



**ZONING TEXT AMENDMENT –  
SECTION 15.08 SIGNS  
TXT#005-13, SEPA#002-14**

**Yakima Planning Commission  
Open Record Public Hearing  
February 26, 2014**

**EXHIBIT LIST**

Applicant:	City of Yakima Planning Division
File Numbers:	TXT#005-13, SEPA#002-14
Site Address:	Citywide
Staff Contact:	Steve Osguthorpe, AICP Planning Manager/Community Development Director

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## **MEMORANDUM**

TO: Planning Commission  
FROM: Steve Osguthorpe, AICP, Community Development Director  
SUBJECT: Billboards & Digital Signs – Public Hearing  
Date: February 26, 2014

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### **Summary of Proposal:**

A draft ordinance regulating billboards is being presented for public hearing before the Planning Commission. The ordinance provides a specific definition of “billboard” and for other terms associated with billboards (b) allows existing billboards to be retained as legal non-conforming structures, and (c) prohibits installation of any additional billboards. To ensure consistency in code language and purpose, and to avoid legal challenges associated with code purpose, the ordinance maintains current allowances for off-premise directional signs for businesses, but prohibits off-premise advertising signs that may be similar to billboards except for associated contracts and advertising fees.

### **Background Information:**

On April 2, 2013, the Yakima City Council enacted a moratorium on all off-premise signs 72 square feet or larger. These larger off-premise signs represent the common billboard which provides advertising space for a fee to the sign owner. The moratorium was primarily intended to address concerns over billboard aesthetics, but it was also intended to address concerns over the rapid transition to digital technologies and the city’s lack of standards to regulate digital signs. Digital billboards create concerns that are more than aesthetic; they create concerns for driver safety because they use intense illumination, rapid motion and creative animation intended to capture driver attention. Because these types of impacts are not limited to just digital billboards, the moratorium was applied to any digital sign similarly sized to billboards (72 square feet or larger), whether it be an off-premise billboard, or an on-premise business sign.

Six months after the moratorium was adopted, the Council heard testimony from representatives of the billboard industry, who claimed that billboards were not the problem in the city and that city staff had confused billboards with on-premise signs. They stated that it was the on-premise signs, particularly smaller on-premise digital signs that the city should be concerned about. The Council therefore did two things: it extended the original moratorium on the larger signs an additional six months, and

adopted an additional moratorium pertaining to smaller on-premise digital signs. The effect of both moratoriums is that the city is not accepting applications for billboards 72 square feet or larger, or for digital signs of any size. The moratoriums are scheduled to expire April 1, 2014.

However, on February 18, 2014, the Council reconsidered it's decision on the digital sign moratorium and determined that it would be better to address on-premise signs more holistically and develop a more comprehensive sign code for the north first street area. The Council therefore rescinded it's direction on digital signs so that the Commission and Council can focus fully on the billboard issue.

### **Billboard Inventory:**

During the period of the original moratorium, city staff inventoried all billboards within the City of Yakima. The inventory revealed the following:

Total Number of billboards: 71  
Total Billboard faces: 119  
Total billboard Ads: 161  
Percent of ads for businesses located in the City: 25%  
Percent of ads pertaining to alcohol and gambling: 25%

### **Additional Staff Research:**

During the period of the moratoriums, staff conducted research on both billboards and digital signs. Based upon that research, staff provided an initial report to the City Council dated September 9, 2013 (*Attachment 1*). The report included:

- A comparison of billboard policies amongst many cities in eastern and western Washington.
- A summary of Yakima's billboard inventory
- Findings on aesthetics and public opinion
- Examples of economic impacts of billboards
- An overview of the American Highway Beautification Act
- Industry lobbyist's focus on state legislatures, including Washington
- An analysis of driver safety
- Specific considerations for Yakima
- Options for consideration

Since development of that initial report, staff conducted a more comprehensive review of regulations in 50 cities in Washington State pertaining to both billboards and digital signs. The review included 31 cities in Western Washington, and 16 cities in Eastern Washington. That additional research is shown in the *Attachment 2* spreadsheet of Billboard and Digital Sign Regulations in Washington State (discussed below). It was

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suggested by billboard industry representatives that the spreadsheet represents only those cities that reflected results that staff wanted and that it does not represent the policies of Eastern Washington. Staff made every effort to include those cities that commonly come to mind for both Eastern and Western Washington and welcomes suggestions for inclusion of cities that may have been overlooked.

### **Differentiating Billboards from On-Premise Signs**

During both Council and Commission level public input, it was suggested that staff had confused billboards with on-premise signs and therefore included on-premise signs in the billboard inventory. Staff was careful to include in the billboard inventory only those signs that sold or leased advertising space to off-premise businesses or organizations. Most of these signs were labeled with Lamar, Metro, Clear Channel and CBS placards. If a sign was as large as the typical billboard but used to advertize a business on the site of the sign, it was considered on-premise signage and not included in the billboard inventory.

Staff understands and appreciates the difference in purpose between billboards and on-premise signage. The purpose of on-site signage is to identify the business or services available at the site on which the sign is located. On-premise signage is an essential and crucial component of local business. Billboards are different from on-premise signs in that billboards do not promote products or services available at the site on which they are located. Their primary purpose is to generate revenue by selling adverting space to off-site businesses, corporations, organizations and other entities. While billboards do advertize some local businesses, the majority of entities that advertize on Yakima's billboards are located out of the city, out of the region and even out of the state or country. (For example, billboards in Yakima included companies based in Oregon, Virginia, and Canada). Moreover, the revenue generated by billboard ads likewise goes primarily to non-local corporations that own the billboards. Specifically, the revenue from billboards in Washington and/or Yakima go primarily to Clear Channel, based in San Antonio, Texas; Lamar Advertising, based in Baton Rouge Louisiana; CBS Outdoor Advertising, based in New York, New York; Metro Outdoor, based in Scottsdale Arizona. Staff acknowledges that some revenue may go to local individuals that maintain the signs and/or change sign messages. However, staff also notes that maintenance has been sporadic on existing static billboards, and the newer digital billboards are designed to minimize local labor costs by being remotely programmable.

### **Planning Commission Considerations:**

Prior to its more focused discussion, the Planning Commission held an open house meeting to allow individuals to provide input on the topic of billboards and digital signs. Following the open house, the Commission held 5 study sessions, one of which included watching a webinar on the digital signs and billboards<sup>1</sup>. The webinar included

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<sup>1</sup> "Digital Signs and Billboards, Crafting and Enforcing Local Regulations", Stafford Webinars, (2013)

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constitutional law attorneys who spoke on the city's legal parameters to regulate signs, and also technical advisors on safety and traffic impacts associated with digital signs. One study session also included an actual demonstration of a digital sign in the City Hall parking lot to better understand its illumination and animation capacities. Throughout each session, the Commission received input from the public, which included representatives from the Outdoor Advertising Association of American (OAAA), the International Sign Association (ISA) and general citizenry including citizens and business owners in Yakima and representatives from Keep Washington Beautiful. The attached ordinance reflects the Commission's consideration of public input received and also staff research on this topic.

**Staff Research & Findings:** The following represents the staff findings for billboards – both static and digital - and provides support for the attached ordinance:

**1. Costs to Local Government:** Billboards have been found to produce adverse impacts and costs at the local level, which are summarized as follows:

- i. Reduced Property Values: Staff finds that there is reasonable and compelling evidence that billboards reduce property values. A 2011 Philadelphia study by Jonathan Snyder found that properties located within 500 feet of a billboard have a decreased real estate value of \$30,826. Homes located further than 500 feet but within a census tract/community where billboards are present experience a decrease of \$947 for every billboard in that census tract<sup>2</sup>. The industry has responded to the Snyder study with two separate studies conducted by Econsult Corporation. While the Econsult studies provided an interesting approach to the topic, staff found that they did not provide compelling reason to discount the Snyder study or otherwise conclude that billboards do not adversely affect values of property near billboards. Staff's response to the Econsult studies is provided in its February 18, 2014 memorandum to the Planning Commission - *Staff Response to Industry Information (attached separately)*.
- ii. Negative Socio-economic Indicators. The above-referenced Snyder study focused also on 20 major US cities, including those with non-strict billboard controls, and those with strict billboard controls, finding that (1) The median income for strict control cities is higher than that for not-strict cities; (2) The mean poverty rate for cities with stricter sign control is lower than for cities without strict sign controls; and (3) The mean home vacancy rate is lower for strict sign control cities.<sup>3</sup>

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<sup>2</sup> Jonathan Snyder, Beyond Aesthetics: How Billboards Affect Economic Prosperity, December 2011, Funded by the Samuel S. Fels Fund.

<sup>3</sup> Ibid.

The presence of billboards is often an indicator of, or associated with, neighborhood instability, and that may reflect on Yakima, where over 90% of existing billboards are located in neighborhoods east of 16<sup>th</sup> Avenue.

- iii. No Tax Revenue to Local Government. In Washington State, billboards are considered personal property for tax purposes, so placing a billboard on property is no different than parking a car or other personal item on a piece of property. Like other forms of personal property, billboards generate no revenue to local coffers except as they promote local tax paying businesses. In Yakima, only 25% of billboard ads are for local tax-paying businesses, and only 12% of those are retail oriented. Under WAC 458-20-204, billboards are considered "outdoor advertising", which is subject to B & O taxes on the gross income from the advertising services, but none of that revenue comes back to the local jurisdiction. Moreover, advertisers are not required to collect retail sales tax, except for any actual product purchased locally to manufacture the sign. Most sign components are manufactured elsewhere.
- iv. Minimal Return to local Economy. Unlike on-premise signage that identifies a local business, only 25% of billboard ads in Yakima at the time of the billboard inventory promoted businesses located within city limits. The balance of ad content included:
- a. 27% of ads for non-local corporations, such as Anheuser Busch, Budweiser, MillerCoors, McDonald's, Verizon, etc.
  - b. 25% of ads dedicated to alcohol and/or gambling. Most gambling ads were for casinos in Toppenish. (Toppenish bans billboards in its own community).
  - c. The balance of ads were public awareness ads, likely provided pro bono by the industry to fill billboards for which there was no demand for paying advertisers.

A study put out by Econsult using input-output economic modeling suggests that billboards provide major benefits to the economy of Philadelphia. However, there is no evidence that the industry provides proportional levels of money or jobs to Yakima's economy as it suggests are provided to Philadelphia's economy. Moreover, staff found that Econsult did not show how its conclusions were derived nor reveal the actual data used in its modeling. Staff's evaluation of that report is included in its February 18, 2014 memorandum to the Planning Commission - *Staff Response to Industry Information (separately attached)*.

- v. Increased Risks of Litigation. The likelihood of litigation against the city increases in relation to both the number of billboards within a city and the city's efforts to regulate billboards or to develop around existing billboards. The industry has filed lawsuits against the city of Seattle in 1980, 1997, and 2002, and against the City of Tacoma in 1997, 2007, and 2011. Lawsuits were largely based upon efforts to remove existing billboards and efforts to

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ban digital billboards. Outside of Washington State, an example comes from Los Angeles, where CBS Outdoor sued the city for 2.3 million dollars over the loss of two billboards on a building demolished twelve years prior to make way for the Hollywood & Highland entertainment and shopping complex. Another example comes from Rapid City, SD where Lamar filed suit in federal court seeking a little over \$10 million in compensation for its losses because of the city's new codes. Epic Outdoor similarly filed suit against Rapid City for the same code provisions. A final example comes from Salt Lake City, where Reagan Sign Company filed a 1 million dollar lawsuit against the city claiming that the parking lot lights of a new hotel blocked visibility of one of Reagan's billboards. That comes even after the City required the relocation of the hotels sign to avoid blocking the billboard.

- vi. Required Compensation to Industry. Any billboard that may require removal to make way for new development can cost a city millions of dollars. A recent example comes from the City of Minneapolis, where the Minnesota DOT required removal of a digital billboard to facilitate a planned bridge project over the Mississippi River into St. Paul. The cost to have the billboard removed was 4.3 million dollars including the value of the structure, even though the same billboard structure was simply relocated to a site a short distance away. (See Exhibit "B" invoice documenting this cost in *separately attached memorandum*) The industry charged not only the value of the billboard structure, but also projected lost revenue. Other costs to Minnesota included the cost of 3 million dollars to remove 4 conventional billboards (\$750,000 each), for a total of \$7.321 million dollars paid to Clear Channel from Minnesota's highway construction budget. These billboards were along State highways, but the same situation could affect road projects at the local level.
  
- vii. Inhibition on City Renewal Projects. A number of communities have attempted to enhance local street and highway corridors through plantings of trees and vegetation. These efforts have often been undermined by both legal and illegal acts of vegetation removal to make existing billboards more visible. An example of this comes from Florida. In an effort to beautify a stretch of State Route 84, sabal palm trees were planted along the swales and median. This upset Clear Channel Communications Inc. which filed a complaint with the Florida Department of Transportation, stating that the organization that planted the trees would have to move 18 of the trees or see them destroyed. The trees were removed. Other examples are provided in staff's February 18, 2014 memorandum to the Planning Commission - *Staff Response to Industry Information (separately attached)*

## 2. Billboard Regulations in Washington State

With revenues to local government low and potential costs high, 91 percent of Washington cities surveyed have chosen to ban installation of additional billboards

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within their jurisdictions. The cities surveyed are included in the attached spreadsheet (see *Attachment 2*), which includes 16 eastern Washington cities, and 31 western Washington cities. Regulatory approaches included outright bans on new billboards, outright bans on any form of off-premise signs, and allowance for new billboards only in exchange for removal of existing billboards. A few cities that yet allow some form of billboards have so restricted their size and location as to effectively ban them, such as Wenatchee, which limits billboards to 60 square feet at 30 feet tall, or 100 square feet at 8 feet tall. The only cities in the survey that still effectively allow billboards are Ellensburg, Grandview, Port Angeles and Yakima. Among those cities, Grandview is the least restrictive (relying solely upon compliance with the building code) followed by Yakima that is less restrictive than Ellensburg and Port Angeles in terms of the permitting process, allowed locations, and spacing between billboards (Yakima's spacing is 500 feet minimum compared to a 1,000 foot minimum in Ellensburg and Port Angeles).

Billboard bans are currently supported by State level bans on digital signs along State highways and scenic byways. However, in response to local prohibitions, the billboard industry is focusing on the State legislature to lift the State ban so it can focus its efforts on local government. Legislation to this effect was introduced in both 2012 and 2013 under HB 1408 & SB 5304. The proposal failed in both years, but the same bills have been introduced this year, with no opportunity for public comment. If the legislation passes, it will remove the State's shield of protection, leaving local governments that choose to regulate or ban billboards along state highways vulnerable to industry law suits. This should alarm local government because the propensity for lawsuits is high as evidenced by industry suits against Seattle, Tacoma, Los Angeles, Salt Lake City, and other jurisdictions choosing to limit billboards. The cost of fighting such litigation is beyond most cities' ability to pay and most simply give in. Most of these lawsuits were the result of trying to remove, regulate or develop around existing billboards.

### 3. Potential for Billboard Proliferation.

As stated above, Yakima's spacing allowances for billboards is less restrictive than all but one of the cities surveyed. When staff presented a map of Yakima's 500-foot spacing allowance at the December 11 workshop, it was asserted by those in the industry that such spacing could not occur because they couldn't sell enough ads to justify that amount of signage. An example from Rapid City South Dakota demonstrates how this has occurred in other locations. With a population of approximately 70,000 (one third smaller than Yakima), Rapid City has 400 billboards throughout the city, and significantly more in the surrounding area. One industry alone has 204 signs in the area and many of these are clustered in short segments of highways. (See attached excerpts from Epic Outdoor Advertising's billboard inventory – *Attachment 3*). For example, along I-90 at milepost 50, Epic has documented 12 signs within that one mile stretch.



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It should be noted that minimally spaced billboards have already been installed along the western side of No. 1<sup>st</sup> Street in Yakima. It was suggested that this could not occur on the east side of No. 1<sup>st</sup> because of existing structures. That itself is not a limiting factor. Sign structures take only a few square feet of land and they are designed to conform to any needed configuration, including off-set faces and dogleg posts that allow projection over roof tops and maneuvering in tight spaces. (See additional information in *Staff Response to Industry Information*.)

#### 4. Derelict Conditions of Yakima's Billboards.

There are growing numbers of billboards in Yakima that are derelict and intermittently abandoned. This is particularly evident on North 1<sup>st</sup> Street, where a number of high profile billboards characterize this entry corridor with tattered canvas and multiple layers of old peeling copy. These remain in this condition for extended periods of time until new copy is installed on an inexpensive thin canvas that is usually torn apart with the next major windstorm. They then hang in shreds that get wrapped around the sign structure or abutting fences and structures. These are typically public service or crime stopper ads that are likely installed pro bono as an interim means of using the sign structures.

This problem was brought to the attention of CBS Outdoor Representative Rob LaGrone during a PowerPoint presentation to the Council back in October 2013. Mr. LaGrone stated that the industry has representatives that regularly visit the area to correct such conditions, and he then had the problems identified in the October presentation corrected. However, in a short period of time, the signs went back to their tattered condition, leaving the City with the burden of having to chase these down as an enforcement action.

This then becomes one more challenge in the city's efforts to clean up North 1<sup>st</sup> Street. The signs create the appearance that neither the city nor property owners in this location care about the conditions of this corridor, and other problems related to this area such as prostitution and drugs continue. This is the classic "broken windows" syndrome identified by Commission-member Bill Cook during a recent Planning Commission discussion of this topic. The broken windows theory is a criminological theory of the



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norm-setting and signaling effect of urban disorder and vandalism on additional crime and anti-social behavior. The theory states that maintaining and monitoring urban environments in a well-ordered condition may stop further vandalism and escalation into more serious crime.

(Staff notes that some of these signs were recently changed out just prior to this scheduled public hearing.)

## 5. Visual and Safety Impacts of digital Signs

There are two related aspects of concern regarding digital billboards. One is the nuisance factor associated with excessively bright, glaring, flashing and/or erratic light conditions. Many people find these annoying, particularly when they are constantly exposed to their effects from either their home or place of work. The other is the safety factor resulting from these nuisance factors. One of the attractions to digital billboards is their attention-getting qualities, both in the way they illuminate and animate, and also in the way they present their messages. For example, they often entice continued gaze by leaving readers to anticipate what the next message or next line of a message will be. It is these qualities that have caused significant debate over the safety aspect of digital signs generally. If they are designed to capture and keep driver attention, is that enough of a distraction to cause accidents. A number of studies are concluding that digital signs do cause accidents, including a study out of Sweden that prompted the Swedish government to have all digital signs removed. A more full discussion of the safety aspect of digital billboards was included in staff's September 9, 2013 report to the City Council. (*Attachment 1*)



### Staff Recommendation:

Based upon the above described research, public input, planning commission deliberation and staff findings, staff concludes that billboards can have adverse impacts on local economies, redevelopment efforts and the health safety and welfare of the general public. Staff further concludes that the proposed ordinances will provide the needed regulation to address these impacts. Staff recommends that the Planning Commission conduct the public hearing and forward to the City Council a recommendation to adopt the proposed ordinance.

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*Attachment 1*

Yakima Billboard Moratorium

First Report to Yakima City Council

September 9, 2013

**Background:**

On April 2, 2013, the City of Yakima imposed a moratorium on the installation of any new off-premise signs and any digital signs 72 square feet or larger. This has more commonly been referred to as a billboard moratorium because it was the common billboard - digitized or otherwise - that the moratorium was intended to address. The moratorium was the result of a discussion city staff had with the Council over Yakima's built environment. Staff shared with Council a PowerPoint presentation on both the positive aspects of Yakima's built environment and the areas where the City has experience significant decline in both the visual and socio-economic quality of its commercial districts and neighborhoods. The presentation identified those features that contributed to the visual disarray and negative images of the City's major entry corridors, including Nob Hill Boulevard and North First Street. Billboards were cited as one of the more visually obtrusive features in these areas that could severely hamper the City's ability to revitalize neighborhoods.

And based upon the content of billboard ads, it was noted that they provided questionable benefit to the City of Yakima. Many were found to promote products or services that conveyed a negative image of the City, such as criminal wanted postings, "jail sucks" bail bonding services, and alcohol products at city entrances and in low income neighborhoods. Others were found to advertize services not located in the city of Yakima, such as a casino in Toppenish, a business in Ellensburg, and a ski resort in Canada.



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Finally, it was shown that the physical condition of the billboards were often tattered and run down, contributing to a blighted image of Yakima's highly visual entry corridors.



The purpose of this report therefore is to provide additional information to the Yakima City Council that will serve as a basis for further discussion and policy development on this topic. Specifically, this report:

- a. Provides an inventory of existing billboards in Yakima, including their location and the content of their ads in terms local or non-local promotions.
- b. Describes the debate over billboard effects on economic development and revitalization efforts.
- c. Provides information on the affect of billboards on property values and local economies.
- d. Addresses the issue of traffic safety as it relates to billboards.
- e. Provides information on how other jurisdictions both regionally and nationally have chosen to regulate billboards.
- f. Describes how the billboard industry has affected policy on this topic at the local, state and national level, and the tactics the City of Yakima can expect the industry to take to affect any changes in local regulations of billboards.

[Due to its length this report and the fact that it was previously distributed, the full report is not reproduced here. The full report can be viewed on the Yakima City Planning Division's website at <http://www.yakimawa.gov/services/planning/billboard-digital-sign-moratoriums/>, or a full copy can be obtained from the Planning Division upon request.]

Attachment 2

ATTACHMENT 2 Billboard / Digital Sign - Regulations in Washington Cities

City / Jurisdiction	Billboards Allowed with Size/ Location Restrictions	Prohibit New Billboards	Prohibit Off-premise Signs (including billboards)	Allow New Billboards Only with Relocation Permit	Prohibit Digital Billboards / Signs	Digital Design Restrictions	Allow Digital Only with Reduction Provision	Eliminate Existing Billboards By Amortization
Eilensburg	✓ TC zone only, CUP required, 288 sq.ft. max.					One digital sign per frontage, 3 sq.ft. max, 64 sq.ft. max. for public use. 3-second rule applies. 10-seconds pause for entire message.		
Grandview	✓							
Kennewick		✓	✓					✓ Must meet size, area, height and electrical requirements by specified date.
Moses Lake		✓				50 sq.ft. max. size. Illumination limit - 8,000 nits daytime; 1000 nits nighttime. 10-second rule. No white background		
Pasco			✓ (with exceptions for directional signs)					
Pullman			✓					
Richland		✓	✓					
Selah		✓	✓					
Spokane			✓			Illumination limit - .3 foot-candles. 2-second rule applies. Limited to 50% of allowable signage. Prohibited in CBD zone.		
Spokane Valley		✓	✓	✓				
Sunnyside	Totally discretionary with no guaranteed right. 200 sq.ft. max. Prohibited along designated entryways.		✓ (with very limited exceptions)					✓

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City / Jurisdiction	Billboards Allowed with Size/ Location Restrictions	Prohibit New Billboards	Prohibit Off-premise Signs (including billboards)	Allow New Billboards Only with Relocation Permit	Prohibit Digital Billboards / Signs	Digital Design Restrictions	Allow Digital Only with Reduction Provision	Eliminate Existing Billboards By Amortization
Eastern Washington	Toppenish	✓				Allows digital only if no more than 40% of sign face. No moving images, 5000 nits day, 500 nits night		
	Union Gap		✓					
	Walla Walla	✓	✓		✓ (No changing message centers)	Allows electronic text only.		
	Wenatchee	✓ Limited to 60 sq.ft. @ 30 feet tall or 100 sq.ft. @ 8 ft. tall.	(Effectively)					
	Yakima	✓ M1, M2, CBD, GC and RD zones. 35 ft tall, 500 ft. spacing.						
	Auburn		✓			Illumination limit - 8,000 nits daytime; 500 nits nighttime. 1.5 second rule applies, 5 second scroll allowed.		
	Bellevue		✓		✓ (Allowed for non-commercial use only)	4 minute rule applies. 8 hour rule applies. No motion or animation. Limited to text only.		✓
	Bellingham			✓	✓			
	Bothell		✓					
	Bremerton		✓	✓				✓
Western Washington	Burien	✓	✓	✓		Limited to 50% area of free-standing sign.		✓ (90 days)
	Centralia		✓					
	Des Moines			✓		Illumination limit - 5,000 nits daytime; 500 nits nighttime. 2-second rule applies. No animation.		

City / Jurisdiction	Billboards Allowed with Size/ Location Restrictions	Prohibit New Billboards	Prohibit Off-premise Signs (including billboards)	Allow New Billboards Only with Relocation Permit	Prohibit Digital Billboards / Signs	Digital Design Restrictions	Allow Digital Only with Reduction Provision	Eliminate Existing Billboards By Amortization
Everett	✓ 20 ft. above street grade, 1000' separation, subject to removal clause.			✓ Requires removal of any nonconforming billboard owned by that company, and remove/conform when sold.	✓			
Federal Way		✓	✓					
Fife			✓					
Gig Harbor			✓		✓			
Kent				✓	✓ (prohibition applies to off-premise only)			
Lacey			✓		✓			
Lakewood		✓	✓					✓
Marysville		✓				No animation. 20 second rule applies. 30% of sign area max. Dimming mechanism required.		
Mill Creek			✓					
Olympia		✓	✓			(3 minute rule (very limited). 30 second rule applies.		
Port Angeles	✓ CA and Industrial Zones only. 1000 ft. spacing.							
Port Orchard		✓	✓		✓ (billboards)			✓
Poulsbo		✓	✓					
Puyallup		✓				2 second rule applies.		
Spanton			✓					

Western Washington

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City / Jurisdiction	Billboards Allowed with Size/ Location Restrictions	Prohibit New Billboards	Prohibit Off-premise Signs (including billboards)	Allow New Billboards Only with Relocation Permit	Prohibit Digital Billboards / Signs	Digital Design Restrictions	Allow Digital Only with Reduction Provision	Eliminate Existing Billboards By Amortization
Sea Tac		✓	✓			Illumination limit - 8,000 nits daytime; 500 nits nighttime. 1.5-second rule applies. Requires dark background.		✓
Seattle	✓ (subject to removal clause).	✓ (except under removal clause).	✓ (within 660 feet of highways)	✓	✓ (billboards)	2 second rule, with 20 second pause.		
Sequim		✓	✓					
Shelton		✓	✓		✓ (except for 10-acre shopping center)			
Shoreline		✓	✓			20-second rule applies. No moving messages.		
Tacoma	✓ (subject to removal clause).	✓ (except under removal clause).	✓	✓		4 / 8 second rule applies. Illumination limit - 8,000 nits daytime; 1000 nits nighttime Requires ambient light monitor		✓
Vancouver		✓	✓		✓ (Allowed only in Public/Institution Zone)	32 sq.ft. max. Single color only (warm tone). 4 second rule applies.		
Woodinville		✓	✓					

Western Washington

Legend - Cities highlighted in yellow are those that permit the typical billboard without any requirements for mitigation (e.g., no requirements to remove existing billboards to allow new billboards), and without limiting factors such as the fully-discretionary, no guarantee provisions of Sunnyside.

Of those jurisdictions that allow billboards, Yakima and Grandview are the least restrictive in terms of required spacing, lack of illumination restrictions, and the number of zones in which billboards are permitted

## Attachment 3

# Epic Outdoor Advertising

## Billboard Report

Area Name	Description	Mile Marker	Direction	Size	Expiration	Illuminated	Price	Special Price
Digital Billboards	The GAP	1700	Eastbound - LHR	10.00 x 18.00	06/01/2013	Yes	\$0.00	
Digital Billboards	The GAP	1700	Westbound - RHR	10.00 x 18.00	06/01/2013	Yes	\$0.00	
Rapid City Area - Metro	Ellsworth AFB Main Gate	0	Westbound - LHR	10.00 x 22.00	01/01/2014	No	\$475.00	
Rapid City Area - Metro	Ellsworth AFB Main Gate	0	Eastbound - RHR	10.00 x 22.00	11/15/2013	No	\$475.00	
Rapid City Area - Metro	Hwy 79 Overpass	2650	Northbound - RHR	10.00 x 36.00	06/01/2014	Yes	\$650.00	
Rapid City Area - Metro	Hwy 79 Overpass	2650	Southbound - LHR	10.00 x 36.00	04/01/2014	Yes	\$600.00	
Rapid City Area - Metro	Elk Vale #2	2	Southbound - LHR	14.00 x 48.00	07/01/2014	No	\$650.00	
Rapid City Area - Metro	Elk Vale & Exit 61	1	Southbound - LHR	14.00 x 48.00	04/01/2014	Yes	\$750.00	
Rapid City Area - Metro	Elk Vale & Exit 61	1	Northbound - RHR	14.00 x 48.00	02/01/2014	Yes	\$750.00	
Rapid City Area - Metro	West Chicago	2710	Westbound - RHR	10.00 x 36.00	02/15/2014	Yes	\$400.00	
Rapid City Area - Metro	West Chicago	2710	Eastbound - LHR	10.00 x 36.00	01/15/2014	Yes	\$400.00	
Rapid City Area - Metro	Elk Vale #2	2	Northbound - RHR	14.00 x 48.00	02/01/2014	No	\$650.00	
Rapid City Area - Metro	Elk Vale #3	3	Northbound - RHR	14.00 x 48.00	05/01/2014	No	\$650.00	
Rapid City Area - Metro	Elk Vale #3	3	Southbound - LHR	14.00 x 48.00	06/15/2014	No	\$650.00	
Rapid City Area - Metro	E St. Patrick St Next to Valley Sports Bar	2660	Eastbound - LHR	12.00 x 32.00	11/01/2013	Yes	\$450.00	
Sturgis Area	190 Sturgis	29	Westbound - LHR	10.00 x 36.00	02/01/2014	Yes	\$400.00	
Rapid City Area - Metro	E St. Patrick St Next to Keefer Sanitation	2510	Westbound - RHR	12.00 x 32.00	02/01/2014	Yes	\$450.00	
Rapid City Area - Metro	E St. Patrick St Next to Keefer Sanitation	2510	Eastbound - LHR	12.00 x 32.00	11/01/2013	Yes	\$400.00	
Rapid City Area - Metro	E St. Patrick St Next to Valley Sports Bar	2660	Westbound - RHR	12.00 x 32.00	05/01/2014	Yes	\$450.00	
Rapid City Area - Metro	E St. Patrick St Next to storage	2330	Westbound - RHR	12.00 x 32.00	10/01/2013	Yes	\$400.00	
Rapid City Area - Metro	E St. Patrick St Next to storage	2330	Eastbound - LHR	12.00 x 32.00	10/01/2013	Yes	\$400.00	
Rapid City Area - Metro	Elk Vale #4	4	Northbound - RHR	14.00 x 48.00	02/01/2014	No	\$650.00	
Rapid City Area - Metro	Elk Vale #4 2300	4	Southbound - LHR	14.00 x 48.00	04/01/2014	No	\$650.00	
Rapid City Area - Metro	E St Patrick St Poster	1	Westbound - RHR	10.00 x 22.00	12/01/2013	No	\$475.00	
Rapid City Area - Metro	E St Patrick St Poster	1	Eastbound - LHR	10.00 x 22.00	02/01/2014	No	\$475.00	
Sturgis Area	190 Sturgis	28	Eastbound - RHR	10.00 x 36.00	06/01/2014	Yes	\$725.00	
Sturgis Area	190 Sturgis	28	Westbound - LHR	10.00 x 36.00	06/01/2013	Yes	\$500.00	

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1.

I-90 - West of Rapid City	I90 Piedmont	43	Eastbound - RHR	10 00 x 32 00	10/01/2013	No	\$450 00	
Nebraska	Hwy 20 Chadron	13	Northbound - RHR	12.00 x 24.00	01/15/2015	No	\$300.00	
I-90 - West of Rapid City	I90 Rapid City	49	Westbound - LHR	14 00 x 48.00	07/01/2014	Yes	\$725 00	
I-90 - West of Rapid City	I90 Rapid City	49	Eastbound - RHR	14.00 x 48.00	02/15/2014	Yes	\$750.00	
I-90 - West of Rapid City	I90 Rapid City	49	Westbound - LHR	14 00 x 48.00	11/01/2014	Yes	\$725 00	
I-90 - West of Rapid City	I90 Rapid City	49	Eastbound - RHR	14.00 x 48.00	02/01/2014	Yes	\$750.00	
I-90 - West of Rapid City	I90 Rapid City	50	Westbound - LHR	14 00 x 48.00	02/01/2014	Yes	\$725 00	
I-90 - West of Rapid City	I90 Rapid City	50	Eastbound - RHR	14.00 x 48.00	09/01/2015	Yes	\$750 00	
I-90 - West of Rapid City	I90 Rapid City	50	Westbound - LHR	14.00 x 48.00	08/01/2014	Yes	\$700 00	
I-90 - West of Rapid City	I90 Rapid City	50	Eastbound - RHR	14.00 x 48.00	01/05/2015	Yes	\$750.00	
I-90 - West of Rapid City	I90 Rapid City	50	Westbound - LHR	14.00 x 48.00	10/01/2013	Yes	\$700 00	
I-90 - West of Rapid City	I90 Rapid City	50	Eastbound - RHR	14.00 x 48.00	06/01/2014	Yes	\$750.00	
I-90 - West of Rapid City	I90 Rapid City	50	Eastbound - RHR	14.00 x 48.00	06/01/2015	Yes	\$750.00	
I-90 - West of Rapid City	I90 Rapid City	50	Westbound - LHR	14.00 x 48.00	11/01/2014	Yes	\$700.00	
I-90 - West of Rapid City	I90 Rapid City	50	Eastbound - RHR	14.00 x 48.00	02/01/2015	Yes	\$750.00	
I-90 - West of Rapid City	I90 Rapid City	50	Westbound - LHR	14.00 x 48.00	03/01/2014	Yes	\$700.00	
I-90 - West of Rapid City	I90 Rapid City	50	Westbound - LHR	14.00 x 48.00	07/01/2014	Yes	\$700.00	
I-90 - West of Rapid City	I90 Rapid City	50	Eastbound - RHR	14.00 x 48.00	06/01/2013	Yes	\$750.00	
I-90 - West of Rapid City	I90 Rapid City	54	Westbound - RHR	14 00 x 48.00	02/01/2014	Yes	\$750.00	
I-90 - West of Rapid City	I90 Rapid City	54	Eastbound - LHR	14.00 x 48.00	04/01/2014	Yes	\$725 00	
I-90 - West of Rapid City	I90 Rapid City	54	Westbound - RHR	14.00 x 48.00	07/01/2014	Yes	\$725 00	
I-90 - West of Rapid City	I90 Rapid City	54	Eastbound - LHR	14.00 x 48.00	04/15/2014	Yes	\$750.00	
I-90 - West of Rapid City	I90 Rapid City	55	Westbound - RHR	14.00 x 48.00	02/01/2014	Yes	\$725.00	
I-90 - West of Rapid City	I90 Rapid City	55	Eastbound - LHR	14.00 x 48.00	11/01/2014	Yes	\$800.00	
Digital Billboards	E North St	0	Westbound - RHR	10.00 x 18.00	01/01/2014	Yes	\$0.00	
Black Hills	Hwy 16A	58	Southbound - LHR	10.00 x 36.00	10/01/2014	No	\$600.00	
Black Hills	Hwy 16	56	Northbound - RHR	8 00 x 28.00	03/01/2014	No	\$380 00	
Black Hills	Hwy 16A	58	Northbound - RHR	10.00 x 36.00	12/15/2014	No	\$400 00	
Black Hills	Hwy 16A	58	Southbound - LHR	10.00 x 36.00	04/01/2014	No	\$550 00	
Black Hills	Hwy 16A	58	Northbound - RHR	10.00 x 36.00	03/01/2014	No	\$600.00	
Black Hills	Hwy 16A	58	Southbound - LHR	10.00 x 36.00	05/01/2014	No	\$600 00	
Black Hills	Hwy 16A	58	Northbound - RHR	10.00 x 36.00	05/15/2014	No	\$600.00	

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# A-1



BEFORE THE PLANNING COMMISSION  
OF THE CITY OF YAKIMA

<u>In the matter of:</u>	)	
	)	Public Hearing: February 26, 2014
Proposed Regulation of Billboard	)	
Signs and Off-Premises Signs	)	FINDINGS OF FACT, CONCLUSIONS
City of Yakima	)	OF LAW, AND RECOMMENDATION
_____	)	

THIS MATTER, having come before the Planning Commission of the City of Yakima (hereafter "Planning Commission") upon public hearing on February 26, 2014, and the Planning Commission having considered the record herein and all evidence and testimony presented, hereby makes the following

FINDINGS OF FACT

1. A public hearing was held before the Planning Commission on February 26, 2014 pursuant to notice duly published, all in accordance with applicable procedures of the Yakima Municipal Code and state law.
2. No objection was made to any member of the Planning Commission hearing and deciding all issues in this matter.
3. On April 2, 2013, the City Council of the City of Yakima adopted Ordinance No. 2013-013 prohibiting the receipt of applications, permitting, installation, erection or construction of (a) any new off-premises static billboard greater than 72 square feet in area, including billboards displaying static printed message and material, within all zoning districts of the City, and (b) on-premises and off-premises digital billboards greater than 72 square feet in area, 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 and providing that static copy on existing billboards may continue to be changed.
4. The City Council conducted a public hearing on May 21, 2013 concerning the moratorium adopted pursuant to Ordinance No. 2013-013, and adopted findings

of fact supporting the moratorium as originally enacted, all as set forth in Resolution No 2013-065.

5. On October 1, 2013, the City Council adopted Ordinance No. 2013-046 extending the moratorium implemented pursuant to Ordinance No. 2013-013 for an additional six months, through April 1, 2014. In addition, on October 1, 2013, the City Council adopted Ordinance No. 2013-047 imposing a moratorium through April 1, 2014 on the receipt of applications, permitting, installation, erection or construction of on-premises and off-premises digital signs 72 square feet or less in area, consisting of or including changing electronic, digital, or changeable message billboards in all zoning districts within the City, and further prohibiting the alteration, modification, or replacement of any existing sign, so that the existing sign (as altered or modified) uses changing electronic, digital or video display or flashing, motion, animated, or changeable electronic variable message copy and providing that static copy on existing signs may continue to be changed.
6. The City Council conducted a public hearing on October 15, 2013 concerning the moratorium extended pursuant to Ordinance No. 2013-046 and the moratorium adopted pursuant to Ordinance No. 2013-047. Following such public hearing, the City Council adopted findings of fact supporting such moratoria as originally approved, all as set forth in Resolution No. 2013-132.
7. The Planning Commission has been directed to receive and consider evidence, testimony and comment from the public and the sign industry, studies conducted by traffic safety agencies and professionals, to consider sign code regulations adopted by other jurisdictions, and to make a recommendation to the City Council regarding proposed regulation of billboards and digital signs.
8. The Planning Commission has held and conducted public meetings, study sessions and public hearings to receive and consider such evidence and testimony, which meetings include meetings scheduled and held on December 11, 2013, January 8, 2014, January 15, 2014, January 22, 2014, January 29, 2014, February 5, 2014, and February 12, 2014, together with public hearing on February 26, 2014, all pursuant to notice.
9. During such meetings, the Planning Commission has received and reviewed reports from city staff, sign code provisions from other cities within the State of Washington, comparisons of sign regulations from other jurisdictions. The Planning Commission has also viewed a video seminar entitled "Digital Signs

and Billboards: Crafting and Enforcing Local Regulations,” produced by Strafford Webinars, and conducted field views of digital signs.

10. The Planning Commission has received and reviewed scientific studies and reports concerning economic impacts of signs, traffic safety issues associated with billboards and digital signs, and aesthetic considerations associated with billboards and digital signs, as referenced and described in staff reports of record.
11. The Planning Commission finds that regulation of billboards and digital signs should be analyzed individually, as general differences between the two types of signage consist of static message versus changing message, static lighting levels versus changing levels with color modulation, driver's perceptions and effects on traffic safety, and effects on the surrounding environment. Therefore, with regard to billboards:

Billboards

(a) Billboards serve primarily as advertising platforms for goods and services available at another location, not on the premises on which the billboard is located. Thus, billboards are categorized as “off-premises” advertising.

(b) As stated in staff reports, and as cited in studies referenced in such reports, billboards produce adverse impacts and costs at the local level, including but not limited to, reduced property values, negative socio-economic indicators, lack of tax revenue to local government, minimal advertising of local businesses, increased risks of litigation and costs to local government, inhibition of local renewal projects, distraction of drivers, contribution to visual blight and increased code enforcement costs to achieve correction of dilapidated or tattered billboard sign faces.

(c) Staff surveys of billboard regulation by forty-seven (47) cities within the State of Washington (sixteen (16) Eastern Washington cities, and thirty-one (31) Western Washington cities) reveal that 91% of such cities have chosen to ban installation of additional billboards.

(d) Current provisions of the Yakima Municipal Code allow placement of billboards in the M-1, M-2, CBD, GC and RD Zones, with a limitation of 35 feet in height and subject to 500-foot spacing requirements. There are currently 119 billboards on 69 structures within the City of Yakima. Eighty-four percent (84%) of existing billboards lie east of 16<sup>th</sup> Avenue. Sixteen percent (16%) of the billboards lie west of 16<sup>th</sup> Avenue, but 55% of those

lie along Fruitvale Boulevard. Under current municipal code provisions, there is significant potential for locating more billboards, thus increasing points of distraction for drivers with deleterious effects on traffic safety, increased incidents of visual blight, and additional public costs of code enforcement.

11. One of the primary purposes of the Growth Management Act is to empower cities planning under the Act to develop and adopt land use controls reflecting the local needs of the community. As provided in RCW 36.70A.010: "It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning."
12. On January 31, 2014, the City of Yakima issued a notice of application pursuant to the State Environmental Policy Act (SEPA) concerning the proposed regulation of signs described herein. The notice advised that the city anticipated issuing a Determination of Nonsignificance (DNS), but that comments could be submitted through February 20, 2014, with issuance of the proposed DNS on February 21, 2014.
13. The Planning Commission finds and determines that Chapter 15.08 YMC should be amended to prohibit additional billboards within the City of Yakima, regulating off-premises directional signs, and stating definitions applicable thereto, and that amendments are in the best interests of residents of the City of Yakima, will promote economic development, reduce visual blight, promote traffic safety, and promote the general health, safety and welfare.
14. Any Finding of Fact, or portion thereof, hereafter determined by a court of competent jurisdiction to be a Conclusion of Law shall be construed as a Conclusion of Law without derogation of any other Finding of Fact.

Having made the above Findings of Fact, the Planning Commission makes the following

#### CONCLUSIONS OF LAW

1. The Planning Commission has jurisdiction to receive all evidence and testimony in this matter, and to make these Findings of Fact, Conclusions of Law and Recommendation concerning all issues herein.
2. There being no objection to any member of the Planning Commission proceeding to hear and consider all matters herein, any and all objections arising or alleged to

arise out of the appearance of fairness doctrine or provisions related to conflict of interest are hereby deemed waived.

3. All procedural requirements pertaining to notice, scheduling and conducting the public hearing have been met and are satisfied.
4. All procedural requirements pertaining to amendment of Title 15 of the Yakima Municipal Code have been met and are satisfied.
5. Any Conclusion of Law, or portion thereof, hereafter determined by a court of competent jurisdiction to be a Finding of Fact shall be construed as a Finding of Fact without derogation of any other Conclusion of Law.

Having made the above Findings of Fact and Conclusions of Law, the Planning Commission hereby renders its

RECOMMENDATION TO CITY COUNCIL

The Planning Commission of the City of Yakima, having received and considered all evidence and testimony presented at public hearing, and having received and reviewed the record herein, hereby recommends that the City Council of the City of Yakima APPROVE the proposed legislation entitled "An Ordinance relating to regulation of signs, amending Chapter 15.08 of the Yakima Municipal Code regarding regulation of billboards and off-premises signs," as included and incorporated into the record herein.

ADOPTED AND APPROVED this 26<sup>th</sup> day of February, 2014.

By: \_\_\_\_\_  
Dave Fonfara, Chair



**ORDINANCE NO. 2014-**

**AN ORDINANCE** relating to regulation of signs, amending Chapter 15.08 of the Yakima Municipal Code regarding regulation of billboards and off-premises signs.

**WHEREAS**, the City Council has previously adopted ordinances establishing criteria for location, licensing and maintenance of off-premises advertising signs and signs commonly known as billboards, all as codified at Chapter 15.08 YMC; and

**WHEREAS**, the City Council has previously adopted a moratorium on April 2, 2013 pursuant to Ordinance No. 2013-013 prohibiting the receipt of applications, permitting, installation, erection or construction of (a) any new off-premises static billboard greater than 72 square feet in area, including billboards displaying static printed message and material, within all zoning districts of the City, and (b) on-premises and off-premises digital billboards greater than 72 square feet in area, 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 and providing that static copy on existing billboards may continue to be changed; and

**WHEREAS**, the City Council conducted a public hearing on May 21, 2013 concerning the moratorium adopted pursuant to Ordinance No. 2013-013, and adopted findings of fact supporting the moratorium as originally enacted, all as set forth in Resolution No 2013-065; and

**WHEREAS**, on October 1, 2013, the City Council adopted Ordinance No. 2013-046 extending the moratorium implemented pursuant to Ordinance No. 2013-013 for an additional six months, through April 1, 2014. In addition, on October 1, 2013, the City Council adopted Ordinance No. 2013-047 imposing a moratorium through April 1, 2014 on the receipt of applications, permitting, installation, erection or construction of on-premises and off-premises digital signs 72 square feet or less in area, consisting of or including changing electronic, digital, or changeable message billboards in all zoning districts within the City, and further prohibiting the alteration, modification, or replacement of any existing sign, so that the existing sign (as altered or modified) uses changing electronic, digital or video display or flashing, motion, animated, or changeable electronic variable message copy and providing that static copy on existing signs may continue to be changed; and

**WHEREAS**, the City Council conducted a public hearing on October 15, 2013 concerning the moratorium extended pursuant to Ordinance No. 2013-046 and the moratorium adopted pursuant to Ordinance No. 2013-047. Following such public hearing, the City Council adopted findings of fact supporting such moratoria as originally approved, all as set forth in Resolution No. 2013-132; and

**WHEREAS**, the Planning Commission of the City of Yakima has held meetings and special meetings to receive public comment, testimony and evidence, including but not limited to, meetings on December 11, 2013, January 8, 2014, January 15, 2014, January 22, 2014, January 29, 2014, February 5, 2014, and February 12, 2014, together with public hearing on February 26, 2014, all pursuant to notice; and

**WHEREAS**, having considered all testimony, comment and evidence presented during such meetings, special meetings and public hearing, has adopted on February 26, 2014 Findings of Fact, Conclusions of Law and Recommendation to the City Council for adoption of an ordinance pertaining to the regulation of billboards within the City of Yakima; and

**WHEREAS**, the City Council, having received the findings, conclusions and recommendation of the Planning Commission, together with the record herein, and having received and considered all evidence, testimony and comment presented at a public hearing conducted March 18, 2014 pursuant to notice duly published, hereby finds and concludes:

(a) The Findings of Fact, Conclusions of Law and Recommendation of the Planning Commission, dated February 26, 2014, are hereby received and adopted by this reference as the Findings of Fact and Conclusions of Law of the City Council;

(b) All procedural provisions of the Yakima Municipal Code pertaining to amendment of Title 15 YMC have been met and satisfied;

and

**WHEREAS**, the City Council finds and determines that such Chapter 15.08 YMC should be amended to add new provisions regulating billboards within the City of Yakima; and

**WHEREAS**, the City Council finds and determines that YMC 15.08.020, YMC 15.08.050 and YMC 15.08.130 should be amended as shown and set forth in Exhibit "1-A" attached hereto and by this reference incorporated herein, and that Table 8-1 set forth in YMC 15.08.060 should be repealed and new Table 8-1 adopted as set forth in Exhibit "1-B" attached hereto and by this reference incorporated herein; and that such amendments are in the best interest of residents of the City of Yakima and will promote the general health, safety and welfare; now, therefore

**BE IT ORDAINED BY THE CITY OF YAKIMA:**

**Section 1.** Sections 15.08.020, 15.08.050 and 15.08.130 of Chapter 15.08 of the Yakima Municipal Code are each hereby amended to read as set forth in Exhibit "1-A" attached hereto and incorporated herein.

**Section 2.** Table 8-1 set forth in Section 15.08.060 of the Yakima Municipal Code are each hereby repealed, and new Table 8-1 adopted and approved as set forth in Exhibit "1-B" attached hereto and incorporated herein.

**Section 3.** Except as amended above, Chapter 15.08 YMC shall remain unchanged.

**Section 4. Severability.** If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

**Section 5.** This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

**PASSED BY THE CITY COUNCIL,** signed and approved this 18<sup>th</sup> day of March, 2014.

ATTEST:

\_\_\_\_\_  
Micah Cawley, Mayor

\_\_\_\_\_  
City Clerk

Publication Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

## EXHIBIT "1-A"

### 15.08.020 Definitions.

For the purpose of this chapter, certain abbreviations, terms, phrases, words and derivatives shall be construed as specified herein.

"Abandoned sign" means any sign located on property that is vacant and unoccupied for a period of six months or more, or any sign which pertains to any occupant, business or event unrelated to the present occupant or use.

"Banner" means any sign of lightweight fabric or similar material that is mounted to a pole or building at one or more edges. National flags, state and local flags or any official flag at an institution or business will not be considered banners.

"Billboard" means any sign face, the primary purpose of which is to lease, rent, let or otherwise allow sign space for a fee or other compensation to the underlying property owner or tenant, and/or to the sign face owner. Billboards primarily advertise, identify or promote off-premises businesses, products, services, organizations and/or entities. Billboards may occasionally provide ad space on a pro bono basis, and may, on a compensatory basis to the property owner or tenant, advertise products or services that are minimally and/or coincidentally available on the site.

"Canopy sign" means any sign that is part of or attached to an awning, canopy or other fabric, plastic or structural protective cover over a door, entrance, window or outdoor service area.

"Changing message center sign" means an electronically controlled sign where different automatic changing messages are shown on the lamp bank. This definition includes time and temperature displays.

"Construction sign" means any sign used to identify the architects, engineers, contractors or other individuals or firms involved with the construction of a building and to show the design of the building or the purpose for which the building is intended.

Directional Sign. See "off-premises directional sign" and "on-premises directional sign."

"Electrical sign" means a sign or sign structure in which electrical wiring, connections, and/or fixtures are used as part of the sign proper.

"Flashing sign" means an electric sign or a portion thereof (except changing message centers) which changes light intensity in a sudden transitory burst, or which switches on and off in a constant pattern in which more than one-third of the nonconstant light source is off at any one time.

"Freestanding sign" means any sign supported by one or more uprights, poles or braces in or upon the ground.

"Freeway sign" means a freestanding sign designed and placed to attract the attention of freeway traffic.

"Grand opening sign" means temporary signs, posters, banners, strings of lights, clusters of flags, balloons and searchlights used to announce the opening of a completely new enterprise or the opening of an enterprise under new management.

"Multiple-building complex" is a group of structures housing two or more retail, offices, or commercial uses sharing the same lot, access and/or parking facilities, or a coordinated site plan. For purposes of this section, each multiple-building complex shall be considered a single use.

"Multiple-tenant building" is a single structure housing two or more retail, office, or commercial uses sharing the same lot, access and/or parking facilities, or a coordinated site plan. For purposes of this section, each multiple-building complex shall be considered a single use. (See YMC 15.08.140.)

"Off-premises directional sign" means an off-premises sign with directions to a particular business located within the city.

"Off-premises sign" means a sign advertising or promoting merchandise, service, goods, or entertainment sold, produced, manufactured or furnished at a place other than on the property where the sign is located. Off-premise signs include but are not limited to billboards, and exclude off-premises directional signs.

"On-premises directional sign" means a sign directing pedestrian or vehicular traffic to parking, entrances, exits, service areas, or other on-site locations.

"On-premises sign" means a sign incidental to a lawful use of the premises on which it is located, advertising the business transacted, services rendered, goods sold or products produced on the premises or the name of the business or name of the person, firm or corporation occupying the premises.

"Political sign" means a sign advertising a candidate or candidates for public elective offices, or a political party, or a sign urging a particular vote on a public issue decided by ballot.

"Portable sign" means a temporary sign made of wood, metal, plastic, or other durable material that is not attached to the ground or a structure. This definition includes sandwich boards, and portable readerboards (also see "temporary sign") if placed on private property. Signs placed on public or street right-of-way, including public sidewalks, require review under YMC 8.20.055.

"Projecting sign" means a sign, other than a wall sign, that is attached to and projects from a structure or building face.

"Real estate sign" means any sign pertaining to the sale, lease or rental of land or buildings.

"Roof sign" means any sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design. See YMC 15.08.090.

"Sign" means any medium, including its structural component parts, used or intended to attract attention to the subject matter that identifies, advertises, and/or promotes an activity, product, service, place, business, or any other thing.

"Sign area" means ~~that area contained~~ the smallest circle, triangle, square, rectangle or parallelogram that will contain a sign. For cabinet-type signs, the sign area includes within a single continuous perimeter enclosing the entire sign cabinet, but excluding any support or framing structure extending beyond the outer edges of the sign cabinet that does not convey a message. For individually mounted letters and symbols, sign area is based upon the entire area of a single message; not the collective area of individual letters or symbols. For example, "Quick Car Wash" is calculated as a single message; not three individual words or 12 individual letters.

"Sign cabinet" means the module or ~~background containing the advertising message~~ box that supports a sign face or sign panel, but ~~excluding~~ excludes sign supports, architectural framing, or other decorative features extending beyond the module or box which that contain no written or advertising copy.

"Sign height" means the vertical distance measured from the grade below the sign or upper surface of the nearest street curb, whichever permits the greatest height, to the highest point of the sign.

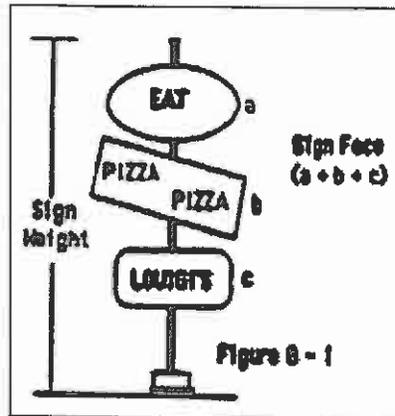


Figure 8-1

"Sign setback" means the horizontal distance from the property line to the nearest edge of the sign cabinet.

"Static" means without motion.

"Street frontage" means the length in feet of a property line(s) or lot line(s) bordering a public street. For corner lots, each street-side property line shall be a separate street frontage. The frontage for a single use or development on two or more lots shall be the sum of the individual lot frontages.

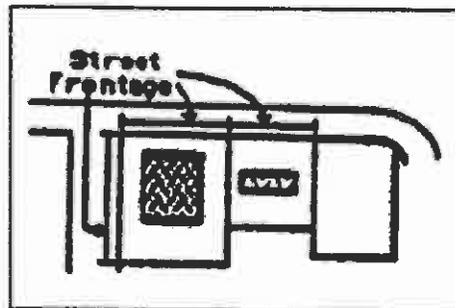


Figure 8-2

"Structural alteration" means any change that enlarges, expands, widens, reconfigures, or otherwise causes visually discernible changes to a sign or any part of a sign or its supporting structure, or that replaces any part of a sign or its sign structure with parts that are visually, structurally, mechanically, and/or functionally different from original parts, except that replacing sign panels, letters or other forms of copy with like type, kind and quality of copy are not considered structurally altered changes.

"Temporary sign" means any sign, banner, pennant, valance, or advertising display constructed of cloth, paper, canvas, cardboard, or other light nondurable materials and portable signs as defined in this section. Types of displays included in this category are: grand opening, special sales, special event, and garage sale signs.

"Use identification sign" means a sign used to identify and/or contain information pertaining to a school, church, residential development, or a legal business other than a home occupation in a residential district.

"Wall sign" means any on-premises sign attached to or painted directly on, or erected against and parallel to, the wall of a building. See YMC 15.08.100.

"Window sign" means any sign, pictures, symbol or combination thereof, designed to communicate information about an activity, business, commodity, event, sale or service placed inside a window or upon the window panes or glass and visible from the exterior of the window.

### **15.08.050 Prohibited signs.**

The following signs are prohibited:

1. Signs on any vehicle or trailer parked on public or private property and visible from a public right-of-way for the purpose of circumventing the provisions of this chapter. This provision shall not prohibit signs painted on or magnetically attached to any vehicle operating in the normal course of business;
2. Signs purporting to be, imitating, or resembling an official traffic sign or signal; could cause confusion with any official sign, or which obstruct the visibility of any traffic/street sign or signal;
3. Signs attached to utility, streetlight and traffic-control standard poles;
4. Swinging projecting signs;
5. Signs in a dilapidated (i.e., having peeling paint, major cracks or holes, and/or loose or dangling materials) or hazardous condition;
6. Abandoned signs;
7. Signs on doors, windows or fire escapes that restrict free ingress or egress; and
8. Billboards and structural alteration of existing billboards;
9. Off-premise signs except off-premise directional signs and signs on legally non-conforming billboards; and
810. Any other sign not meeting the provisions of this chapter.

### **15.08.130 Off-premises directional signs and billboards.**

A. ~~Billboards are:~~

1. ~~Class (1) uses in the M-1 and M-2 districts; and~~
2. ~~Class (2) uses in the CBD, GC, and RD districts.~~

~~B. Billboards may be permitted in these districts after the required level of review, provided they meet the provisions of this chapter and all of the following criteria:~~

- ~~1. The maximum sign area does not exceed three hundred square feet per sign face;~~
- ~~2. There is no more than one product displayed per sign face;~~
- ~~3. There are no side-by-side panels;~~
- ~~4. Required front yard setbacks are met;~~
- ~~5. Billboards between a one hundred fifty and three hundred foot radius of a residential district shall be restricted to one hundred sixty square feet per sign face and may not be lighted;~~
- ~~6. No billboard shall be located within one hundred fifty feet of a residential district;~~
- ~~7. The billboard is not within five hundred lineal feet of another billboard having the same street frontage;~~
- ~~8. Billboard height standards shall not exceed that permitted for freestanding signs as provided in Table 8-3;~~
- ~~9. The total number of combined freestanding signs, off-premises signs and billboards does not exceed the number of freestanding signs allowed for the property.~~

G. Off-premises directional signs are:

1. Class (1) uses in the M-1 and M-2 districts;
2. Class (2) uses in the B-2, CBD, GC, and RD districts.

Off-premises directional signs may be permitted in these districts after the required level of review, provided they meet the provisions of this chapter and the specific standards for the district in which they are located.

**EXHIBIT "1-B"**  
**Table 8-1**

SIGN TYPE		ZONING DISTRICTS														
		SR	R-1	R-2	R-3	B-1	HB	B-2	SCC	LCC	CBD	GC	AS	RD	M-1	M-2
<b>PERMITTED SIGNS</b>																
On-Premises Signs	Nameplate	Permitted as an Accessory Use to an Approved or Existing Use														
	Subdivision Identification/ Project Identification <sup>2</sup>	Permitted as an Accessory Use to an Approved or Existing Use														
	Changing Message Center Signs (Reserved)	Permitted as an Accessory Use to an Approved or Existing Use														
	Roof/Portable Signs	Class (1) Use														
	Freestanding <sup>1</sup>	On-premises signs meeting the standards of this chapter are considered Class (1) uses requiring Type (1) review. On-premises signs not meeting the standards of this chapter shall follow the procedures of YMC 15.08.170, and are otherwise not permitted.														
	Projecting	See YMC 15.08.150														
	Freeway	See YMC 15.08.150														
Off-Premises Signs	Directional	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted
	Advertising	Not Permitted														
	Billboards	Not Permitted														
		Not Permitted														
<b>NUMBER OF SIGNS PERMITTED</b>																
On-Premises Signs	Nameplate	1 Per Dwelling														
	Subdivision Identification/ Use Identification <sup>2</sup>	1 Per Street Frontage														
	Freestanding <sup>1</sup>	1 Per Street Frontage														
	Changing Message Center Signs (Reserved)	1 Per Street Frontage														
	Projecting	Not Permitted														
	Wall/Roof/Portable Signs	Wall: YMC 15.08.100/ Roof: YMC 15.08.090/ Temporary: YMC 15.08.110														
	Freeway	Freeway: See YMC 15.08.150														
Off-Premises Signs	Directional	Directional: See YMC 15.08.120(B)														
	Advertising	Not Permitted														
	Billboards	Not Permitted														
		Not Permitted														

**NOTES:**

1. YMC 15.08.140 has freestanding sign provisions for multiple-building complexes and multiple-tenant buildings.
2. Nameplates and subdivision identification signs permitted in the residential districts may be placed on a wall—See Table 8-2.

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# C-1





**COMMUNITY DEVELOPMENT DEPARTMENT**  
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## MEMORANDUM

**TO:** Planning Commission  
**FROM:** Steve Osguthorpe, AICP, Community Development Director  
**SUBJECT:** Billboard Information  
**DATE:** February 18, 2014

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### *Staff Response to Industry Information*

At the Planning Commission's January 29, 2014 meeting, information was submitted by both Peter Grover of Metro Outdoor Advertising, and Tom Knaub of Lamar Outdoor Advertising. These gentlemen provided helpful feedback on a number of fronts, and perhaps raised questions pertaining to the accuracy of information provided by staff. I have therefore prepared the following response to their submittals and comments that may have raised additional questions:

1. **Reduced Property Values.** Regarding the question as to whether billboards have an effect on property values, it is evident that there are varying opinions and divergent statistical methods of addressing this question. Industry representatives provided a study prepared by iMapData Inc. on the impact of billboards on Tampa, Florida property values. That study provided compelling evidence that billboards increase commercial property values. However, it focused solely on the value of commercial properties with billboards. The conclusion was that a billboard increases the underlying property's value. That should not be surprising because a billboard is a revenue generator for that property owner. However, the study did not address the impact billboards have on values of surrounding properties. To answer that question, the Philadelphia study by Jonathan Snyder<sup>1</sup> was prepared to consider that broader impact. Mr. Snyder found that home values within 500 feet of billboards in Philadelphia had a marked decrease in value compared to homes beyond 500 feet of billboards. That study generated a quick response

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<sup>1</sup> "Beyond Aesthetics: How Billboards Affect Economic Prosperity", Jonathan S. Snyder, Samuel S. Fels Fund (December 2011)

by the billboard industry, which apparently secured the services of Econsult Corporation<sup>2</sup> out of Philadelphia to critique Snyder's study. Econsult concluded almost the opposite of Snyder, finding that Snyder's report did not account for other variables that might affect home values in the vicinity of billboards, such as their location in or proximity to commercial zones. In other words, don't blame billboards for reducing home values; blame the commercial zone that attracted the billboards to locate near the homes.

That argument raises the question as to whether commercial zoning itself decreases property values. Typically, rezoning land from a residential to commercial zone is considered an up-zone that actually increases property values even if it diminishes its attraction for residential use. The question of how proximity of commercial uses effect residential prices was the subject of a dissertation by John Matthews of Georgia State University and the Georgia Institute of Technology.<sup>3</sup> Matthews noted that existing studies produced indefinite results, with some finding positive influence while others finding negative influences. He found that appraisal literature is not conclusive on the effect of commercial proximity to residential uses, and that empirical literature identifies no clear pattern of either positive or negative effects of proximity to non-residential uses on the price of housing. But he also cites studies finding that the effect depends on *design*, maintenance and management of proximate non-residential uses, not necessarily the uses themselves. For example, he references a 1980 study by Li & Brown<sup>4</sup> which states, "Empirical findings suggest that proximity to certain non-residential land uses affects housing prices by having a positive value for accessibility and a negative value for external diseconomies (congestion, pollution, and *unsightliness*). Furthermore, *visual quality* and noise pollution have impacts on housing prices". (Emphasis added).

This brings us back to the premise of Jonathan Snyder's study. Since design, unsightliness and visual quality is the principle focus of most billboard criticisms, it is not hard to conceive that residential properties near billboards may indeed have diminished values just as other visual disamenities referenced by Econsult can diminish property values. Econsult concludes that there is no evidence that the one subject element – i.e., billboards – have any significant impact on property values, and likewise suggests that removing that one element should increase property values if it in fact is a disamenity. However, that assumes that property values fluctuate when only one variable changes. Perhaps the weakness of both Snyder and Econsult's studies is that they both underestimate the synergy of multiple disamenities as the cause of decreased property values. Econsult apparently assumes that reduced property values can be reversed by simply eliminating any single disamenity once the synergistic elements of neighborhood

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<sup>2</sup> "Economic Impact of Billboard Locations on Property Values in Philadelphia", Econsult Corporation, (April 2012). The Econsult report was submitted to Duane Morris LLP, who is part of a law firm in Philadelphia representing corporate interests.

<sup>3</sup> John William Matthews, "The Effect of Proximity to Commercial Uses on Residential Prices. A Dissertation Presented to the Academic Faculty in Partial Fulfillment of the Requirements for the Degree Doctor of Philosophy in Public Policy, Georgia State University and the Georgia Institute of Technology." (May, 2006).

<sup>4</sup> Li, M. M., & Brown, J. (1980). Micro-Neighborhood Externalities and Hedonic Housing Prices. *Land Economics*, 56(2), 125-141.

decline are in motion. Reversing that motion will likely take more time, and the removal of more disamenities, that Econsult accounts for in its study.

Tom Knaub of Lamar Advertising submitted to the Planning Commission a second report prepared by Econsult Corporation, presumably as additional rebuttal to the Snyder report. That second report attempts to estimate the impact of the billboard industry on the economy of Philadelphia proper and at the broader Commonwealth level using Input-Output (I/O) modeling. I/O modeling is a method of representing the interdependencies between different segments of a national or regional economy. It uses "multipliers" to estimate the amplified effect of an initial economic stimulus after all of the secondary effects of the stimulus have worked their way through an economy. The Econsult report claims to draw upon RIMS II data, which breaks down industries into specific categories used in input-output modeling. However, at its most finite level, RIMS II data as published by the U.S. Bureau of Economic Analysis (BEA) does not provide multiplier figures specific to the billboard industry. That is one of the problems with I/O analysis – it assumes that each industry has a single homogenous product. Billboards fall under the broader Industry Code 339950 titled "Sign Manufacturing". (See attached Exhibit "A" - Industry List A. RIMS II 406 Detailed Industry Codes) Therefore, the only conclusions one could draw under standard Input-Output modeling using available RIMS II figures pertain to the effects that the total sign manufacturing industry has on an identified regional economy. But that is not even the question here. The impacts that sign manufacturing has on a region's economy is a completely different level of analysis than the specific impacts of billboards.

The Econsult report appears to address this limitation by stating that it utilizes "industry data and industry-recognized input-output modeling techniques". However, that customized level of analysis is not defined in the report. First, the report does not reveal what "industry data" is applied to the model as opposed to data available through BEA, and it does not provide the coefficients applied to its model or state how they were derived. Moreover, it defines terms that are not otherwise defined in any study referenced by, or in the users handbook developed by, BEA. Finally, with all of its technical terms and jargon, Econsult provides no information on what additional assumptions it applies to its I/O modeling to come to its more finite conclusions for billboards. Obviously, the sign industry is far more diversified than billboards, so to attribute all the functions, products, services, employment and other impacts of the sign industry to just the billboard component would be a gross exaggeration of that component's impact on the local economy. We simply don't know how Econsult derived billboard-specific multipliers from available RIMS II data or how input and impacts from the broader signage industry were discounted to avoid those kinds of errors.

But even if the BEA provided RIMS II data specific to the billboard industry, the Econsult study reveals the same limitations and potential flaws of any I/O analysis. First, it assumes that the input is constant and that conditions and technology will not change over time. That represents a significant limitation if not flawed premise of the Econsult study, for its conclusions are based on the premise the billboards provide 400 jobs to the Philadelphia economy, even as the industry shifts to digital billboards that significantly

reduces the amount of local labor required to change billboard messaging. So while the Econsult report predicts job creation through billboards, the industry is implementing technological changes that significantly impact, displace and/or eliminate jobs. Second, it assumes that the jobs created put monies back into the local economy, which further assumes that monies earned in the region are spent in the same region.

Additionally, it does not account for opportunity costs. First, it claims that property taxes will increase due to the increased value of properties on which billboards are placed, but it does not take into account any decreased values associated with properties in the vicinity of billboards. Second, billboards are clearly not the sole or most up-to-date means of advertising, and resources spent on this medium could negate resources spent on developing newer and potentially less controversial technologies. Opportunity costs might also apply to monies spent to mitigate impacts associated with products advertized on billboards. For example, it is estimated that for every dollar acquired for sales associated with alcohol (a significant portion of billboard ads) 10 dollars are spent addressing the social costs of this product. Moreover, there are other less tangible benefits that standard input-output analysis does not even attempt to measure including economic development objectives affected by aesthetics, such as tourism or redevelopment of declining neighborhoods. Again, without a statement of assumptions that Econsult put into its analysis, the study is suspect to abuses common to many input-output analyses.

Finally, it is difficult to ignore the purpose for which both Econsult studies were conducted. They were sponsored by the billboard industry in response to a study that was obviously concerning to the industry. Economist Jonathan Q. Morgan warned against too much reliance on advocacy reports, stating, "Economic development professionals may provide a basic assessment of a project's economic or fiscal impacts, or both. But the analysis of such a professional might not be purely objective since his or her job performance is dependent upon making projects happen. Project boosters and other advocates may not be the best source for independent and unbiased analysis of development impacts".<sup>5</sup>

This challenge of sorting through complex and often conflicting reports was perhaps best addressed by the California Supreme Court in its landmark Metromedia decision upholding San Diego's billboard restrictions. Speaking to the issue of billboards and traffic safety, the court concluded,

"No matter what one's position on the sign and safety issue [is] one can find the study to support it . . . [D]espite the insights provided by statistical analyses, the case for the hazards of private signs rests largely upon common sense and the informed judgments of traffic engineers and other experts. The arguments are complex and sometimes highly technical, but on the whole, the courts are increasingly likely to

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<sup>5</sup> Jonathan Q. Morgan, "Analyzing the Benefits and Costs of Economic Development Projects," Community and Economic Development Bulletin No. 7 (Chapel Hill, NC: UNC School of Government, April 2010).

conclude that regulation of private signs may be reasonably expected to enhance highway safety."<sup>6</sup>

Considering the conflicting reports on property values, the same "common sense" and "informed judgment" approach might be the best means of deciding whether billboards do or do not have adverse impacts on home values. Individuals can assess and decide for themselves whether a billboard in close proximity to a home would affect their decision to buy the home or otherwise determine how much they would be willing to pay for the home. What is evident is that properties within the vicinities of billboards typically do have decreased property values. Whether that it is the result of the billboard being located in less desirable areas, or the area being less desirable because of the billboard may be difficult to assess. But what should be of primary concern is whether a billboard might adversely affect efforts to revitalize neighborhoods that are in decline for any number of reasons. If the findings of the Econsult report are correct – i.e., that decreased property values near billboards are the result of multiple variables not included in Snyder's report, it is risky to conclude that billboards are not a pertinent variable nonetheless, or that they are not one of those "visual quality" issues referenced by Li and Brown<sup>7</sup>, and that they will not hamper redevelopment efforts. As many cities have discovered, billboards have in fact hampered redevelopment efforts because of underlying property easements, view easement, long term lease provisions and associated lawsuits against cities that have attempted meaningful redevelopment efforts, like those mentioned in my January 29 memorandum to the Planning Commission.

**2. Tax Revenue to Local Government.** Regarding the issue of tax revenue to the City of Yakima, there is virtually no tax revenue to the city of Yakima attributable to either the value of the structure or the revenue the billboard owner receives. Again, in terms of property tax, billboards are considered personal property rather than real property. The question is whether there might be indirect benefits to the City based upon the businesses or products the billboards may advertise. The inventory of billboards in Yakima revealed that of the actual businesses advertized on Yakima's billboards, only 25% of those businesses were within Yakima City limits, and only 12% of those were retail based. That figure has been challenged by local industry representatives, apparently because I did not include in that figure ads for specific products that might be sold by a Yakima business (e.g., alcohol). However, to suggest that product-specific ads have a direct impact on the local economy also suggests that billboard ads for any product will increase local sales of that particular product. The only way to confirm that would be through comparison of product sales in communities with billboards promoting that product against communities that have banned billboard advertising. It would be interesting to know, for example, whether Vermont, Maine, Alaska or Hawaii<sup>8</sup> sells less of a given product per capita than those states that allow billboards to advertize that product, or whether their overall state economies have been adversely impacted because they have banned billboard medium.

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<sup>6</sup> Dowds, *Private Signs and Public Interests*, in 1974 Institute on Planning, Zoning and Eminent Domain, p. 231.) Cited in *Metromedia Inc. vs. City of San Diego*.

<sup>7</sup> *Ibid*, Li, M. M., & Brown, J.

<sup>8</sup> These four states have banned billboards throughout their states.

Finally, if a billboard ad should in fact increase local sales of an advertized product, it may be premature to conclude that any tax revenues as a result of that product sale are a net gain to the City. As determined in the 2013 inventory of billboards in Yakima, a high percentage of billboard ads are for alcohol products. Based upon research from the Center for Applied Research Solutions (CARS), 16% of city budgets are used to address the negative consequences of substance abuse and addiction, and the city will realize a long-term savings of \$10.00 for every dollar spent on substance abuse prevention.<sup>9</sup> While cities cannot prohibit alcohol advertising or otherwise regulate content, it can minimize the exposure to youth and other vulnerable individuals by limiting the medium upon which the ads are located.

**3. Potential for Proliferation.** I have identified in numerous reports and memorandums the potential that existing codes provide for proliferation of additional billboards. One industry representative stated that proliferation should not be a concern for the following reasons:

- a. Billboards are allowed only in the M1, M2, CBD, and CBDS zones and that there are no zones on the west side that allow billboards.
- b. Since 2009 only one permit has been issued for a new billboard and two permits for upgrades.
- c. Existing structures prevent locating billboards to their full code-allowed potential.
- d. The proliferation example staff provided for Rapid City, South Dakota incorrectly stated the number of billboards within city limits.
- e. If proliferation was to occur, why hasn't it happened?

To address reason "a", above, it needs to be pointed out that the information the industry representative provided is based upon a previous zoning code. We no longer have a CBDS zone. The current code allows billboards in the M1, M2, CBD, GC and RD zones. There are large areas of GC zoning on the west side and large areas of RD zoning on the east side where billboards are permitted.

Per reason "b", Mr. Grover has stated that only 1 permit and two upgrade permits have been issued since 2009. That is not entirely correct. Since 2009 permits were issued for five billboards, four of which have expired, and one additional permit for an upgrade. (See Exhibit "D"). However, it is not clear why 2009 was chosen as a benchmark year. Since 2008 we have issued 10 billboard permits. Since 2006 we have issued 15 permits. But what is particularly significant is the number of permits we have not issued. According to city records, **62%** of existing billboards **have no permits** on file with the City of Yakima. It appears that many billboards may have been installed illegally and we don't know the date of their installation.

Regarding reason "c", it should be noted that sign structures take only a few square feet of land and they are designed to conform to any needed configuration, including off-set

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<sup>9</sup> Center for Applied Research Solutions. "Power of Prevention", (2011)

faces and dogleg posts that allow projection over roof tops and maneuvering in tight spaces.

Regarding reason "d" and comments expressed over Rapid City billboard information, the only reason I included that information was to demonstrate the degree to which billboards can proliferate in smaller cities and along short segments of highway. I therefore referred to the Rapid City example and have confirmed that the information provided is essentially correct. Rapid City records for 2011 revealed that there were 197 active sign permits in Rapid City, with many signs having as many as two and four sign faces attached. The high number of billboards in Rapid City resulted in a citizen petition to ban digital billboards and to further limit spacing and credit provisions for new billboards. The petition included more than 3,000 signatures of city residents (only 2,000 were required).

Reason "e" is asking why the proliferation hasn't happened yet. The permitting activities of Yakima prior to 2009 indicate that there have been significant bursts of billboard permitting in short periods of time. As the response to reason "b" indicates, a total of 14 permits were issued between 2006 and 2009, and permit records cannot account for the number of billboards that have been installed without permits. The slow down in permit activity identified by industry representatives occurred after 2009. Staff fully expects activities to increase to reflect current national trends to digitize billboards. The industry's current and continued focus on the State legislature to allow digital billboards is indicative of that movement.

**4. Required Compensation to the Industry.** As an example of the potential costs to local government for having to condemn or otherwise remove billboards for public improvement projects, I referenced the amount awarded to Clear Channel from the Minnesota Department of Transportation. Mr. Grover questioned the validity of that example, stating that compensation is not provided if relocation is agreed upon. I'm attaching a copy of the condemnation award document that shows the award amount of \$4,321,000.00. (See attached Exhibit "B") This amount was paid in spite of its relocation. The sign was moved and relocated to a spot just a short distance from its original location.

**5. Vegetation Removal.** Finally, regarding the issue of vegetation control and tree removal, the following background information may be helpful:

In 1977, the Federal Highway Administration (FHA) issued guidance that permitted States to enter into agreements with billboard companies to clear trees and other vegetation on the public highway right-of-way to ensure clear visibility of billboards. The guidance reflected language of the Highway Beautification Act (HBA) pertaining to promoting "the reasonable, orderly, and effective display of outdoor advertising" and also language pertaining to agreements between the Fed and States to "maintain" such displays (U. S. Code, Chapter 1, Section 131(d)). The guidance was the result of the Outdoor Advertising Association proposing changes to the HBA in 1976 that would make legal those vegetation maintenance practices that were otherwise occurring

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illegally. Trees on highways across the nation were dying from being either poisoned or cut down in the middle of the night to facilitate the visibility of billboards. For example, in 1972 the Florida Department of Transportation presented testimony to the Commission on Highway Beautification showing that more than 1,500 trees had been destroyed along I-75, all in front of billboards. This vandalism was addressed by the Federal Highway Administration in their Federal-Aid Program Manual Transmittal 156, dated September 26, 1975 which urged the states to "take all legal and administrative actions at its disposal to abate these practices

Many states enacted specific vegetation removal provisions<sup>10</sup>, which prompted complaints by cities wanting to enhance their rights-of-way over the practice of allowing a single company to dictate vegetation provisions within the public right-of-way. The "vegetation control" programs gave rise to other legal questions: If vegetation on the public right-of-way is destroyed to provide better visibility for billboards, does this practice violate laws and regulations relating to highway maintenance or relinquishment of right-of-way? Does it constitute an illegal gift of public property for a non-public purpose? In Georgia, the Supreme Court ruled in 1995 that allowing the destruction of publicly owned trees on the public right-of-way for billboard visibility violated the state's constitution, because it constituted a gratuity to a private interest without providing a substantial benefit to the state or its citizens.

In May, 1990 the FHWA clarified its 1977 memorandum that permitted vegetation clearance to improve the visibility of outdoor advertising signs, stating that because it is Federal Highway Administration policy to be sensitive to environmental concerns, such vegetation clearance can no longer be endorsed. As might be expected, this change drew a furious response from the outdoor advertising industry and their supporters in Congress, and the Federal Highway Administration quickly "unrescinded" their directive, saying that their memorandum was only a "statement of policy" which the states could ignore. And some states have in fact ignored the policy as the industry continues its push for legal removal of vegetation. For example, Georgia Governor Deal signed into law on May 12, 2011, a bill called the "Tree Removal Statute, which gave rights to billboard companies to clear-cut state-owned, roadside trees that obstruct their signs by paying only a fraction of the trees' actual value. Furthermore, the Tree Removal Statute granted billboard companies the option to offset the price to be paid for tree cutting by receiving credits for the cost of removing non-conforming or non-permitted billboards that the original billboard owner was already obligated to remove. This law was recently challenged when the City of Columbus, Gateways Foundation, and Trees Columbus Inc. filed a lawsuit to stop the trees from being removed. However, in May 2013, Georgia's highest court upheld the Georgia statute allowing trees to be chopped down so that

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<sup>10</sup> Eighteen states (Alabama, California, Connecticut, Florida, Georgia, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, New Jersey, North Carolina, North Dakota, Pennsylvania, South Carolina, Tennessee, Virginia, Tennessee, and Wisconsin) now permit or require that trees be cut on the public right-of-way to provide a clear view of billboards.

billboard companies could advertise along highways. This decision completely contradicted the Court's 1995 decision.

Although many states, including Washington, did not adopt a tree removal provision, the practice of tree removal to facilitate billboard visibility continues even without state or local authorization. No matter what state it occurred in, it has usually been difficult to prove who was responsible for the tree removals, but in many situations the trees affected were those that otherwise blocked billboards. The following instances provide additional examples of this type of activity:

- In 2012, Robert J. Barnhart of Tallahassee Florida "blew the whistle" on what he claimed were direct orders from the billboard company he worked for to kill trees that blocked the company's billboards. Mr. Barnhart was a crew chief for Lamar Advertising at the time. The attached article (Exhibit "C") provides details of this account.
- In 2011, Conroe, Texas, Clear Channel was accused by the city council of cutting down 15 pine trees on the south side of Loop 336 on the Interstate 45 North frontage road in Conroe in order to provide more visibility to the company's billboard. The cutting came just days after the council approved Clear Channel converting the south-facing part of the billboard at that intersection to digital advertising.
- In 2009, the California Highway Patrol caught a person cutting trees in the I-405 freeway right-of-way adjacent to the new Westfield shopping mall in Culver City. The trees were in the way of a billboard on the corner of the mall site. Also, nearly two dozen trees near Los Angeles billboards were severely cut back. The trees were part of a major landscaping initiative along the I-405 and I-10 freeways. According to the California Department of Transportation's deputy district director for maintenance in Los Angeles and Ventura counties, the pruning job appeared to be aimed at making two large advertisements erected by the World Wide Rush advertising company more visible to drivers.
- In 2008, the Connecticut Department of Transportation filed a lawsuit against Lamar Advertising of Hartford and related companies for clearing 83 mature trees on state property along Interstate 84 in order to maximize visibility of its billboard. The lawsuit also named Long Hill Tree and Lawn Care Service, Inc. of East Hartford.
- In 2007, Raleigh NC, the State Department of Transportation investigated a rash of tree killings that were all in close proximity to highway billboards. While the state allows cutting within 250 feet of billboards, the destruction occurred far beyond the legal limits.
- In 2001, Hollywood, California, individuals in unmarked trucks similarly hacked trees that blocked visibility of billboards. This area had increasing problems of such activities, where, for example, 10 trees were cut in one month, followed by another 20 trees the next.
- In 1996, New York, NY, an individual named Andrew Campanile was convicted of killing trees to increase the visibility of billboards on 31st Street and on Broadway that were being blocked by the trees. Mr. Campanile worked for a

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billboard company at the time. After his arrest, Mr. Campanile refused to disclose his employer, but detectives realized that all three locations where trees were chopped down were in front of signs owned by Transportation Displays Inc., a billboard company in Manhattan. Transportation Displays subsequently agreed to pay \$34,000 to plant 69 saplings in the three locations and elsewhere in Queens, although no charges were filed against the company.

Attachments:    Exhibit "A" – *Industry List A. RMS II 406 Detailed Industry Codes*  
                      Exhibit "B" – *State of Minnesota vs. Randall R. Grilz, Sharon Grilz, et al*  
                      Exhibit "C" – *News Article entitled "A Crime by the Highway: Poisoning trees to make billboards easier to see"*  
                      Exhibit "D" – *City of Yakima permit data for billboards.*

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**Exhibit "A"**

**Industry List A. RIMS II 406 Detailed Industry Codes**

Detailed industry code and title	Related 2002 NAICS Codes	Detailed industry code and title	Related 2002 NAICS Codes
<b>AGRICULTURE, FORESTRY, FISHING AND HUNTING</b>		<b>MANUFACTURING</b>	
<b>Crop production</b>		<b>Food manufacturing</b>	
1111C0 Oilseed and grain farming .....	11111-2, 11113-6, 11119	311111 Dog and cat food manufacturing .....	311111
111200 Vegetable and melon farming .....	11112	311119 Other animal food manufacturing .....	311119
1113B0 Fruit and nut farming .....	11131-2, 111331-4, 111335-6, 111339	311210 Flour milling and malt manufacturing .....	31121
111400 Greenhouse, nursery, and floriculture production .....	11114	311221 Wet corn milling .....	311221
111910 Tobacco farming .....	11191	31122A Soybean and other oilseed processing .....	311222-3
111920 Cotton farming .....	11192	311225 Fats and oils refining and blending .....	311225
1119C0 All other crop farming, including sugarcane and sugar beet farming .....	11193-4, 111991-2, 111998	311230 Breakfast cereal manufacturing .....	311230
<b>Animal production</b>		31131A Sugar cane mills and refining .....	311311-2
1121A0 Cattle ranching and farming .....	11211, 11213	311313 Beet sugar manufacturing .....	311313
112120 Dairy cattle and milk production .....	11212	311320 Chocolate and confectionery manufacturing from cacao beans .....	31132
112A00 Animal production, except cattle and poultry and eggs .....	1122, 1124-5, 1129	311330 Confectionery manufacturing from purchased chocolate .....	31133
112300 Poultry and egg production .....	1123	311340 Nonchocolate confectionery manufacturing .....	31134
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212390 Other nonmetallic mineral mining and quarrying .....	21239	312130 Wineries .....	31213
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<b>Natural gas distribution</b>		313230 Nonwoven fabric mills .....	31323
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221300 Water, sewage and other systems .....	2213	313320 Fabric coating mills .....	31332
<b>CONSTRUCTION</b>		<b>Textile product mills</b>	
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		314990 All other textile product mills .....	31499
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32121A Veneer and plywood manufacturing .....	321211-2	<b>Other chemical product and preparation manufacturing</b>	
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321992 Prefabricated wood building manufacturing .....	321992	326122 Plastics pipe and pipe fitting manufacturing .....	326122
321999 All other miscellaneous wood product manufacturing .....	321999	326130 Laminated plastics plate, sheet (except packaging), and shape manufacturing .....	32613
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322110 Pulp mills .....	32211	326150 Urethane and other foam product (except polystyrene) manufacturing .....	32615
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32222B All other paper bag and coated and treated paper manufacturing .....	322223-6	<b>Nonmetallic mineral product manufacturing</b>	
322230 Stationery product manufacturing .....	32223	32711A Pottery, ceramics, and plumbing fixture manufacturing .....	32711
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323120 Support activities for printing .....	32312	327213 Glass container manufacturing .....	327213
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324122 Asphalt shingle and coating materials manufacturing .....	324122	327330 Concrete pipe, brick, and block manufacturing .....	32733
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324199 All other petroleum and coal products manufacturing .....	324199	3274A0 Lime and gypsum product manufacturing .....	3274
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325130 Synthetic dye and pigment manufacturing .....	32513	327993 Mineral wool manufacturing .....	327993
325181 Alkalies and chlorine manufacturing .....	325181	327999 Miscellaneous nonmetallic mineral products .....	327999
325182 Carbon black manufacturing .....	325182	<b>Iron and steel mills and manufacturing from purchased steel</b>	
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325190 Other basic organic chemical manufacturing .....	32519	331200 Steel product manufacturing from purchased steel .....	33121, 33122
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<b>Boiler, tank, and shipping container manufacturing</b>		333912 Air and gas compressor manufacturing .....	333912
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332996 Fabricated pipe and pipe fitting manufacturing .....	332996	<b>Semiconductor and other electronic component manufacturing</b>	
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333315 Photographic and photocopying equipment manufacturing .....	333315	334515 Electricity and signal testing instruments manufacturing .....	334515
333319 Other commercial and service industry machinery manufacturing .....	333319	334516 Analytical laboratory instrument manufacturing .....	334516
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33341A Air purification and ventilation equipment manufacturing .....	333411-2	33451A Watch, clock, and other measuring and controlling device manufacturing .....	334518-9
333414 Heating equipment (except warm air furnaces) manufacturing .....	333414	<b>Manufacturing and reproducing magnetic and optical media</b>	
333415 Air conditioning, refrigeration, and warm air heating equipment manufacturing .....	333415	33461A Software, audio, and video media reproducing .....	334611-2
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335222 Household refrigerator and home freezer manufacturing...	335222	339114 Dental equipment and supplies manufacturing.....	339114
335224 Household laundry equipment manufacturing .....	335224	339115 Ophthalmic goods manufacturing .....	339115
335228 Other major household appliance manufacturing .....	335228	339118 Dental laboratories.....	339116
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335314 Relay and industrial control manufacturing.....	335314	339940 Office supplies (except paper) manufacturing .....	33994
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335912 Primary battery manufacturing.....	335912	339992 Musical instrument manufacturing .....	339992
335920 Communication and energy wire and cable manufacturing	33592	33999A All other miscellaneous manufacturing .....	339993, 339995, 339999
335930 Wiring device manufacturing.....	33593	339994 Broom, brush, and mop manufacturing .....	339994
335991 Carbon and graphite product manufacturing .....	335991	<b>WHOLESALE TRADE</b>	
335999 All other miscellaneous electrical equipment and component manufacturing .....	335999	<b>Wholesale trade</b>	
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336111 Automobile manufacturing .....	336111	<b>RETAIL TRADE</b>	
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336212 Truck trailer manufacturing .....	336212	481000 Air transportation.....	481
336213 Motor home manufacturing.....	336213	<b>Rail transportation</b>	
336214 Travel trailer and camper manufacturing .....	336214	482000 Rail transportation.....	482
336300 Motor vehicle parts manufacturing.....	3363	<b>Water transportation</b>	
<b>Aerospace product and parts manufacturing</b>		483000 Water transportation .....	483
336411 Aircraft manufacturing.....	336411	<b>Truck transportation</b>	
336412 Aircraft engine and engine parts manufacturing .....	336412	484000 Truck transportation .....	484
336413 Other aircraft parts and auxiliary equipment manufacturing	336413	<b>Transit and ground passenger transportation</b>	
336414 Guided missile and space vehicle manufacturing.....	336414	485A00 Transit and ground passenger transportation.....	485*
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<b>Other transportation equipment manufacturing</b>		486000 Pipeline transportation .....	486
336500 Railroad rolling stock manufacturing.....	3365	<b>Scenic and sightseeing transportation and support activities</b>	
336611 Ship building and repairing .....	336611	48A000 Scenic and sightseeing transportation and support activities for transportation.....	487, 488
336612 Boat building .....	336612	<b>Couriers and messengers</b>	
336991 Motorcycle, bicycle, and parts manufacturing.....	336991	492000 Couriers and messengers.....	492
336992 Military armored vehicle, tank, and tank component manufacturing .....	336992	<b>Warehousing and storage</b>	
336999 All other transportation equipment manufacturing .....	336999	493000 Warehousing and storage.....	493
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337110 Wood kitchen cabinet and countertop manufacturing.....	33711	<b>Newspaper, periodical, book, and directory publishers</b>	
337121 Upholstered household furniture manufacturing .....	337121	511110 Newspaper publishers .....	51111
337122 Nonupholstered wood household furniture manufacturing	337122	511120 Periodical publishers.....	51112
33712A Metal and other household furniture (except wood) manufacturing .....	33712A-5	511130 Book publishers .....	51113
337127 Institutional furniture manufacturing.....	337127	5111A0 Directory, mailing list, and other publishers .....	51114, 51119
33721A Wood television, radio, and sewing machine cabinet manufacturing .....	337129	<b>Software publishers</b>	
337212 Office furniture and custom architectural woodwork and millwork manufacturing .....	337211, 337212, 337214	511200 Software publishers .....	51121
337215 Showcase, partition, shelving, and locker manufacturing ...	337215		
337910 Mattress manufacturing .....	33791		
337920 Blind and shade manufacturing .....	33792		

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512100 Motion picture and video industries .....	5121	541400 Specialized design services .....	5414
512200 Sound recording industries .....	5122		
<b>Radio and television broadcasting</b>		<b>Computer systems design and related services</b>	
515100 Radio and television broadcasting .....	5151	541511 Custom computer programming services .....	541511
		541512 Computer systems design services .....	541512
<b>Cable networks and program distribution</b>		54151A Other computer related services, including facilities management .....	541513, 541519
515200 Cable and other subscription programming .....	5152		
<b>Telecommunications</b>		<b>Management, scientific, and technical consulting services</b>	
517000 Telecommunications .....	517	541610 Management, scientific, and technical consulting services .....	54161
		5416A0 Environmental and other technical consulting services .....	54162, 54169
<b>Internet and other information services</b>		<b>Scientific research and development services</b>	
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52A000 Monetary authorities and depository credit intermediation .....	521, 5221		
52A00 Nondepository credit intermediation and related activities .....	5222-3	<b>Other professional, scientific, and technical services</b>	
<b>Securities, commodity contracts, investments, and related activities</b>		5419A0 All other miscellaneous professional, scientific, and technical services .....	54191, 54193, 54199
523000 Securities, commodity contracts, investments, and related activities .....	523	541920 Photographic services .....	54192
		541940 Veterinary services .....	54194
<b>Insurance carriers and related activities</b>		<b>MANAGEMENT OF COMPANIES AND ENTERPRISES</b>	
524100 Insurance carriers .....	5241	<b>Management of companies and enterprises</b>	
524200 Insurance agencies, brokerages, and related activities .....	5242	550000 Management of companies and enterprises .....	55
<b>Funds, trusts, and other financial vehicles</b>		<b>ADMINISTRATIVE AND WASTE SERVICES</b>	
525000 Funds, trusts, and other financial vehicles .....	525	<b>Employment services</b>	
		561300 Employment services .....	5613
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531000 Real estate .....	531		
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532100 Automotive equipment rental and leasing .....	5321	561600 Investigation and security services .....	5616
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<b>Consumer goods and general rental centers</b>		561800 Other support services .....	5619
532A00 General and consumer goods rental except video tapes and discs .....	53221-2, 53229, 5323	<b>Waste management and remediation services</b>	
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<b>Commercial and industrial machinery and equipment rental and leasing</b>		<b>EDUCATIONAL SERVICES</b>	
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533000 Lessors of nonfinancial intangible assets .....	533	611B00 Other educational services .....	6114-7
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541100 Legal services .....	5411	621A00 Offices of physicians, dentists, and other health practitioners .....	6211-3
<b>Accounting, tax preparation, bookkeeping, and payroll services</b>		621B00 Medical and diagnostic labs and outpatient and other ambulatory care services .....	6214-5, 6219
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824A00 Individual and family services .....	6241	811200 Electronic and precision equipment repair and maintenance .....	8112
824200 Community food, housing, and other relief services, including rehabilitation services .....	6242-3	811300 Commercial and industrial machinery and equipment repair and maintenance .....	8113
824400 Child day care services .....	6244	811400 Personal and household goods repair and maintenance .....	8114
<b>ARTS, ENTERTAINMENT, AND RECREATION</b>		<b>Personal and laundry services</b>	
<b>Performing arts, spectator sports, museums, zoos, and parks</b>		812100 Personal care services .....	8121
711100 Performing arts companies .....	7111	812200 Death care services .....	8122
711200 Spectator sports .....	7112	812300 Dry-cleaning and laundry services .....	8123
711A00 Promoters of performing arts and sports and agents for public figures .....	7113-4	812900 Other personal services .....	8129
711500 Independent artists, writers, and performers .....	7115	<b>Religious, grantmaking, giving, and social advocacy organizations</b>	
712000 Museums, historical sites, zoos, and parks .....	712	813100 Religious organizations .....	8131
<b>Amusements, gambling, and recreation</b>		813A00 Grantmaking, giving, and social advocacy organizations .....	8132, 8133
713A00 Amusement parks, arcades, and gambling industries .....	7131-2	<b>Civic, social, professional and similar organizations</b>	
713B00 Other amusement and recreation industries .....	71391-3, 71399	813B00 Civic, social, professional, and similar organizations .....	8134, 8139
713940 Fitness and recreational sports centers .....	71394	<b>SPECIAL INDUSTRIES</b>	
713950 Bowling centers .....	71395	<b>Federal, state, and local government enterprises</b>	
<b>ACCOMMODATION AND FOOD SERVICES</b>		491000 Postal service .....	491
<b>Accommodation</b>		S00A00 Other government enterprises .....	n.a.
7211A0 Hotels and motels, including casino hotels .....	72111-2	<b>Private households</b>	
721A00 Other accommodations .....	72119, 7212-3	H00000 Households .....	n.a.
<b>Food services and drinking places</b>			
722000 Food services and drinking places .....	722		
<b>OTHER SERVICES EXCEPT PUBLIC ADMINISTRATION</b>			
<b>Automotive repair and maintenance</b>			
8111A0 Automotive repair and maintenance, except car washes .....	81111-2, 811101, 811198		
811192 Car washes .....	811192		

n.a. Not applicable.

\* Includes Federal Government enterprises.

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**Exhibit "B"**

CONDEMNATION

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT  
Court File No.: 62-CV-10-6746

-----

State of Minnesota, by its Commissioner of Transportation,

Petitioner,

vs.

Randall R. Grilz, Sharon Grilz, Donald M. Grilz, Union Pacific Railroad Company, successor in interest by merger to the Chicago and North Western Railway Company, Maytag Corporation, successor in interest to Chicago Pacific Corporation and to Chicago, Rock Island and Pacific Railroad Company, Northern States Power Company, doing business as Xcel Energy, Qwest Corporation, successor in interest to U S West Communications, Inc. and to Northwestern Bell Telephone Company, Unknown successors in interest to Pier Foundry & Pattern Shop, Inc., a statutorily dissolved Minnesota corporation, City of St. Paul, County of Ramsey, CHS Inc., Donerly, Inc., Clear Channel Outdoor, Inc., J.M. Keefe Co., doing business as Keefe Co. Parking, 444 Lafayette, LLC, State of Minnesota Department of Natural Resources, LaSalle Bank, National Association, NGP Lafayette Portfolio Owner Corp., Meritex Enterprises, Inc., Holiday Stationstores, Inc., Naegele Realty of Minnesota, Inc., formerly known as Naegele Outdoor Advertising, Inc., a statutorily dissolved Minnesota corporation, J-Mont, Inc., Anchor Bank, National Association, successor in interest by corporate merger, consolidation, amendment, or conversion to The Bank of Saint Paul, Judith A. Kaufman, Jay W. Montpetit, Michelle Montpetit, Port Authority of the City of St. Paul, BNSF Railway Company, formerly known as The Burlington Northern and Santa Fe Railway Company, and as Burlington Northern Railway Company successor in interest to the Northern Pacific Railway Company, and to The First Division of the St. Paul and Pacific Railroad Company, and to The St. Paul, Minneapolis, and Manitoba Railway Company, City of Minneapolis, also all other persons unknown claiming any right, title, estate, interest or lien in the real estate described in the Petition herein,

Respondents.

-----

IN THE MATTER OF THE CONDEMNATION OF  
CERTAIN LANDS FOR TRUNK HIGHWAY PURPOSES

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REPORT OF COMMISSIONERS

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REPORT OF COMMISSIONERS

To the Court above named:

The undersigned Commissioners appointed by this Court in the above entitled matter by Order of the Court, do hereby report as follows:

I.

We met at the time and place appointed by the Court, in the office of the Court Administrator, and took the oath prescribed by law.

II.

We make the following award for the damages sustained by the several respondents by reason of the taking.

As to the property interests described as Parcel 251E, C.S. 6283 (94=392) 901:

Holiday Stationstores, Inc.	_____ )	<u>\$441,840.00</u>
Clear Channel Outdoor, Inc.	_____ )	<u>\$4,321,000.00</u>
Naegele Realty of Minnesota, Inc., formerly known as	)	
Naegele Outdoor Advertising, Inc.	_____ )	<u>NONE</u>
State of Minnesota	)	
Department of Natural Resources	_____ )	<u>NONE</u>
Northern States Power Company, doing business as Xcel Energy	_____ )	<u>NONE</u>
City of St. Paul	_____ )	<u>NONE</u>
J-Mont, Inc.	_____ )	<u>NONE</u>
County of Ramsey	_____ )	<u>NONE</u>

The above award is made on the basis and condition that the date of passage of title and right of possession and the date of valuation is October 8, 2010, pursuant to Minn. Stat. § 117.042.

The above award of commissioners is based on the condition that the real estate taxes due and payable 2010 or in prior years on the lands acquired by the State and all unpaid special assessments and future installments thereof, as well as pending assessments, are the responsibility of the owners or lessees herein, except that petitioner is responsible for and will pay real estate taxes, if any, payable in 2011 on the real estate acquired herein by petitioner.

As a further basis and condition of this award, Holiday Stationstores acknowledges the receipt of \$160,000.00 on or about October 8, 2010. Clear Channel Outdoor, Inc. acknowledges the receipt of \$500,000.00 on or about October 8, 2010. Said funds were paid to owners pursuant to Minn. Stat. § 117.042. These previous payments will be credited against full payment of the above amounts.

The above award is made on the basis and condition that the State of Minnesota and the owners have agreed to said award and that interest shall be paid on said award at the statutory rate.

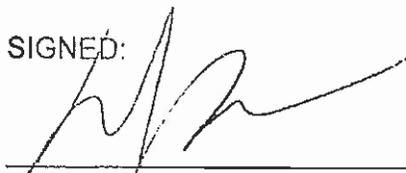
The commission has not considered the impact of pollutants, contaminants, or hazardous materials on the subject property, if any, in its assessment of damages.

III.

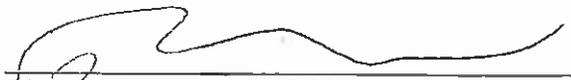
We further report that in the performance of our duties as Commissioners we were occupied for \_\_\_\_ day(s).

Dated: 9-26-2013

SIGNED:

  
\_\_\_\_\_  
Marilyn Michales

  
\_\_\_\_\_  
Stephanie Warne

  
\_\_\_\_\_  
Richard Black                      COMMISSIONERS

## A crime by the highway: Poisoning trees to make billboards easier to see

By Investigations

Thursday Apr 26, 2012 12:05 AM

[EMAIL](#)

By Myron Levin, Lilly Fowler and Stuart Silverstein

FairWarning.org



Tallahassee Democrat

Robert Barnhart, right, and his wife, Kimberly. Barnhart claims he was fired by Lamar Advertising in August 2011 when he refused to continue poisoning trees that blocked the view of Lamar billboards. He has been granted immunity in a criminal investigation, and has sued over loss of his job.

Robert J. Barnhart was a crew chief for a billboard company, and a soldier in a war on trees.

Trees were the enemy if they spoiled the view of a billboard. On days of an attack, Barnhart, 27, would arrive by dawn at Lamar Advertising Co. in Tallahassee, Fla. After removing the magnetic Lamar logo from a company truck, he would set forth with a

[http://investigations.nbcnews.com/\\_news/2012/04/26/11402635-a-crime-by-the-highway-trees-to-make-billboards-easier-to-see?lite#](http://investigations.nbcnews.com/_news/2012/04/26/11402635-a-crime-by-the-highway-trees-to-make-billboards-easier-to-see?lite#)

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machete, a hospital mask and a container of what he described as a "pretty gnarly" herbicide.

It was all about being fast: Hack into the roots or base of the tree, douse the wound with herbicide, and get out of there. The Lamar executive who gave the orders, said Barnhart, called it "a hit and run."

Barnhart's account, detailed in [court papers](#) and in [statements to investigators](#), is the focus of a criminal investigation. It also is the basis for a whistleblower suit in which Barnhart, who through his lawyer declined to be interviewed, maintains that he was fired because he would not keep poisoning trees. His claims are supported by sworn testimony from Barnhart's former supervisor, Chris Oaks, who admitted that he, too, had illegally poisoned trees before Barnhart took over in 2009 as poisoner-in-chief.

As long as there have been billboards, trees have been getting in the way. And billboard companies have been removing them — sometimes legally, sometimes not. News archives are replete with accounts of mysterious tree disappearances near billboard sites. Usually, no one gets caught, due to lack of evidence or to officials failing to aggressively pursue those responsible.



North Carolina Department of Transportation

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Poisoned trees near a billboard for a topless dance joint in North Carolina in 2006.

Fewer trees means more viewing time for motorists, and more money for billboard operators. A 500-foot clearance in front of a sign creates more than five seconds of viewing time for a motorist going 60 mph.

It's uncertain if the Tallahassee tree-poisonings were isolated, or reflect a pattern at Lamar. The Baton Rouge, La., company has nearly 150,000 billboards, more than any other U.S. outdoor advertising firm.

Barnhart and Oaks said they acted under orders from Lamar's former regional manager, Myron A. "Chip" LaBorde, who ran company operations in Florida and Georgia and was past president of the Florida Outdoor Advertising Association. LaBorde died of pancreatic cancer last summer.

Hal Kilshaw, a Lamar vice president and chief spokesman, declined to discuss the criminal investigation, but said "cutting of trees or poisoning of trees without the required permits would be contrary to company policy."

Charges in the tree-poisoning case could be filed soon. Meanwhile, another tree-killing binge in the Florida panhandle has also drawn attention. In that episode, billboard operator Bill Salter Outdoor Advertising cleared more than 2,000 trees from public rights of way to enhance views of its signs.

Florida transportation officials acted "in flagrant violation of the law" in issuing permits for the cutting, [a grand jury found in January](#), because, among other things, they did not require Salter to compensate the state for the loss of the trees, valued at \$1 million to \$4 million. The permits were issued to Salter after a state legislator, Greg Evers, intervened by making calls to the state Department of Transportation. The agency is currently negotiating with Salter for repayment.

Tree pruning also happens routinely, and legally, by arrangement between billboard operators and private landowners. The industry has lobbied for state laws to allow tree-cutting along public highways under certain conditions. According to the Outdoor Advertising Assn. of America, the industry trade group, 29 states, including Florida, have "reasonable" regulations on clearing vegetation that blocks views of signs. The group says on its website: "The OAAA discourages vegetation control that is not in compliance with state and local laws and regulations."

[http://investigations.nbcnews.com/\\_news/2012/04/26/11402635-a-crime-by-the-highway-poisoning-trees-to-make-billboards-easier-to-see?lite#](http://investigations.nbcnews.com/_news/2012/04/26/11402635-a-crime-by-the-highway-poisoning-trees-to-make-billboards-easier-to-see?lite#)

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However, environmental groups have criticized these laws, asking why publicly owned trees that provide beauty and shade should be removed to accommodate advertising signs. Though billboard companies pay for the cutting, critics say permit fees and compensation for destroyed trees do not meet the real cost to taxpayers. Moreover, they note, in states that permit vegetation removal, illegal cutting still takes place.

Lamar's Kilshaw said his company's record is good. "We have over 150 offices, we have thousands of employees, we've been in business over 100 years," he said. The record shows Lamar is "doing the right thing almost all the time, almost everywhere."

'An honest, legitimate mistake'

In 2008, Lamar was sued by the state of Connecticut after the company and a tree service trespassed on state land and removed 83 trees along Interstate 84, including oak, spruce, maple and birch trees up to 37 inches in diameter. They "swept a swath of destruction," said then-Attorney General Richard Blumenthal, "obliterating a vital environmental buffer protecting homeowners from noxious noise and views."

The problem was that Lamar had a permit to trim — not cut down — trees. It also felled trees outside the permitted area.



Florida Office of Agricultural Law Enforcement

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An oak tree in Florida allegedly poisoned by Robert Barnhart. The tree "had signs of dying and chop marks near the base," said the report by Florida investigators.

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It was "an honest, legitimate mistake," Kilshaw said, adding that a state transportation official had observed the work without raising objections. But a judge found Lamar liable in October, 2010. In lieu of paying damages, Lamar agreed to fund a replanting program for an estimated \$181,000.

In 2009, Lamar was forced to pay about \$182,000 to an irate Ohio couple for illegally felling 34 trees on their property to improve views of a sign.

The dispute began in the late 1990s when, according to John Blust, he and his wife rebuffed Lamar's offer to plant a sign on land they owned in the Dayton suburb of Beavercreek.

A neighbor proved more obliging, and the billboard went up there. But it turned out that the Blusts' trees were in the way. They lived a few miles from the property, and did not learn of the destruction of their woodland until alerted by a cousin.

Blust told FairWarning that he sought compensation, and "If they had sent me \$3,000, it would have been all over." But a Lamar executive "laughed at me over the phone from Baton Rouge, Louisiana," said Blust, who then decided to sue.

A jury awarded the Blusts more than \$2.2 million in punitive damages. Appeals dragged the marathon case into 2009, when an appeals court ruling led to Lamar paying damages and attorney fees.

"In that case, our contractor made a mistake," Kilshaw said, "and simply went across a property line, and we ultimately paid on that."

For his part, Blust, 76, said he was "satisfied that I caused them pain. Did we make a lasting impression on the management of Lamar? If they're still cutting down trees, I guess we didn't."

What is unusual about these episodes is that someone got caught. More often, over the years, the culprits remained unknown or were not aggressively pursued by authorities.

For example, [a 1985 report by the General Accounting Office](#) cited dozens of incidents in Georgia of illegal tree cutters acting with impunity, including a case in which about 500 trees were poisoned near three signs along interstate highways.

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In Louisiana, said the GAO, "over 2,000 feet of vegetation and trees were cut and cleared to enhance the visibility of two signs. We counted over 900 stumps from destroyed trees at this site."

In a 1996 deposition, a former billboard company tree trimmer testified that he had cut down and poisoned trees in the Los Angeles area for many years, usually without the owners' consent. The former employee, Fred Jackson, worked until the late 1980s for two large billboard companies, Foster & Kleiser and Patrick Media, that eventually merged and were absorbed by Clear Channel Outdoor.

Jackson said he occasionally was confronted about what he was doing, and would make up a lie. It might be "'I'm working for the Edison Company,'" Jackson testified. "That was a great one."

More recently, illegal tree clearing near billboards and "supergraphics" — giant ads draped on buildings — has been a problem in Southern California, said Dan Freeman, an official with the state Department of Transportation, or Caltrans.

"The billboard industry — well, my impression of them is they're kind of lawless," said Freeman, Caltrans' deputy director of maintenance for Los Angeles and Ventura counties. "They pretty much do whatever they want."

"We've been victim a number of times to people who come in the middle of the night, with a chainsaw, and just kind of clear cut the area immediately in front of one of these supergraphics or a large billboard," Freeman told FairWarning.

"And, of course, we call them," Freeman said, referring to the sign company, "and they say, 'We have no idea who could have done it. My, what a terrible thing.' They don't own up to it. We have had a very, very difficult time in getting traction on prosecuting them."

The right to be seen

Billboard companies have sometimes claimed an inherent right to have unimpaired views of their signs. If revenues go down because of public trees, they have argued, public agencies should pay damages. This has been a hard sell.

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For example, a Tennessee appeals court rejected an industry lawsuit against the state department of transportation over its failure to maintain unrestricted views of roadside signs.

"It is true that wild vegetation, as well as that planted by the State, has and will have a normal tendency to grow taller," said the 1979 ruling. "Plaintiffs seem to insist that the licensing of a billboard confers some special right of visibility or imposes some special duty upon the State to maintain visibility of the licensed billboard. No authority has been cited or found to sustain this novel theory."

In 2006, the California Supreme Court rejected claims of billboard operator Regency Outdoor, which had sued the city of Los Angeles, claiming it lowered the value of its signs by planting palm trees for a beautification project.

"The right to be seen from a public way...simply does not exist," the Supreme Court ruled. "Regency cannot claim unfair surprise from the plantings. Local governments have long planted trees along roads for aesthetic reasons, to lessen the burdens of climate, and for other salubrious purposes."

So the industry has turned to state legislatures to establish the right to be seen. Under laws or regulations of most states, billboard operators can legally cut back trees and other vegetation along state and federal highways. Typically, they must pay for a permit, file a work plan, and either replant or pay for lost trees.

The Outdoor Advertising Assn. of America failed to respond to interview requests, but in an email described vegetation control as "a common, longstanding practice along roadways for the sake of safety and visibility."

Once state rules are in place, billboard companies often lobby state legislatures to relax restrictions and expand the freedom to cut. In the past year, for example, the industry pushed through such changes in Georgia, North Carolina and Wisconsin.

In Georgia billboard companies won more freedom to clear trees, though the new law is tied up in a court challenge. The industry's legislative success followed years of cultivating lawmakers. From 2001 through 2010, billboard owners and the Outdoor Advertising Association of Georgia contributed at least \$467,522 to candidates for state office, according to [a report by the advocacy group Scenic Georgia](#).

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The Outdoor Advertising Association also did some wining and dining, last year hosting 34 Georgia legislators and two board members of the state Department of Transportation at a golf outing at the Reynolds Plantation resort, [according to The Atlanta Journal-Constitution](#).

A Georgia Department of Transportation spokeswoman said that in the past five years, the agency has completed investigations into 20 complaints of illegal tree cutting, and collected about \$203,000 in compensation.

In North Carolina, the industry-backed law passed last July expanded the cutting area to up to 380 feet on each side of billboards — up from 250 feet before. This translates into extra viewing time of 1.5 seconds for motorists approaching billboards at 60 mph. State transportation officials estimated that up to 200,000 trees could be removed in the next five years as a result.

From 2005 through June, 2011, billboard interests donated at least \$206,000 to state legislative and gubernatorial candidates in North Carolina, [according to a report by the nonprofit group Democracy North Carolina](#), and research by FairWarning.

"They've got a lot of money, and it's amazing how cheaply legislators can be bought," said North Carolina resident Charles Floyd, a retired University of Georgia business professor who has written extensively about the billboard industry and is critical of the new law.

Even in states such as North Carolina that provide a legal means to enhance billboard views, incidents of illegal cutting and poisoning still occur. In some respects, loosening restrictions is the path of least resistance, reducing the number of violations and need for enforcement.

"If you legalize vandalism," Floyd complained, "that helps out a lot."

Since July, 2006, the North Carolina Department of Transportation recorded 88 incidents of illegal tree removal near billboards, according to [agency data reviewed by FairWarning](#).

The cost to the state was \$923,000 under a formula based on the size of lost trees. Of that amount, records show, the state was able to collect only about \$39,000. Without admitting liability, Lamar paid \$18,487.50 to settle one of the cases.

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## Criminal probe in Florida

Soon after Barnhart filed his whistleblower suit, he led state agriculture officials to an oak tree he claimed he had poisoned next to a CVS pharmacy in Tallahassee. When the lab results came back in October, they revealed a herbicide, Triclopyr, in soil and vegetation samples.



## Florida Department of Transportation

The stump of one of more than 2,000 trees allegedly cut by a billboard company in northern Florida. According to a grand jury report, state officials issued permits to cut the trees "in flagrant violation of the law."

He told officials it was one of seven to 10 trees he had illegally poisoned since 2009. Sometimes, he said, he used a machete before pouring in the poison, other times drilled holes in a tree, and on still other occasions he simply cut them.

Barnhart has been granted immunity by the state attorney in Tallahassee. Asked to comment on the criminal probe, State Attorney William Meggs said his office is continuing to gather information.

In a deposition taken in the whistleblower case, Chris Oaks, Barnhart's supervisor, confirmed Barnhart's account. Oaks admitted to poisoning trees himself under orders from his boss, LaBorde.

Oaks, 35, claimed he initially balked, saying he thought Lamar must first get permits.

[http://investigations.nbcnews.com/\\_news/2012/04/26/11402635-a-crime-by-the-highway-poisoning-trees-to-make-billboards-easier-to-see?lite#](http://investigations.nbcnews.com/_news/2012/04/26/11402635-a-crime-by-the-highway-poisoning-trees-to-make-billboards-easier-to-see?lite#)

"And he told me, he said to just jump over the fence and do what needs to be done and kick a little dirt over it," Oaks testified, referring to LaBorde, "and if you don't know how to do that, I'll take out my gun and I'll shoot you in the head."

Oaks said he figured LaBorde was joking. But "I felt then that I needed to do what the man was telling me for fear — not for death, I didn't really think he would kill me, but I did feel like it was threatening to my job," Oaks said.

"I just want to get it clear that none of this was me," Oaks said. "I did not want to do any of this."

Barnhart said fear of getting caught on a surveillance camera and, according to his lawyer, pressure from his wife led him to come forward. Barnhart said that after suffering a back injury and going on light duty, he told managers that he would no longer poison trees when he came back. In August, he says, he was fired.

Lamar contends it never fired Barnhart. The company's response is less clear cut on the other alleged violations, such as criminal mischief and illegal handling of poisons.

"Any act or omission by Lamar was done in good faith," the company said in [court papers](#). "To the extent that the actions of any Lamar employee were, in fact, in violation..., those actions directly violated Lamar's corporate policies and procedures and were, thus, beyond the course and scope of their employment."

[FairWarning](#) is a nonprofit, online investigative news organization focused on public health and safety issues.

Support for this story came from the [Fund for Investigative Journalism](#).

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**Exhibit "D"**

City of Yakima Permit Data For Billboards

Applicant Name	Permit No	Issued Date	Permit Type	Permit Status	Project Description
CASCADE SIGN & FABRICATION	SIGN-11-003	13-Jan-11	CA-POLESIGN	EXPIRED	ONE NEW BILLBOARD SIGN FOR US SYNTEC
METRO OUTDOOR LLC	SIGN-09-075	27-Oct-09	CA-POLESIGN	FINALED	NEW APPLICATION FOR EXPIRED PERMIT #50106 FOR BILLBOARD SIGN
METRO OUTDOOR LLC	SIGN-09-074	18-Nov-09	CA-POLESIGN	EXPIRED	NEW SUBMITTAL TO REPLACE EXPIRED PERMIT #50808 FOR A BILLBOARD SIGN
METRO OUTDOOR LLC	50478-42625-17	26-Jan-10	B-SIGN-LEG	FINALED	OFF PREMISE BILLBOARD SIGN LOCATED ON BNSF RAILROAD PROPERTY; 12/11/09 SUBMITTED UPDATED ENGINEERING
METRO OUTDOOR LLC	SIGN-10-105	24-Nov-10	CA-POLESIGN	EXPIRED	NEW 30' x 10' BILLBOARD SIGN
PARKER OUTDOOR INC	SIGN-11-019	5-May-11	CA-POLESIGN	EXPIRED	INSTALLATION OF 30'X10' BILLBOARD SIGN

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