

Off-premise Digital Sign Lighting

Section 28-125 – **Off-premise digital signs**, subsection (b)(3)(a) requires off-premise digital signs to display light intensity at or below NIT levels proscribed by the subsection.

The NIT levels in that section were passed by Council during the digital sign pilot program of 2009. At that time, there was little research and no lighting standards for digital signs to which the council could refer to set lighting levels. The NIT, which required the use of an expensive measuring device (the “NIT gun”), most commonly used to measure the light output of computer screens, was the only measurement available to control digital lighting.

Since that time, research has set the lighting level of digital signs at 0.3 foot candles over ambient light levels. The distance at which a digital sign’s luminance is measured is determined by the size of the sign face. Such measurements can be taken by a photographer’s light meter; inexpensive compared to the NIT gun. Note that the City has already adopted these standards for on-premise signage in 28-241(e)(7)(a)(1)Table 4.

Clear Channel proposes, to promote consistency of lighting standards for all digital signs, to amend the Sign Code to include off-premise signs in the foot candle measurement method.

Relocation of Off-premise Signs

Section 28-151 -**Exception to General Prohibition: Governmental Action**, subsection (3) restricts all sign relocations to relocation of the structure to the same premises. Such premises have been practically defined as the same tract of land, with the same ownership, on which the current sign resides.

As alluded to in the section, relocation of an off-premise sign rarely occurs unless there is some governmental action, such as roadway improvement. However, 60% of the time, either the entire landowner’s site is taken, or the remainder of the site is incompatible with sign relocation and the sign owner is forced to remove the structure.

Logically, should the sign be unable to relocate to the remainder, the owner will seek a comparable site for the structure. To do so, the owner must possess, or be willing to remove, another sign to avail itself of the sign ordinance’s 2 for 1 new sign allowance. As the relocation is caused by governmental action, combining the same-site requirement with the above requirement of the removal of a second sign creates an undue burden on the sign owner, meaning the majority of the time the asset will be lost.

Such a change to the ordinance would also expedite the removal of signs for construction purposes. Currently, because of its value as a revenue producing asset, the owner is hesitant to remove the structure until every relocation possibility has been exhausted. An owner secure in the knowledge that the asset can be moved would be much more willing to quickly contribute to right of way clearing. This approach would also relieve governmental entities of unnecessary roadway expenditures related to signs, such as that which occurred on Wurzbach Parkway.

Excluding scenic corridors and historic districts, Clear Channel proposes, similar to the methodology currently used by TxDOT, expanding the current on-site only relocations to allow signs to be relocated to any other roadway within the city not under the aforementioned restrictions.

Greater San Antonio Builders Association:

The Greater San Antonio Builders Association is grateful for the opportunity to participate in the stakeholder process for the upcoming amendment to Chapter 28 of the City Code, as it relates to signage. We look forward to playing an active role in shaping sensible regulation that maintains the safety of our community but also allows members of our industry to thrive.

In response to Draft A of the proposed revisions to the Sign Code, our Association has the following questions, concerns and proposed amendments to add:

1. The Greater San Antonio Builders Association requests an amendment to Chapter 28 that incorporates Chapter 35's definition of a 'subdivision' into that chapter for clarity.

2. Section 28-148 as it relates to Residential Developer/Builder Off-Premises Signs

The proposed revisions to this section state that signs within and outside of a subdivision will be permitted for two years or until 95% of houses in the subdivision have been consummated. Many of our members' communities are very large; 5% of homes remaining in a development would mean that a large number of homes would no longer be able to be advertised. Our Association prefers to amend this provision to allow for a one-year extension of sign permits after 95% of homes in a subdivision have consummated, at the discretion of the Director. This will allow the remaining homes or lots to be advertised and sold promptly.

3. Section 28-148 as it relates to Residential Developer/Builder Off-Premises Signs

The section currently reads that off-premises builders signs are restricted to five (5) miles from the development. Many times, due to permit restrictions, land use agreement issues, or other geographical or regulatory barriers, signs are not able to be placed near areas of traffic for which they target. The Association proposes amending this section to expand the allowance of off premises signs to within seven (7) miles of the development. This will allow compliance with sign spacing requirements and provide alternative locations to use in case of other regulatory barriers to sign placement.

4. Section 28-148 as it relates to Residential Developer/Builder Off-Premises Signs

The proposed revisions to this section restrict the number and size of signs outside of a residential development to eight

(8) signs, half developers and half builders, with a maximum size of 64 square feet for each sign. Additionally, the proposal maintains a 150-foot spacing requirement between signs.

The Association is concerned that these regulations will limit the number of developers/builders who will be able to advertise their products at a mixed development. Some subdivisions are quite large and host multiple builders. Other subdivisions have few builders who offer various products, which are often rebranded or sold as a separate product. The Association maintains that it is imperative that all builders and developers in large projects are able to advertise their product(s), and that the number, size, or spacing of these signs outside of the development should be evaluated further.

5. Section 28-148 as it relates to Residential Developer/Builder Off-Premises Signs

The proposed revisions to this section limit builder advertising signs within a subdivision to four (4) total. An additional

note is included in the section revisions that states that temporary signs advertising individual homes for sale are permitted in addition to the four (4) builder advertising signs, when limited to a maximum of twelve (12) square feet. The Association has reached out to Development Services Department for clarification on these signs, and would like to add an amendment to clarify that these signs do not require a permit if displayed as an individual "available" sign only.

6. Section 28-148 as it relates to Residential Developer/Builder Off-Premises Signs

The proposed revisions in this section limit builder advertising signs within a subdivision to four (4) total, with each sign limited to a maximum of 288 square feet. The Association requests clarifying language be inserted in regards to dimensions, height restrictions, easements, and placement. If signs within the subdivision are restricted to a certain height of eight (8) feet, as described in Section 28-116, the maximum sign size may not be a realistic possibility to place on lots within a subdivision.

7. Section 28-150 as it relates to Off-Premises Signs in the ETJ

This section currently regulates the size, spacing, and composition of signs in the extra-territorial jurisdiction (ETJ). While the Association is committed to sensible regulation, we

propose a revision or deregulation of some of the sign spacing and size requirements outside of the city limits. Signs in the ETJ are placed on private property with secured agreements with property owners. City size and spacing regulations, which are better suited for a more urban environment, should be evaluated as burdensome when combined with the land use issues in the ETJ.

The aforementioned issues, concerns and amendments to Chapter 28 of the City of San Antonio Sign Code are not all-inclusive. The Greater San Antonio Builders Association remains open to feedback from all stakeholders, and reserves the right to support any other amendments that may emerge from the stakeholder meetings themselves. Many industry members will expound on the Association's proposals as they pertain to their own specific business, and representatives of the Association may decide to support, oppose, or amend related proposals at the appropriate time.

Northside Neighbors for Organized Development:

1. Sec. 28-2. - Legislative findings; intent.

(a) It is the intention that this chapter be liberally interpreted to cover advances in technology and its impact on City interests in aesthetics and traffic safety not contemplated at its inception. As such, the Director is authorized, through appropriate staff, to draft Information Bulletins to further administer this chapter. Such actions shall be to accommodate the impact of new technology but shall not amend this chapter or waive the requirements of this chapter.

We don't understand how a "liberal interpretation" of "advances in technology" can become a municipal legislative finding. Could staff give us examples of other cities that do this? Doesn't this mean that the entire code becomes problematic for the City to enforce? And wouldn't it be difficult to successfully defend, if legally challenged?

Has the City's legal department reviewed this DRAFT for first amendment speech issues? We understand there is a new Supreme Court case, *Reed v Town of Gilbert*, that must be considered in any new rewrite to assure the City has a strong and constitutionally defensible code.

In addition, there could be an impact on digital billboards from the *Scenic America v FHWA, USDOT and OAAA* case that is pending at the US Court of Appeals, DC Circuit. Commercial message digital billboards that operate along the federal highway system are being challenged in that case. Oral argument was given in September 2015, and there should probably be a decision in the near future.

2. (c) Duties and Powers of the Director

*(12) **Alternative materials, design and methods of construction and equipment.** The provisions of this chapter are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this chapter, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the Director finds that the proposed design is satisfactory and complies with the intent of the provisions of this chapter, and that the material, method or*

work offered is, for the purpose intended, at least the equivalent of that prescribed in this chapter in qualify, strength, effectiveness, fire resistance, durability and safety. Where the alternative material, design or method of construction is not approved, the Director shall respond in writing, stating the reasons why the alternative was not approved.

*a. **Research reports.** Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this chapter, shall consist of valid research reports from approved sources.*

*b. **Tests.** Whenever there is insufficient evidence of compliance with the provisions of this chapter, or evidence that a material or method does not conform to the requirements of this chapter, or in order to substantiate claims for alternative materials or methods, the Director has the authority to require tests as evidence of compliance to be made at no expense to the city. Test methods shall be as specified in this chapter or by other recognized test standards. In the absence of recognized and accepted test methods, the Director shall approve the testing procedures. Testing shall be performed by an approved agency. Reports of such tests shall be retained by the Director for the period required for retention of public records.*

I'd just like to note that the City did not really test for the adverse impact of digital signs on drivers before passing a pilot off-premise digital sign ordinance. (See comments for #3.) So, we have concerns about the Director's discretion when it might affect driver safety.

Another area of concern is aesthetics. We are well aware that there is not one standard for 'beauty', but our concern lies with using technology to attract the viewer to the sign – which is good advertising, but may not be appreciated by many citizens and might actually reduce the aesthetic appeal of our City. As an example, there were many comments at the NNOD meeting of 2/8/16 when we discussed the proposed ordinance about the seemingly increased brightness of signage, which was not appreciated. I don't have the impression that neighborhood residents are opposed to signs. They recognize their value and understand that they are one element in an increasingly complex urban environment. But, what they would like is for signage to complement the existing built and natural environments, not compete with these environments for attention in a way that is unpleasing to them.

We would like to have some discussion of how the planning staff who guides overall community design program and policies might contribute to this document. For example, when the scenic corridors were developed, the process involved serious consideration of aesthetics.

(d) Variance and appeal procedures.

The same comments apply. Our concern is that these procedures are implemented in a manner that ensures driver safety and good community design. Is there a legal reason to have a variance procedure for signage versus an appeal process for a denial? Liberal variance procedures undermine the integrity of the sign code and the authority of staff. An appeals process should adequately protect an applicant who feels that the denial is not justified.

3. Sec. 28-125. –Off-premise digital signs

One of the intents of the entire ordinance according to Sec. 28-3 is to balance the safety of citizens with the facilitation of message communication. When the Pilot program for off-premise digital signage was passed in 2009, the issue of the safety of digital signage was not adequately addressed, i.e.,

the City had no independent studies of its own that would meet rigorous scientific standards that could confirm that digital signage was or was not a safety hazard. In 2010, the federal government was to study the issue. My understanding is that their report was so flawed that it was buried. I am attaching a report from a transportation safety expert, Jerry Wachtel, who was commissioned in 2013 by Scenic Texas to summarize the latest information about traffic safety. We understand that he is updating that report to include the most recent studies. It should be finished and ready to circulate to the city in the next few weeks. There is evidence that digital signage adversely impacts drivers. The only outstanding issue is whether that adverse impact creates hazardous driving conditions that the city should take into consideration.

NNOD suggests that the City engage this expert in making a presentation to this Sign Ordinance Review Committee prior to assuming that the City should allow 15 additional off-premise digital signs. In fact, we think it would be a good idea to engage Mr. Wachtel and ‘pick his brains” about signage in general and what his research shows about safety. It could be an opportunity to improve this ordinance.

And, could you clarify something for us. The ordinance now allows up to 15 digital signs. Twelve have been installed. How many more are going to be allowed at this time? Is it possible that 15 more will be allowed? If that is the case, we would like to know the exact locations of those and suggest the city alert surrounding property owners. There is evidence that off-premise billboards, digital or not, devalue nearby properties. Residential real estate within 500 feet of a **non-digital** billboard is \$30,826 less valuable at the time of purchase. In contrast, each additional SQ FT of livable area has an \$89.34 increase in price, and properties located within 1,000 ft. of amenities such as parks and bike paths are correlated with a higher real estate price. For a link to Beyond Aesthetics, How Billboards Affect Economic Prosperity, see: <http://www.scenichouston.org/new-study-shows-billboards-hurt-nearby-property-values/> also see what happened in Toronto when digital billboards came to this neighborhood. <https://www.youtube.com/watch?v=5qIRkg4zFDI>

4. **Sec. 28-152 – Signs on roads and highways maintained by city and**

Sec. 28-153 – Bandit Signs

We noted that these sections were not in the DRAFT document. Yet, this is one of the most common complaints that neighborhoods have about signs. While there are regulations, they are not always followed. It seems to us that this is not so much a matter of the ordinance, as individual behaviors. We’d like to know if realtor and homebuilder associations would be willing to work with neighborhoods to encourage their members to follow the rules.

These types of temporary signs are at the heart of the new Supreme Court case, *Reed v Town of Gilbert*. Does the City have on staff an attorney who specializes in first amendment free speech sign issues to be sure all the temporary sign provisions are constitutionally defensible?

Submitted Compendium of Recent Studies on Distraction from Commercial Electronic Variable Message Signs (CEVMS) and a news release from Scenic America on Digital Billboards and Driver Safety.