CITY OF SACRAMENTO

20

CITY PLANNING DEPARTMENT

725 "J" STREET SACRAMENTO, CALIF. 95814 TELEPHONE (916) 449-5604

MARTY VAN DUYN
PLANNING DIRECTOR

July 29, 1981

APPROVED BY THE CITY COUNCIL AUG -4 1981 ord. adopted extending moratorium to 8-25-81 and hearing cont to 8-25-81

OFFICE OF THE CITY CLERK

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: An Emergency Ordinance amending Section 3.66, 3.81, 3.85, 3.86, 3.157 and 3.181(c) of Article II of Chapter 3 of the Sacramento City Code relating to offsite sign requirements (M-531)

SUMMARY

The proposed ordinance amendments would prohibit the location of offsite signage on properties zoned C-2, General Commercial, and set forth specific standards relating to height, area, and setback requirements for offsite signs in the C-4, M-1, and M-2 zones. The staff and Planning Commission recommend that the attached ordinance be adopted.

BACKGROUND INFORMATION

On January 27, 1981 the City Council adopted a moratorium on the issuance of offsite sign permits located within the C-2, General Commercial, zone. On March 17, 1981 this moratorium was expanded to include all offsite signs and all detached signage located within 660 feet of a freeway. This moratorium will expire on August 4, 1981.

Consideration of the proposed Sign Ordinance Amendment was continued to this hearing to allow additional time for evaluation of the Supreme Court decision on the Metro-Media case and to allow staff to evaluate the sign companies alternative proposal.

The City Attorney has reviewed the proposed amendments and has determined that the amendments as approved by the Planning Commission do not conflict with the decision rendered in the Metro-Media case.

The proposed ordinance is being presented to the City Council because of concerns regarding the location of billboard-type signs adjacent to residential areas and the potential proliferation of billboard signs throughout the City. In the recent years there has been an increase in permits issued for billboard signs within the City as indicated by the following:

Year	Number of Permits
1978	6
1979	2
1980 (January to July)	10
1980-1981 (July 1980 to today)	27

The Building Department has 32 offsite sign applications pending. Most of these applications are in the C-2 zone. Because of the increase in sign permits there is a concern with future sign proliferation. Also, there are many non-conforming existing billboards located throughout the City that have not been removed. A recent survey conducted by staff indicates that there is a minimum of 76 billboards which are non-conforming as a result of the 1970 Sign Ordinance. These signs are detracting to the adjacent areas.

Current Sign Ordinance: The current Sign Ordinance allows offsite signs in the C-2, C-4, M-1 and M-2 zones subject to certain conditions related to spacing, maximum area, setbacks and maximum heights. Also, offsite signage is generally not permitted within 100 feet of residential zoned properties nor within 660 feet of the exterior boundaries of freeways.

Specifically, in the C-2 General Commercial zone, offsite signs as permitted uses may not exceed 300 square feet in area. However, the Planning Commission has the authority to grant a special permit following application and public hearing for an offsite sign not to exceed 720 square feet in area.

The C-2 General Commercial zone is the most common commercial zone in the City of Sacramento. This zone is often found along commercial strips, shopping centers and other locations adjacent to single family subdivisions and multiple family zones throughout the City. The present Sign Ordinance would permit billboards in these locations subject to certain requirements. Staff is concerned with the location of billboards and other offsite signs near or in residential neighborhoods and communities. Additional signage has a tendency to create visual clutter and detracts from residential areas. The current ordinance could allow a saturation of billboard signage throughout the City. It would also allow billboards to compete with signage that is used to identify onsite businesses, especially along commercial strips.

Subsequent to the Council hearing on May 26, 1981, staff and various sign company representatives met on three separate occasions to discuss the proposed ordinance.

As a result of these meetings, staff has revised the proposed amendments in regards to general spacing and setback requirements and eliminated reference to spacing from detached onsite signs. In addition, the offsite sign companies submitted their own proposal. Discussion of staff's revised ordinance and the offsite sign industry proposal follows.

Staff's Proposal: The intent of the proposed ordinance is to prohibit the location of intensive offsite signage where such signage is detrimental to the environment in which it is located. If the ordinance is approved, the only offsite signage that would be allowed in the C-2 zone is a subdivision directional sign. These signs are currently allowed subject to obtaining a special permit. Staff has less concern with subdivision signs because they are temporary.

The proposed ordinance would also reduce the total area and height of offsite signage permitted in the C-4, M-1 and M-2 zones. The current ordinance permits a maximum area of 720 square feet and a maximum height of 40 feet in these zones. The proposed ordinance will set forth specific standards relating to height, area and setback requirements for offsite signs located in the C-4, M-1 and M-2 zones. First, offsite signs must be detached signs. Second, the proposed maximum height is 20 feet, as compared to the current requirements of 35 to 40 feet. Third, the maximum area shall not exceed 300 square feet as compared to the current allowance of 720 square feet. Fourth, a billboard must be 300 feet from any residential use or zoned property. They must also be located no closer than 500 feet of another offsite sign and meet the same setback requirements.

Sign Companies' Proposal: The major components of the revisions as recommended by the billboard industry would allow retention and replacement of all existing offsite signs in the C-2 zone and the placement of new offsite signs of less than 100 square feet subject to the issuance of a special permit. This proposal also recommends continuance of the existing ordinance in the C-4, M-1 and M-2 zones, including a maximum height of 40 feet and area of 720 square feet. (See Exhibit A for Industries' Proposal.)

Other revisions as suggested by the industry would increase spacing requirements between offsite signs and from residential buildings. In addition, new signs would be prohibited in the area which roughly corresponds to the Central Business District and the Capitol Plan Area. Offsite signs are currently prohibited in both the Capitol Plan Area and Central Business District. Capitol Plan Area offsite signs are currently prohibited in the Central Business District. The replacement of existing billboards would be accomplished by establishing a City-wide roster of such signs in the C-2 zone. No permit for a new sign could be processed unless to replace a sign which has been removed.

Such an approach would allow billboards to remain in their present abundance, which, according to staff's survey, consists of 233 sign structures. In addition, there are a number of offsite signs in the C-2 zone currently nonconforming according to the 1970 Sign Ordinance. No provision is offered for the removal of these signs which were required to be brought into conformance by 1980.

Since the industry proposal would retain a specific number of billboards, it is conceivable that a shift in billboards from one area to another may occur thereby posing a problem of over concentration in certain areas. Also, such an approach may favor existing sign companies and eliminate market place competition.

The amendments as proposed by the industry would allow the erection of new billboards under 100 square feet in the C-2 zone subject to the issuance of a special use permit. The special permit would be for a given period of time and subject to certain landscaping requirements including removal of existing abandoned or non-conforming signs.

Staff finds the industries' proposal unacceptable. Its basic thrust is to increase the spacing requirements while maintaining all existing billboards and allowing for additional smaller billboards throughout the City. Staff finds that the retention of such signage, including non-conforming signs, of such numbers and size detracts from the visual quality of the immediate area in which they are located and the City as a whole. Offsite signage is more appropriately placed in the C-4, M-1 and M-2 zones, subject to the requirements as proposed by staff.

VOTE OF COMMISSION

On April 30, 1981, the Planning Commission, by a vote of six ayes, one abstention, two absent, recommended approval of the attached ordinance.

RECOMMENDATION

The staff and Planning Commission recommend that the City Council approve and adopt the attached Ordinance.

Respectfully submitted,

Marty Van Duyn
Planning Director

FOR CITY COUNCIL INFORMATION
WALTER J. SLIPE
CITY MANAGER

MVD:TMM:bw
Attachments
M-531

August 4, 1981
All Districts

ORDINANCE NO.

AN ORDINANCE AMENDING SECTIONS 3.66, 3.81, 3.85, 3.86, 3.157 AND 3.181(c) OF ARTICLE II OF CHAPTER 3 OF THE SACRAMENTO CITY CODE RELATING TO OFFSITE SIGNS, AND DECLARING SAID ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 3.66 of Chapter 3 of the Sacramento City Code is hereby amended to read as follows:

Sec. 3.66. C-2, C-3, C-4 Commercial Zones; M-1 and M-2 Industrial Zones.

Within the C-2, C-3, C-4, M-1, and M-2 zones, onsite signs and offsite signs are subject to the following regulations:

(a) Onsite signs.

(1) One detached sign for each developed parcel not exceeding one square foot of sign area for each lineal foot of street frontage abutting the developed portion of such parcel, provided that

a) Where a developed parcel has in excess of three hundred feet of street frontage, one additional detached sign may be erected for each additional three hundred feet of street frontage in excess of the first three hundred feet of street frontage abutting the developed portion of such parcel.

b) Where a developed parcel is permitted to have more than one detached sign under these regulations, the distance between such detached signs on each parcel shall be not less than three hundred feet.

c) Subject to the provisions of division 4 of this article, the total area of all detached signs on each parcel shall not exceed one square foot of sign area for each lineal foot of street frontage of the developed portion of such parcel.

(2) Two attached signs are permitted for each occupancy. Such signs shall not exceed a total aggregate area of three square feet of sign area for each front foot of building occupancy. Such signs may be placed flat against a building, may be projected or nonprojecting signs and may be located on an architectural projection or attached to the underside of an architectural projection subject to the provisions of sections 3.106 and 3.107 of this article.

(3) The maximum height limit for detached signs shall be as follows:

In C-2, C-3, C-4 zones: thirty-five feet
In M-1, M-2 zones: forty feet

No height limit is specified for signs placed flat against the wall of a building or for other attached signs provided all other provisions of this article are complied with.

(b) Offsite signs

(1) Except as otherwise prohibited by this article, offsite signs may be erected and maintained in the C-4, M-1, and M-2 zones only.

(2) All offsite signs must be detached signs.

(3) No offsite sign shall be located nearer than five hundred feet to any other offsite sign or detached onsite sign on the same side of the street as such offsite sign. When an offsite sign is located on one street but is oriented to be viewed primarily from another street, no such sign shall be located nearer than five hundred feet to any other offsite sign or detached onsite sign on the same side of the street on which it is located or any other offsite sign or detached onsite sign located on the nearest side of the street to which said sign is oriented.

(4) An offsite sign may not exceed 300 square feet in area.

(5) The maximum height limit for an offsite sign shall be 20 feet.

(c) General Provisions Relating to Location

No sign shall be located nearer than five feet to an interior property line nor shall any sign be located nearer than five feet to any common wall or other point common to two separate occupancies on the same parcel. This regulation, however, shall not apply to signs painted on or otherwise attached flat against the wall or architectural projection of a building on the same parcel.

With the exception of offsite signs, a sign may be located within or project into a required front or street sideyard setback area. However, no sign may project into or over an abutting public right-of-way except as otherwise provided in this article. Offsite signs shall be located so as to provide and maintain the same front and street sideyard setbacks as are required for a building on the same parcel.

SECTION 2.

Section 3.81 of Article II of Chapter 3 of the Sacramento City Code is hereby amended to read as follows:

Sec. 3.81. Maximum Sign Area.

No sign shall exceed 300 square feet in area.

SECTION 3.

Section 3.85 of Article II of Chapter 3 of the Sacramento City Code is hereby amended to read as follows:

Sec. 3.85. Offsite signs on residentially used property.

Offsite signs on property used entirely for residential purposes and located in the C-4, M-1, and M-2 zones are subject to the following regulations:

(a) Any offsite sign existing on such property on the effective date of this article may be retained, provided that if such sign does not comply with any other applicable provisions of this article, the sign shall be subject to the nonconforming and amortization regulations contained in this article.

(b) No new offsite sign may be erected after the effective date of this article on property located in the aforementioned zones as long as such property is used entirely for residential purposes.

SECTION 4.

Section 3.86 of Article II of Chapter 3 of the Sacramento City Code is hereby amended to read as follows:

Sec. 3.86. Offsite signs near residences.

No offsite sign shall be permitted where such sign faces the front or sideyard of any lot within any R zone, or any lot within any other zone which lot is used entirely for residential purposes, and is located within three hundred feet of such lot line. No offsite sign shall be located on any vacant lot or parcel of land lying between two residential buildings where such buildings are less than three hundred feet apart.

SECTION 5.

Section 3.157 of Article II of Chapter 3 of the Sacramento City Code is hereby amended to read as follows:

Sec. 3.157. Offsite signs.

Offsite signs are prohibited except (a) as otherwise provided in

subsection (b) of section 3.66 and, (b) subdivison development signs, when approved by the planning commission as provided in section 3.194.

SECTION 6.

Section 3.181(c) of Article II of Chapter 3 of the Sacramento City Code is hereby amended to read as follows:

(c) The following nonconforming signs shall be removed within ten years from the date such signs were erected, or within five years from the effective date of this article, whichever occurs last.

(1) Offsite signs, except as provided in subsection (d) below.

(2) Roof signs except as otherwise provided in section 3.90.

(3) Signs in excess of the number specified by this article.

(4) Sidewalk clocks.

(5) Provided, however, that nothing in this section shall be construed to extend or create a new amortization period for signs which were rendered nonconforming, pursuant to City Ordinance No. 2868, prior to the effective date of this section.

SECTION 7. Emergency.

This Ordinance is hereby declared an emergency measure to take effect immediately. The facts constituting the emergency are as follows. A moratorium on offsite signs was enacted by Ordinance No. 81-014 and amended by Ordinance No.81-066 to allow the City time to study and develop regulations to address the problems created by a sudden proliferation of offsite signs within the City, as described in Ordinance No. 81-014. The moratorium is due to expire August 4, 1981. It is therefore necessary, to preserve the public health, safety, and welfare, that this Ordinance take effect immediately so that its regulations, which address the problems stemming from the proliferation of offsite signs,will be in effect when the moratorium expires.

DATE ENACTED:

DATE EFFECTIVE:

_____
MAYOR

ATTEST:

_____
CITY CLERK

-8-

ORDINANCE NO.

AN ORDINANCE AMENDING SECTIONS 3.66, 3.81, 3.85, 3.86, 3.157 AND 3.181(c) OF ARTICLE II OF CHAPTER 3 OF THE SACRAMENTO CITY CODE RELATING TO OFFSITE SIGNS, AND DECLARING SAID ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 3.66 of Chapter 3 of the Sacramento City Code is hereby amended to read as follows:

Sec. 3.66 C-2, C-3, C-4 Commercial Zones; M-1 and M-2 Industrial Zones.

Within the C-2, C-3, C-4, ~~Commercial Zones, and M-1~~, and M-2 ~~Industrial~~ zones, onsite signs ~~indicating the business, commodities, service, industry, or other activity sold, offered, or conducted on the premises are permitted as follows:~~ and offsite signs are subject to the following regulations:

(a) Onsite signs

~~(a)~~ (1) One detached sign for each developed parcel not exceeding one square foot of sign area for each lineal foot of street frontage abutting the developed portion of such parcel, provided that

~~(1)~~a) Where a developed parcel has in excess of three hundred feet of street frontage, one additional detached sign may be erected for each additional three hundred feet of street frontage in excess of the first three hundred feet of street frontage abutting the developed portion of such parcel.

~~(2)~~b) Where a developed parcel is permitted to have more than one detached sign under these regulations, the distance between such signs on each parcel shall be not less than three hundred feet.

~~(3)~~c) Subject to the provisions of division 4 of this article, the total area of all detached signs on each parcel shall not exceed one square foot of sign area for each lineal foot of street frontage of the developed portion of such parcel.

~~(b)~~ (2) Two attached signs are permitted for each occupancy. Such signs shall not exceed a total aggregate area of three square feet of sign area for each front foot of building occupancy. Such signs may be placed

flat against a building, may be projected or nonprojecting signs and may be located on an architectural projection or attached to the underside of an architectural projection subject to the provisions of sections 3.106 and 3.107 of this article.

~~(c)--Except-where-otherwise-prohibited-by-this-article,-offsite signs-may-be-erected-and-maintained-in-the-C-2,-C-4,-M-1,-and-M-2 zones-subject-to-the-following-conditions:~~

~~(1)--Spacing.--No-offsite-sign-shall-be-located-nearer-than three-hundred-feet-to-any-other-offsite-sign-on-the-same-side-of-the street-as-such-offsite-sign.--When-an-offsite-sign-is-located-on-one street-but-is-oriented-to-be-viewed-primarily-from-another-street,-no such-sign-shall-be-located-nearer-than-three-hundred-feet-to-any other-offsite-sign-on-the-same-side-of-the-street-on-which-it-is-located or-any-other-offsite-sign-located-on-the-nearest-side-of-the-street-to which-said-sign-is-oriented.~~

~~(2)--Size.--In-the-C-4,-M-1-and-M-2-zones,-an-offsite-sign not-exceeding-seven-hundred-twenty-square-feet-in-area-may-be-erected. In-the-C-2-zone-an-offsite-sign-not-exceeding-three-hundred-square-feet in-area-may-be-erected.~~

~~The-planning-commission-shall-have-the-authority-to-grant-a-special permit,-following-application-and-public-hearing,-for-an-offsite-sign in-a-C-2-zone,-of-not-to-exceed-seven-hundred-twenty-square-feet-in area.~~

~~(d)~~ (3) The maximum height limit for detached signs shall be as follows:

In C-2, C-3, C-4 zones: thirty-five feet
In M-1, M-2 zones: forty feet

No height limit is specified for signs placed flat against the wall of a building or for other attached signs provided all other provisions of this article are complied with.

(b) Offsite signs

(1) Except as otherwise prohibited by this article, offsite signs may be erected and maintained in the C-4, M-1, and M-2 zones only.

(2) All offsite signs must be detached signs.

(3) No offsite sign shall be located nearer than five hundred feet to any other offsite sign or detached onsite sign on the same side of the street as such offsite sign. When an offsite sign is located on one street but is oriented to be viewed primarily from another street, no such sign shall be located nearer than five hundred feet to any other offsite sign or detached onsite sign on the same side of the

street on which it is located or any other offsite sign or detached onsite sign located on the nearest side of the street to which said sign is oriented.

(4) An offsite sign may not exceed 300 square feet in area.

(5) The maximum height limit for an offsite sign shall be 20 feet.

(c) General Provisions Relating to Location

No sign shall be located nearer than five feet to an interior property line nor shall any sign be located nearer than five feet to any common wall or other point common to two separate occupancies on the same parcel. This regulation, however, shall not apply to signs painted on or otherwise attached flat against the wall or architectural projection of a building on the same parcel.

With the exception of offsite signs, a sign may be located within or project into a required front or street sideyard setback area. However, no sign may project into or over an abutting public right-of-way except as otherwise provided in this article. Offsite signs shall be located so as to provide and maintain the same front and street sideyard setbacks as are required for a building on the same parcel.

SECTION 2.

Section 3.81 of Article II of Chapter 3 of the Sacramento City Code is hereby amended to read as follows:

Sec. 3.81. Maximum Sign Area.

No sign shall exceed 300 square feet in area.

SECTION 3.

Section 3.85 of Article II of Chapter 3 of the Sacramento City Code is hereby amended to read as follows:

Sec. 3.85. Offsite signs on residentially used property.

Offsite signs on property used entirely for residential purposes and located in the ~~C-2~~, C-4, M-1, and M-2 zones are subject to the following regulations:

(a) Any offsite sign existing on such property on the effective date of this article may be retained, provided that if such sign does not comply with any other applicable provisions of this article, the sign shall be subject to the nonconforming and amortization regulations

contained in this article.

(b) No new offsite sign may be erected after the effective date of this article on property located in the aforementioned zones as long as such property is used entirely for residential purposes.

SECTION 4.

Section 3.86 of Article II of Chapter 3 of the Sacramento City Code is hereby amended to read as follows:

Sec. 3.86 Offsite Signs near residences.

No offsite sign shall be permitted ~~if~~ where such sign faces the front or sideyard of any lot within any R zone, or any lot within any other zone which lot is used entirely for residential purposes, and is located within ~~one~~ three hundred feet of such lot line. No offsite sign shall be located on any vacant lot or parcel of land lying between two residential buildings where such buildings are less than ~~one~~ three hundred feet apart.

SECTION 5.

Section 3.157 of Article II of Chapter 3 of the Sacramento City Code is hereby amended to read as follows:

Sec. 3.157. Offsite signs.

Offsite signs are prohibited except (a) as otherwise provided in subsection ~~(e)~~ (b) of section 3.66 and, (b) subdivision development signs, when approved by the planning commission as provided in section 3.194.

SECTION 6.

Section 3.181(c) of Article II of Chapter 3 of the Sacramento City Code is hereby amended to read as follows:

(c) The following nonconforming signs shall be removed within ten years from the date such signs were erected, or within five years from the effective date of this article, whichever occurs last.

(1) Offsite signs, ~~in zones where not permitted~~ except as provided in subsection (d) below.

~~(2) Offsite signs in civic improvement districts in accordance with the provisions of section 3.205 of this article.~~

~~(3)~~ (2) Roof signs except as otherwise provided in section 3.90.

~~(4)~~ (3) Signs in excess of the number specified by this article.

~~(5)~~ (4) Sidewalk clocks.

(5) Provided, however, that nothing in this section shall be construed to extend or create a new amortization period for signs which were rendered nonconforming, pursuant to City Ordinance No. 2868, prior to the effective date of this section.

SECTION 4. Emergency.

This Ordinance is hereby declared an emergency measure to take effect immediately. The facts constituting the emergency are as follows. A moratorium on offsite signs was enacted by Ordinance No. 81-014 and amended by Ordinance No. 81-066 to allow the City time to study and develop regulations to address the problems created by a sudden proliferation of offsite signs within the City, as described in Ordinance No. 81-014. The moratorium is due to expire August 4, 1981 It is therefore necessary, to preserve the public health, safety, and welfare, that this Ordinance take effect immediately so that its regulations, which address the problems stemming from the proliferation of offsite signs, will be in effect when the moratorium expires.

DATE ENACTED:

DATE EFFECTIVE:

_____
MAYOR

ATTEST:

_____
CITY CLERK

EXHIBIT "A"

SIGN COMPANIES' PROPOSAL

PAGES 15, 16, 17, 18, AND 19

MARTIN OUTDOOR

1014 El Monte Avenue
SACRAMENTO
CALIFORNIA 95815
(916) 925-7406

ARIZONA
CALIFORNIA
KANSAS
MISSOURI

July 8, 1981

Mr. Mary Van Duyn
Planning Director
City of Sacramento
725 "J" Street
Sacramento, CA 95814

Re: Sign Ordinance

Dear Marty:

As can be seen by the photos that accompany this letter, one of the problem areas of concern to all is the unsightly appearance of many "on-premise" signs that for one reason or many have deteriorated to a point that their removal would probably be most welcome by everyone.

We propose a way in which some of this can be accomplished at no cost to the City.

Our proposal is that an off-premise sign of not more than 100 square feet be allowed by special permit of the Planning staff where on a case by case basis it can be demonstrated to and approved by the staff that an acceptable improvement can be accomplished by the removal of an objectional "on-premise" sign and the new placing of an "off-premise" sign.

This approach, where and when approved, relieves the City of the role of adversary to its constituents and yet, with expediency and no cost, an eyesore has been eliminated.

Martin Outdoor will in addition subject each of these new structures to a seven year bond for $1,000.00 each which will be forfeit to the City if not removed at the end of the seven year period unless renegotiated. Please see copy of letter dated June 24, 1981 from our insurance broker attached.

We feel that by allowing a few small off-premise signs this proposal will result in a cleaner, brighter and more appealing appearance to the City of Sacramento.

Thank you for your consideration.

Yours truly,

Tom Martin

Tom Martin
President

TM:clo

Enclosures

MARTIN OUTDOOR

1014 El Monte Avenue
SACRAMENTO
CALIFORNIA 95815
(916) 925-7406

ARIZONA
CALIFORNIA
KANSAS
MISSOURI

July 21, 1981

Mr. Marty Van Duyn
Planning Director
City of Sacramento
725 "J" Street
Sacramento, California
95814

Re: Sign Ordinance

Dear Marty:

This letter is to elaborate on our proposal of July 8, 1981 whereby we would be permitted to erect an off-premise sign of not more than 100 square feet when the removal of objectionable, dangerous, unsightly, abandoned and neglected signing can be accomplished.

This procedure obviously limits us to a very few locations where all the conditions can be satisfied, but we will accept this severe limitation in the C-2 zone and be governed by the ordinance in the C-4, M-1 and M-2 zones.

Our few placements in the C-2 zone would of necessity be in the less affluent, less attractive areas of the City and where our replacement program would have the greatest impact in visual enhancement.

These are the boards that would be bonded for seven year removal. We believe that this proposal would be fair and equitable to all parties including the City which in the long run will benefit the most.

Thanks again for your consideration.

Yours truly,

Tom Martin
President

SACRAMENTO MEMBERS,
CALIFORNIA STATE OUTDOOR ADVERTISING ASSOCIATION -
COMMENTS AND PROPOSALS

1. Has Staff obtained an opinion from the City Attorney's office whether Staff's proposed amendments would meet the constitutional standards of Metromedia v. San Diego? It is our opinion that the proposed ordinance would be unconstitutional on its face (also see Ryan v. Salinas, remanded by the U.S. Supreme Court on the same day as the Metromedia v. San Diego case). We would request an immediate legal opinion by the City Attorney's office, and that further consideration by Staff and Council be postponed for three weeks or less until such an opinion is obtained.

2. While we believe no substantial limits can be placed on our constitutional right to provide a medium of communication and service to the community; but in order to avoid further administrative and legal costs, we would propose the following major revision be made to the existing sign ordinance (all other provisions of the existing ordinance to be unchanged); and that this proposal be fully considered by the Staff, City Attorney's Office, and Council before any changes are made to the existing sign ordinance.

3. These proposed ordinance amendments are in addition to the July 8, 1981 proposal of Martin Outdoor wherein Martin Outdoor seeks special permits to remove abandoned on-premise signs.

A. Amend Section 3.66 (b):

Spacing between signs increased from 300 feet to 500 feet.

B. Amend Section 3.86:

(a) Spacing from R Zone increased from 100 feet to 200 feet.

(b) No signs allowed if placed between residential buildings less than 200 feet apart (increased from 100 feet).

C. Add Section _____ (Downtown Prohibitions):

Prohibit new signs in Capital Plan Area (app. between L, Q, 7th, and 17th).

Prohibit new signs in Central Business District (app. between H/I, L, 3d, and 16th).

D. Add Section _____ (C-2 Replacement Zones):

C-2 Replacement Only.

No new offsite sign may be erected and maintained in C-2 Zone, except to replace another sign in the C-2 Zone which was in place at the time of the enactment of the Moratorium Ordinance (January 29, 1981).

(a) All persons owning and/or maintaining offsite signs in the C-2 Zone shall provide a list of each said sign in place on January 27, 1981, its location, and square footage to the Sign Inspector within 90 days of the effective date of this ordinance.

(b) From this list, the Sign Inspector shall, within 120 days from the effective date of this ordinance, prepare a tentative roster of all signs in C-2 Zones, and mail a copy of the roster to all persons claiming to own a sign in the C-2 Zone and all other persons requesting a roster. Notice that the roster is available shall be published in accordance with legal requirements and posted at the appropriate places.

Any person who believes the roster is incorrect or incomplete shall notify the Sign Inspector within 20 days of date of publication of the availability of the roster, and a final roster shall be prepared after that 20 day period.

(d) Any offsite signs in the C-2 Zone not listed on the roster shall be illegal and subject to immediate removal.

(e) No new offsite sign may be erected in the C-2 Zone except to replace a sign on the C-2 roster which has been or is hereafter removed. A permit for the new sign must be obtained, and the new sign shall be added to the roster. No application for a permit for a new sign need be processed unless the applicant states which existing sign has been removed, or will be removed prior to the commencement of construction.

SACRAMENTO CITY PLANNING COMMISSION

MEETING DATE 4-30-81

ITEM NO. 6 FILE NO. P- M-531

- GENERAL PLAN AMENDMENT ☐
- COMMUNITY PLAN AMENDMENT ☐
- REZONING ☐
- SPECIAL PERMIT ☐
- VARIANCE ☒
- TENTATIVE MAP ☐
- SUBDIVISION MODIFICATION ☐
- EIR DETERMINATION ☐
- OTHER Sign Ord. Amendment off-site Signs

Recommendation:
☐ Favorable
☐ Unfavorable

LOCATION:

☐ Petition ☐ Correspondence

PROPONENTS

NAME	ADDRESS
John Harvey Carter	

OPPONENTS

NAME		ADDRESS
Al Reed	Foster & Kleiser	1330-U St.
Andrew Johnson	Eller Outdoor	1695 - Eastshore Highway Berkeley 94710

MOTION NO.

	YES	NO	MOTION	2ND
Augusta	abstain			
Fong	✓			
Goodin	absent			
Holloway	✓		✓	
Hunter	✓			✓
Larson	✓			
Muraki	✓			
Silva	absent			
Simpson	✓			

MOTION:

- ☐ TO APPROVE
- ☐ TO DENY
- ☐ TO APPROVE SUBJECT TO COND. & BASED ON FINDINGS OF FACT IN STAFF REPORT
- ☐ INTENT TO APPROVE SUBJ. TO COND. & BASED ON FINDINGS OF FACT DUE _____
- ☐ TO RECOMMEND APPROVAL _____ & FORWARD TO CITY COUNCIL
- ☐ TO RATIFY NEGATIVE DECLARATION
- ☐ TO CONTINUE TO _____ MEETING
- ☐ OTHER _____

City Planning Commission
Sacramento, California

Members in Session:

Subject: Amendment to Section 3.66, 3.81, 3.85, 3.86, 3.157, and 3.181(c) of Article II of Chapter 3 of the Sacramento Sign Ordinance Relating to Off-Site Sign Requirements (M-531)

SUMMARY: The proposed ordinance amendments would prohibit the location of off-site signage on properties zoned C-2 General Commercial and *and set forth specific standards relating to height, area, and setback requirements for off-site signs in the C-4, M-1 and M-2 zones. Also, there are several amendments that will calify existing language in this section of the Ordinance.*

BACKGROUND INFORMATION: On January 27, 1981 the City Council adopted a moratorium upon the issuance of off-site sign permits located within the General Commercial C-2 zone. On March 17, 1981 this moritorium was expanded to include all off-site signs and all detached signage located within 660' of a freeway. This moritorium expires May 27, 1981.

CURRENT ORDINANCE REQUIREMENTS: The current regulations governing off-site signs, except for temporary subdivision development signs or exempt signs, permit off-site signage to be located in the C-2, C-4, M-1 and M-2 zones subject to the following conditions:

Sec. 3.66(c)(1) Spacing. No off-site sign shall be located nearer than 300 feet to any other off-site sign on the same side of the street as said off-site sign. When an off-site sign is located on one street but is oriented to be viewed primarily from another street, no such sign shall be located nearer than 300 feet to any other off-site sign on the same side of the street on which it is located or any other off-site sign located on the nearest side of the street to which said sign is oriented.

(2) Size. In the C-2 zone an off-site sign not exceeding 300 square feet in area may be erected. The Planning Commission shall have the authority to grant a special permit, following application and public hearing, for an off-site sign in a C-2 zone, of not to exceed 720 square feet in area.

(d) The maximum height limit for detached signs shall be as follows:

In C-2, C-4 zones..... 35 feet
In M-1, M-2 zones..... 40 feet

No height limit is specified for signs placed flat against the wall of a building or for other attached signs provided all other provisions of this article are complied with.

Sec. 3.85. Off-site signs on residentially used property. Off-site signs on property used entirely for residential purposes and located in the C-2, C-4, M-1 and M-2 zones are subject to the following condition:

(b) No new off-site sign may be erected after the effective date of this article on property located in the aforementioned zones as long as said property is used entirely for residential purposes.

Sec. 3.86. No off-site signs shall be permitted if such sign faces the front or side yard of any lot within any "R" zone and is located within 100 feet of such lot line. No off-site sign shall be located on any vacant lot or parcel of land lying between two residential buildings where said buildings are less than 100 feet apart.

Sec. 3.205. Permitted Signs.

(a) Within civic improvement districts, any signs permitted and as regulated by this article may be erected within said districts except for the following signs:

(1) Off-site, rotating or roof signs when located within, or within 300 feet of, the exterior boundaries of a public school, park, place of public assembly, public building complex, the State Capitol Plan area or a redevelopment project.

PROPOSED ORDINANCE: The proposed ordinance recommends the following changes in the Sign Ordinance as it pertains to off-site signage;

a) Off-site signs would be prohibited in the General Commercial C-2 zone;

b) off-site signs could be erected in the C-4, M-1, and M-2 zones subject to the following provisions:

1. All off-site signs must be detached signs;

2. no off-site sign may be erected within 300 feet of either another off-site sign or detached on-site sign;

3. no off-site sign may exceed 300 square feet in area;

4. no off-site sign may exceed 20 feet in height;

5. no off-site sign may be erected within 300 feet of any lot used for residential purposes nor on any vacant parcel between two residential buildings where such buildings are less than 300 feet apart.

STAFF EVALUATION: The C-2 General Commercial zone is the most common commercial zone in the City of Sacramento. This zone is often found along commercial strips, shopping centers, adjacent to single family subdivisions and other residential zones throughout the City. The present sign ordinance would permit billboards in these locations subject to certain requirements. Staff is concerned with the location of billboards and other off-site signs near or in residential neighborhoods and communities. Additional signage has a tendency to create visual clutter and detracts from residential areas. The current ordinance would allow a saturation of billboard signage throughout the City. It would also allow billboards to compete with signage that is used to identify businesses, expecially along commercial strips.

The intent of the proposed ordinance is to prohibit the location of intrusive off-site signage where such signage is detrimental to the environment in which it is located. If the ordinance is approved, the only off-site signage that would be allowed in the C-2 zone is a subdivision directional sign. These signs are currently allowed subject to obtaining a special permit. Staff has less concern with subdivision signs because they are temporary.

The proposed ordinance would also reduce the total area and height of off-site signage located in the C-4, M-1, and M-2 zones. The current ordinance permits a maximum area of 720 square feet and a maximum height of 40 feet within these zones. Staff finds that signage of such magnitude detracts from the visual quality of areas in which they are located. In addition, such signage competes with on-site signage used to identify businesses located within these zones.

Staff has reviewed the off-site signage regulations adopted by other cities and has found the following;

a) Sixty (60) cities prohibit off-site signage entirely;

b) seven (7) cities prohibit off-site signage within a given distance of a scenic corridor;

c) sixteen (16) cities require a special use permit for off-site signs.

On April 21, 1980 staff met with representatives of the major off-site sign companies to discuss the proposed ordinance. At that time the representatives suggested that the spacing requirement between off-site signs and between residential uses and zones be increased. If staff receives additional suggestions they will be forwarded to the Commission at the earliest possible date.

The proposed amendment is in harmony with the General Plan as reflected by the following General Plan policy statements:

"Review the City's Sign Ordinance and initiate more stringent regulations for the Central Business District, and other areas, where indicated (10-15)", and to

"emphasize and promote the overall visual attractiveness of Sacramento (10-1)"

STAFF RECOMMENDATION: The staff recommends that the Planning Commission approve the attached ordinance.

Respectfully submitted,

Howard Yee,
Principal Planner

HY:TM:sg

Attachments

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ORDINANCE NO. 81-013

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

AUGUST 4, 1981

ORDINANCE EXTENDING MORATORIUM ON
ISSUANCE OF OFFSITE SIGN PERMITS
ESTABLISHED BY ORDINANCE NO. 81-014,
AS EXTENDED BY ORDINANCE NO. 81-034 AND
NO 81-066, AND DECLARING THIS ORDINANCE
AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

The effective date of Ordinance No. 81-014, as extended by Ordinance Nos. 81-034 and 81-066, to the extent both of said ordinances relate to offsite signs, is hereby extended from August 4, 1981 to and including

SECTION 2.

This Ordinance is hereby declared to be an emergency measure to take effect immediately. The facts constituting the emergency are set forth in Section 5 of Ordinance No. 81-014 and are incorporated herein by reference. Protection of the public health, safety and welfare requires an extension of the moratorium on offsite signs until the regulations, described in Section 5 of Ordinance No. 81-014, relating to such signs become effective.

ENACTED:

EFFECTIVE

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED
BY THE CITY COUNCIL
AUG - 4 1981
OFFICE OF THE
CITY CLERK

CITY OF SACRAMENTO

JAMES P. JACKSON
CITY ATTORNEY

THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY

LELIAND J. SAVAGE
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July 29, 1981

City Council
Sacramento, California

RE: IMPACT OF METROMEDIA v. CITY OF SAN DIEGO, U.S. , (JULY 2, 1981) ON BILLBOARD REGULATION IN SACRAMENTO

Honorable Members in Session:

BACKGROUND

This opinion summarizes the permissible scope of municipal regulation of permanent detached outdoor signs (billboards)[1/] in light of the recent United States Supreme Court decision, Metromedia v. City of San Diego. The opinion also explains why our current billboard regulations and the proposed amendments to those regulations, scheduled for hearings by the Council on August 4 and 11, 1981, are probably valid in the wake of Metromedia.

Please find attached a separate expanded legal analysis of Metromedia which provides a more comprehensive in-depth examination of this important decision.

COMPARISON OF THE SAN DIEGO ORDINANCE AND SACRAMENTO'S CURRENT AND PROPOSED BILLBOARD REGULATIONS

It is important to highlight the similarities and differences between the San Diego ordinance tested in Metromedia and Sacramento's current and proposed billboard regulations. Like Sacramento, San Diego generally allowed billboards which contained messages relating to the use or physical characteristics of the land on which the billboard was located. Such signs

1/ This is a broad definition of billboard; it includes signs typically not considered billboards, such as monument signs.

are commonly described as "onsite" and include directional signs (for example "Entrance"), identification signs (street numbers, the name of a business), and advertising messages which promote the sale of products or services sold on the same site.

Unlike Sacramento, San Diego generally prohibited in all zones billboards which carried messages unrelated to the underlying parcel. Thus, San Diego, with a few minor exceptions, entirely banned "offsite" or "non-site-related billboards. In contrast, Sacramento currently permits offsite billboards in those parts of the C-2, C-4, M-1 and M-2 zones which are not within 660 feet of a freeway, subject to certain size and spacing restrictions.

If adopted, the proposed Sacramento billboard ordinance amendments would (1) impose more severe size limitations on onsite billboards located near freeways, (2) impose more severe size and spacing restrictions on offsite signs in the C-4, M-1 and M-2 zones, and (3) prohibit offsite signs in one additional zone: C-2.

Therefore, Sacramento's current and proposed billboard regulations are less restrictive than the San Diego ordinance tested in Metromedia. Unlike San Diego, Sacramento permits, and would continue to permit under the proposed ordinance amendments, offsite billboards in a significant part of the City.

THE PERMISSIBLE SCOPE OF BILLBOARD REGULATIONS AFTER METROMEDIA

The Metromedia decision consists of five opinions, representing three views of what types of billboard restrictions are constitutionally permissible. The following generalizations result from our analysis of the consistencies and differences in these three views:

1. A city may ban commercial offsite billboards in all zones.

Seven of the nine justices unequivocably affirmed this rule.

Neither our current nor proposed billboard regulations ban commercial offsite billboards in all zones. However, Metromedia clearly holds that the Council could expand the regulation of such billboards should it decide to do so.

2. A city may distinguish between onsite and offsite billboards, and may more restrictively regulate offsite billboards.

In nearly all zones, Sacramento distinguishes between onsite and offsite billboards, and more restrictively regulates offsite signs. Five of the nine justices in Metromedia approved of San Diego's differential treatment of onsite and offsite billboards, holding that (a) this type of differential treatment, based on the content of the message carried on a billboard (site-related vs.

non-site-related), does not operate to censor, inhibit, or promote any particular ideological viewpoint and therefore does not invalidly discriminate between kinds of speech, and (b) there is a rational basis to prefer site-related messages which often cannot be effectively conveyed by any other communication medium -- such as newspapers, radio, TV or direct mailings.

A minority (four justices) of the court objected to San Diego's preferential treatment of onsite billboards, reasoning that (a) onsite billboards frequently carry commercial messages, whereas non-commercial (social or political) billboard messages are rarely site-related and therefore are usually conveyed on offsite signs, (b) the First Amendment protects commercial speech much less than non-commercial speech, and (c) accordingly, a city cannot allow onsite commercial messages on the same billboard on which an offsite non-commercial message is prohibited.

To satisfy these four justices, a city must allow all types of non-commercial messages on all permitted billboards.

3. A city may prohibit all billboards in certain areas within its boundaries.

All of the justices agreed that the importance of promoting and maintaining an aesthetically pleasing environment, uncluttered by billboards, was sufficiently great in certain restricted areas (such as residential zones) to outweigh any right to communicate by means of a billboard.

Generally, Sacramento prohibits billboards (permanent detached signs) only in residential and limited residential buffer zones where the public interest in an aesthetically pleasing uncluttered environment is highly significant.

4. Zone by zone restrictions on billboards are more likely to be valid than uniform City-wide restrictions.

The main objection of two justices to the uniform city-wide San Diego ordinance was the failure of the ordinance to balance the specific aesthetic values present in different kinds of areas against the need for billboard speech.

Unlike the San Diego ordinance, Sacramento's billboard regulations are tailored to the aesthetic considerations and types of permitted uses in various zones. As such, our current and proposed sign ordinances reflect a conscious balancing of particularized aesthetic concerns versus the need to communicate by means of billboards.

5. Federal statute requires that just compensation must be paid to owners of non-conforming billboards located within 660 feet of a freeway.

San Diego unsuccessfully argued that it could compel the removal of such billboards by amortization, and thus avoid the just compensation requirement in federal law. Although federal law envisions federal-state funding to satisfy this just compensation requirement, Congress has not authorized billboard removal funds for the past two years.

UNRESOLVED ISSUES AFTER METROMEDIA

We can expect future litigation to resolve the following questions which were either not addressed or not answered by a majority of the justices in Metromedia:

1. May a city prohibit all billboards in all zones?

Three justices said yes. Two justices said no -- except in a city like Williamsburg, Virginia. The remaining four justices explicitly refused to address this question.

2. May a city prohibit billboards containing commercial messages in all zones?

Three justices said yes. Four other justices impliedly held that had San Diego banned all commercial billboards (rather than permitting onsite commercial billboards), they would have sustained all parts of the San Diego ordinance.

Therefore, probably a majority of the court would uphold a total prohibition on billboards carrying commercial messages.

3. In which zones must a city permit billboards?

This question essentially rephrases the first question. While it is clear that billboards may be prohibited from restrictive residential reas, it is unclear whether the public interest in an aesthetically pleasing environment, uncluttered by billboards is adequate in other non-residential zones to justify a prohibition of billboards within those zones.

4. If a city must permit billboards in some zones, how severely can it restrict the size and spacing of billboards in those permitted zones?

In other words, at what point are restrictions so pervasive that they effectively constitute a total ban? None of the opinions in Metromedia provide much guidance on this question.

If adopted, the proposed sign ordinance amendments would reduce the areas within the City where offsite billboards would be permitted, and would decrease the maximum permitted square footage and height of both offsite and certain onsite billboards near freeways. These more severe restrictions would not constitute a total ban because (a) three zones within the City will continue to permit offsite billboards, and (b) the proposed square footage and height restrictions permit onsite and offsite billboard messages large enough to be read from a reasonable distance. Absolutely nothing in the Metromedia decision indicated that there is a constitutional right to maintain a billboard larger than is reasonably necessary to communicate a message.

The fact that the proposed ordinance would render nonconforming many existing large billboards is not evidence of the "prohibitive" nature of the proposed ordinance; Sacramento would continue to permit existing smaller billboards and also would permit the construction of new billboards of a size large enough to communicate to persons on adjacent roadways.

CONCLUSION

We believe that a majority of the United States Supreme Court would uphold both the current Sacramento billboard regulations and the proposed amendments to those regulations.

Very truly yours,

JAMES P. JACKSON
City Attorney

CHRISTINA PRIM
Deputy City Attorney

CP:mb

Attachment

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July 27, 1981

City Council
Sacramento, California

RE: METROMEDIA v. CITY OF SAN DIEGO, _____ U.S. _____ (July 2,1981)
THE PERMISSIBLE SCOPE OF BILLBOARD REGULATION

Honorable Members in Session:

BACKGROUND

This opinion assesses the validity of current City ordinances regulating billboards, and the validity of the proposed post-moratorium billboard ordinance amendments in light of the recent United States Supreme Court decision in Metromedia v. City of San Diego. Public hearings by the Council to consider the proposed post-moratorium sign ordinance amendments are scheduled for August 4 and August 11, 1981.

Based on an analysis of the splintered five opinion decision in Metromedia, we believe that a majority of the United States Supreme Court would sustain both the current City billboard ordinance and the proposed amendments to the sign ordinance.

A. THE FACTS IN METROMEDIA

Several outdoor advertising companies challenged a San Diego ordinance which, with very limited exemptions, prohibited all billboards in all zones within the city. The ordinance defined a billboard as a "permanent detached outdoor sign", and therefore did not regulate readily movable signs or signs attached or painted on the exterior walls of buildings. Also exempt from the ordinanc were:

- Onsite[1/] identification or commercial signs.
- Governmental, religious, historical, commemorative, time, temperature, public service, and temporary political campaign signs.

1/ The term "onsite" means that the message contained on a sign relates to the use, or physical characteristics of the parcel on which the sign is located. The contrasting term, "offsite", means that the message on a sign is unrelated to the use or physical characteristics of the parcel on which the sign is located.

- Signs located on buses, non-stationary commercial vehicle and bus stop benches.
- Temporary sale/lease of the premises and offsite subdivision directional signs.
- Signs not visible from any boundary of the parcel containing the sign.

The California Supreme Court upheld the entire San Diego ordinance, finding neither police power nor First Amendment violations. The State Supreme Court overruled numerous cases which had held that the police power may be exercised only to advance the limited goals of public health, safety and morals. The court thereby authorized local jurisdictions to enact a broad range of ordinances for the explicit purpose of improving the appearance of a community. Additionally, the California Supreme Court found that the city's interest in either community aesthetics or traffic safety outweighed the plaintiff's interest in communicating by means of billboards. Therefore, the court found that San Diego's comprehensive billboard ban did not violate the First Amendment.

Finally, the California Supreme Court decided that federal law mandates that owners of billboards located within 660 feet of federal interstate or primary highways must be paid just compensation for removal of such billboards.

B. SUMMARY OF THE UNITED STATES SUPREME COURT METROMEDIA DECISION

1. Payment for Removal of Certain Billboards Near Freeways

The United States Supreme Court left undisturbed that part of the California Supreme Court decision dealing with the federal statutory requirement that just compensation must be paid for the removal of billboards near certain federal roads. Under the federal Highway Beautification Act,[2/] this compensation is supposed to be paid 75% by the federal government and 25% by the state. However, the federal government has appropriated no money for billboard removal for the past two years, pending the release of a currently ongoing study of the Highway Beautification Act. Therefore, until the release of federal funds, Sacramento cannot order the removal of billboards located within 660 feet of federal interstate or primary highways without providing municipal money to justly compensate the owners of such billboards.

2. Validity of San Diego Ordinance under the Police Power and First Amendment

Generally, the decision upheld only those parts of the San Diego ordinance which regulated billboards containing commercial speech.

2/ 23 USC §§ 131 et seq.

In five separate opinions, all members of the court clearly affirmed the California Supreme Court ruling that San Diego did not exceed its police power by enacting an ordinance for the principal purpose of improving the appearance of the community.

All of the justices also reaffirmed the propriety of the long-established "balancing" approach to test the validity of infringements on First Amendment protected speech. This balancing standard was succinctly articulated in Baldwin v. Redwood City 540 F.2d 1360 (9th Cir. 1976); cert denied 431 U.S. 913 (1977):

> Incidental restrictions upon the exercise of the First Amendments rights may be imposed on furtherance of a legitimate interest if that interest is unrelated to the suppression of expression and is substantial in relation to the restrictions imposed, and if the restrictions are no greater than necessary or essential to the protection of the governmental interests. At 1365.

Application of the above standard involves balancing numerous considerations. First, the court must assess the importance of the asserted public interest in regulation. A community's interest in its appearance may be more important in residential areas than in industrial areas. Second, the court must determine the level of First Amendment protection which the Constitution extends to the type of speech restricted. Thus, restrictions on political signs, which are accorded the highest level of First Amendment protection must be justified by a more significant governmental interest and must be more narrowly tailored than restrictions on commercial signs, which are accorded relatively little protection by the First Amendment. Third, the scope or breadth of the challenged regulatory scheme must be examined. A total ban of a medium of communication, such as billboards, is subject to more scrutiny than a less pervasive regulatory scheme, such as restrictions which merely limit the location, size, and spacing of signs. Finally, the court must consider the availability of alternative means of communication. If a city can convince a court that radio, TV, newspapers, mass mailings, and other communicative mediums can economically convey the messages contained on billboards to substantially the same audience, the court will be more likely to uphold billboard restrictions.

Although all of the United States Supreme Court justices in Metromedia agreed that a determination of the validity of the San Diego ordinance required balancing the above considerations, the plurality, concurring, and dissenting justices sharply and significantly differed in the weight they allocated to the competing values asserted by the city and the plaintiff billboard companies. The

justices also differed in their assessment of whether the San Diego ordinance was truly content-neutral, or whether it impermissibly regulated billboards on the basis of the nature of the message on a billboard. It is important to understand the parallels and differences in the analyses of the plurality, concurring and dissenting opinions in Metromedia in order to evaluate the impact of this recent United States Court decision on billboard regulation in Sacramento.

a. Plurality Opinion

Justices White, Stewart, Marshall, and Powell.

The plurality voted to uphold only that part of the ordinance which regulated billboards containing commercial messages, finding that San Diego's public interest in either community aesthetics or traffic safety clearly outweighed the plaintiff's interest in conveying commercial messages on billboards.

Because San Diego generally permitted billboards only if the billboard message related to the use of the underlying parcel (onsite signs), the plurality characterized the ordinance as "content-specific." A "content-specific" regulation is one which allows or prohibits a billboard on the basis of the content of the message carried on the face of the billboard.

The message on onsite signs are often commercial. The plurality held that San Diego could not reasonably conclude that a billboard with a commercial message harmed aesthetics less than a similarly located and sized billboard with a message not related to the use of the parcel - such as a non-commercial social or political message. Because commercial speech is accorded less constitutional protection than non-commercial speech, the plurality ruled that San Diego could not prohibit non-commercial messages while allowing commercial messages on the same billboard. Furthermore, the plurality held that San Diego could not limit the types of non-commercial messages permitted on the same billboard.

The Metromedia concurring and dissenting justices strongly criticized the plurality's characterization of the onsite-offsite distinctions in the ordinance as "content-specific." These five non-plurality justices described the San Diego ordinance as "content-neutral" because there was no evidence that San Diego, in regulating onsite and offsite billboards in a different manner, intended to suppress any particular point of view, censor any information, or ban any thought. According to five of the justices, the narrow and and neutral ordinance exemptions existed solely because San Diego recognized the close link between the medium and the message for certain signs such as onsite directional or identification signs, the special public value gained from commemorative and historical

plaques, and the higher First Amendment importance properly accorded political campaign signs. Thus, five justices in Metromedia - or a majority of the United States Supreme Court, held that regulations which generally prohibit most types of offsite billboards but permit onsite commercial billboards are essentially "content-neutral," and do not impermissively favor a particular kind of speech.

The plurality's focus on the disparate treatment by the ordinance of site-related and non-site-related messages on billboards implies that had San Diego prohibited all billboards without reference to the message on any sign, the plurality would have upheld the entire San Diego billboard ordinance. Indeed, the concurring and dissenting justices joined in criticizing the plurality for penalizing San Diego because the city had not prohibited enough speech! The plurality answered this harsh criticism by expressly stating that it was not addressing the constitutional properiety of a total ban on billboards - or a ban of all billboards in most zones of a city.[3/] The plurality's refusal to address this critical question means that the precise scope of a city's power to restrict and prohibit billboards remains somewhat uncertain and, consequently, subject to conflicting interpretations.

b. The Concurring Opinion

Justices Brennan and Blackmun.

The concurring justices voted to strike the ordinance in its entirety.

As indicated in our discussion of the plurality opinion, the two concurring justices joined the three dissenters in characterizing the ordinance as a content-neutral total prohibition of communication medium.

The primary difference between the concurrence and the other seven justices concerns what level of judicial scrutiny is appropriate to test the constitutional validity of a billboard ordinance. The plurality and dissent easily found that the community interest in aesthetics and traffic safety in all zones of the city was a substantial government interest, and that San Diego had submitted adequate evidence to show that its restrictions on billboards furthered those substantial interests. In contrast, the concurring justices doubted that the beauty of some areas within San Diego would be improved by the absence of signs. Because San Diego failed to submit evidence adequate to convince the concurring justices that the city was actively trying to improve the appearance of industrial areas by means of other types of

3/ 49 USLW 4932, footnote 20.

ordinances, the concurrence found that San Diego had failed to meet its burden of proof in establishing that its interest in community aesthetics everywhere in the city was truly substantial, genuine, and outweighed the plaintiff's right to speak through the medium of billboards.

However, even Justices Brennan and Blackmun admitted that a total ban on billboards would be constitutionally permissible in such places as Williamsburg, Virginia or Yellowstone National Park, where the interest in maintaining nature or historical structures is very substantial.

The concurring justices, therefore, primarily objected to the absence of zone-by-zone sign billboard regulations which would have reflected that San Diego had consciously weighed the competing values of the need for free speech and the importance of community attractiveness in different areas of the city.

c. The Dissenting Opinions

Justices Berger, Rehnquist and Stevens.

There are no substantial differences in the three separate dissenting opinions. Each dissenting justice voted to uphold the San Diego ordinance in its entirety, and further explicitly stated that a municipal ban on all types of billboards is constitutionally permissible.

Both the dissent and concurrence weighed the same competing considerations in evaluting the propriety of a total ban on a medium of communication. However, unlike the concurrence, the dissent indicated that great judicial deference should be accorded to a city's choice of a regulatory scheme intended to improve the appearance of all areas within the city. Unlike the concurring justices, the dissenters also had little trouble accepting San Diego's argument that a total ban on billboards was justified by the availability of alternative means to convey the messages carried on billboards. The concurring justices were bothered by the plaintiffs' claim that billboards are often the only economical way of widely communicating some messages. However, the diessenting justices held that the critical question is not whether a prohibition of a communication medium will reduce the quantity of speech or whether a particular medium of communication is totally banned. For the dissenting justices, the critical question is whether substantial and legitimate public interests justify restrictions on the quantity of speech or a ban on a communication medium.

C. GENERALIZATIONS ABOUT THE PERMISSIBLE SCOPE OF MUNICIPAL BILLBOARD REGULATIONS AFTER METROMEDIA

1. A City May Ban all Commercial Offsite Billboards

Seven justices (the plurality and the dissent) in Metromedia explicitly affirmed this rule.

However, the wisdom of enacting an ordinance banning offsite commercial billboards is questionable. No United States Supreme Court decision has yet defined what constitutues "commercial" versus "non-commercial" speech. Resourceful commercial advertisers, desirous of circumventing a ban on offsite commercial billboard messages, could simply intertwine non-commercial language in a message communicated for the primary or true purpose of promoting the sales of a product, and thus argue that an offsite commercial ordinance prohibition was inapplicable to such a billboard.

2. A City Must Permit Some Temporary Political Campaign Signs and Onsite Real Estate Sales Signs.

This generalization is based on the holdings in several pre-Metromedia decisions which used the traditional balancing analysis, approved by the whole United States Supreme Court in Metromedia, to test the validity of billboard regulations.

a. Political Signs

Baldwin v. Redwood City, 540 F.2d 1369 (9th Cir. 1976) cert. denied 431 U.S. 913 (1977) held that a city may regulate the spacing and size of temporary political signs, but may not totally prohibit the placement of such signs in residential zones. Baldwin ruled that the use of a particular medium of expression may be totally banned by a city if the city establishes a sufficiently important public interest justifying the prohibition and demonstrates the existence of alternative means to effectively communicate. The residential ban of political signs was held invalid because of the First Amendment importance of political speech, the low impact on community appearance resulting from the minimal duration of the temporary signs, and the lack of alternative means for effective political campaigning by individual citizens other than frontyard residential signs.

Using a balancing analysis similar to that used in Baldwin and Metromedia, Sussli v. City of San Mateo, 120 Cal.App.3d 1 (1981) very recently upheld a local ban on the posting of political signs on public property. Sussli strongly affirmed the importance of a city's interest in reducing urban clutter and found the availability of private property locations for political signs adequate to justify a ban of political advertising on public land.

However, it remains unclear whether a city must allow political or onsite real estate sale billboards which by the relative massiveness of their structure, more severely clutter the environment than temporary or attached signs.

b. Onsite Real Estate Sales Signs

Linmark Associates, Inc. v. Willingboro 431 U.S. 85 (1977) struck a municipal ban on onsite residential for-sale signs, but stated that a city could constitutionally regulate the size and onsite location of such signs. In this unanimous decision, the court objected to the prohibition of residential real estate sales signs in part because of the unique advantage of a sign as a communication medium to convey this particular kind of site-related message.

Linmark's recognition of the strong link between the message and the medium which occurs only in onsite signs could mean that cities must guarantee a specific minimum amount of signage as a means to communicate other site-related messages. For example, visible street numbers are the only effective means of identifying a particular residence with certainty; a directional sign may be the only effective medium to alert customers to a hidden retail store entrance, or to alert motorists to a hospital emergency room.

3. A City May Ban All Billboards in Residential Zone

Even the pro-billboard concurring justices in Metromedia indicated that billboards may validly be banned from those zones where a city can prove, by its enactment of a broad range of regulatory measures, a serious attempt to create an aesthetically pleasing environment.

Additionally, Metromedia affirmed Young v. American Mini-Theater, 427 U.S. 50 (1976) which upheld an ordinance requiring minimum distances between adult movie theaters, in part because there is "no doubt" a city may control the location of theaters.[4/] If cities may prohibit theaters from certain zones, then they certainly should be able to prohibit another type of communication medium - billboards.

4. It Is Unclear Whether a City May Ban All Billboards[5/] in All Zones

The three Metromedia dissenting justices clearly held that San Diego could validly enact a total ban; the two Metromedia concurring justices speculated that an historical community such as Williamsburg, Virginia probably could carry the burden of proof in establishing that its interest in aesthetics and historical authenticity are sufficiently important to outweigh the value of any form of billboard communication, in all parts of that unique city.

4/ Dictum in the recent case Schad v. Borough of Mt. Ephraim, U.S. (July 1981) also stated that a city may ban a medium of communication in certain areas within a city if such a partial ban is adequately justified.

5/ With the exceptions noted in footnote 4.

However, the two concurring justices and the four plurality justices- a majority of the United States Supreme Court - explicitly refused to express an opinion on the permissibility of a total ban enacted by a typical American city, such as San Diego- or Sacramento.

5. A City May Enact a Broad Range of Size and Spacing Restrictions on Billboards in All Zones

This generalization is implied from Metromedia's affirmance of cases like Linmark, supra (upheld the validation of the size and spacing restrictions on residential real estate signs) and Young, supra (upheld an ordinance requiring minimum distances between theaters showing adult movies.

Because size and spacing restrictions are inherently content-neutral, are less intrusive than a total prohibition of all billboards, and reduce visual clutter even in a relatively unrestricted industrial zone, it is probable that all of the United States Supreme Court justices would uphold comprehensive restrictions on the physical characteristics and spacing of billboards.

6. Billboard Ordinances Should Be As Content-Neutral As Possible

If billboard regulations are enacted for the primary purpose of improving the appearance of the community, it is difficult to justify an ordinance which allows or prohibits a billboard based on the message contained on the billboard. Size and spacing restrictions leave to property owners the unfettered freedom to make content-related decisions. Content-neutral size and spacing restrictions do not expose a city to allegations that the city is attempting to censor or favor a particular type of message.

However, certain content-related regulations are permissible, and may be constitutionally compelled. Primary examples already discussed in this opinion are temporary political signs and minimal onsite identification and directional signs.

7. An Ordinance May Distinguish Between Billboards Carrying Site-related (Onsite) and Non-site Related (Offsite) Messages

The four plurality justices struck a major part of the San Diego ordinance because, in their view, San Diego's onsite/offsite regulations unreasonably favored the commonly commercial messages contained on onsite signs, while limiting the non-commercial messages sometimes contained on offsite signs.

However, the remaining five justices criticized the plurality for ruling that San Diego's onsite/offsite ordinance classifications rendered the ordinance "content-specific." The non-plurality justices expressly upheld San Diego's distinction between site-related and non-site messages because (1) such distinction did not reflect any

attempt by the city to censor or promote any particular point of view, and (2) the nexus between the medium and the message is much higher for onsite than offsite signs; thus, a city may rationally permit only site-related messages- which cannot be as effectively communicated by alternative means as non-site related messages.

8. Zone by Zone Restrictions On Billboards Are More Likely To Be Ruled Valid Than Uniform City-wide Restrictions

Billboard restrictions tailored to the specific aesthetic interests in differing zones are excellent evidence that a city has consciously balanced the need for communication mediums against the varying levels of public interest in an uncluttered environment in different kinds of areas. Additionally, permitting billboards in relatively unrestricted zones aids a city's ability to ban billboards in more restrictive zones.

D. VALIDITY OF EXISTING SACRAMENTO SIGN ORDINANCE AFTER METROMEDIA

Chapter 3 of the City Code contains nearly all of Sacramento's current billboard regulations.

Unlike the San Diego ordinance tested in Metromedia, Sacramento's ordinance restricts billboards on a zone-by-zone basis, and does not as extensively ban non-site related messages on billboards. Sacramento allows offsite messages on billboards in its C-2,[6/] C-4, M-1 and M-2 zones, and thus billboards are an available medium within Sacramento (unlike San Diego) for the communication of non-commercial social or political types of messages.

In some limited areas, Sacramento, like San Diego, permits only site-related messages; however, five of the U.S. Supreme Court Justices in Metromedia upheld San Diego's "preference" for site-related billboard messages. Thus, the onsite-offsite distinctions in Sacramento's current sign ordinance are valid in view of a majority of the high court.

Section 3.140 of the City Code expressly permits directonal, on-site real estate, and temporary political signs -- subject to physical characteristic limitations constitutionally permitted by cases such as Linmark, supra, and Baldwin, supra.

Therefore, Sacramento's current sign ordinance appears to be clearly valid in light of Metromedia and the other recent billboard decisions discussed in this opinion.

6/ The proposed sign ordinance amendment will prohibit offsite signs in the C-2 zone.

E. VALIDITY OF PROPOSED POST-MORATORIUM SIGN ORDINANCE AMENDMENTS

1. Onsite Signs Near Freeways

The draft ordinance amendment imposes more severe restrictions on the maximum area, height, minimum clearance and structural characteristics of signs containing messages unrelated to the use of the underlying parcel. There seems little question that these more vigorous restrictions on the physical characteristics of certain signs are constitutionally valid.7/

The draft amendment does not change the prohibition in current ordinance Section 3.191 which bans the erection of new offsite signs. Retention of this distinction between onsite and offsite signs is constitutionally permissible according to a majority of United States Supreme Court Justices.8/

2. Offsite Signs

The proposed ordinance amendment prohibits offsite signs in one additional zone: C-2. It also imposes more restrictive size, height, and spacing requirements on offsite signs in the remaining zones where offsite signs are a permitted use: C-4, M-1 and M-2.

Because a significant amount of the City is zoned C-4, M-1 and M-2, a ban of C-2 offsite signage is not tantamount to a ban on offsite billboards within Sacramento. The elimination of C-2 zones for offsite signs would therefore be subject to the relatively low level of judicial scrutiny all of the justices in Metromedia ruled appropriate for sign regulations less restrictive than a total prohibition. Additionally, numerous other zoning regulations more severely restrict uses in the C-2 than in the C-4, M-1 and M-2 zones, and thereby evidence a serious and systematic attempt by Sacramento to improve the appearance of the C-2 zone.

As just discussed, retention of the distinction between onsite and offsite signs is constitutionally permissible according to a majority of the United States Supreme Court Justices.

Very truly yours,

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7/ See parts 5 and 8 of Section D of this opinion.

8/ See part 7 of Section D of this opinion.