

ORDINANCE NO. 623

**AN ORDINANCE OF THE CITY OF TROUTDALE AMENDING
CHAPTER 10 OF THE TROUTDALE DEVELOPMENT CODE
(ORDINANCE NO. 491-0) RELATING TO OFF-SITE SIGNS**

WHEREAS, Section 10.060G of the Troutdale Development Code prohibits off-site signs or billboards that advertise a business, service or facility not located on the same lot as that sign; and,

WHEREAS, the Oregon courts have ruled on several occasions that it is unconstitutional to ban billboards and similar "off premise" advertising signs; and,

WHEREAS, the City faces potential legal challenges if it enforces this ban; and,

WHEREAS, the City Attorney believes that a court would likely overturn the current code prohibition on billboards if it were challenged; and,

WHEREAS, the City Attorney advises amending to the Development Code in order to correct its current unconstitutional ban of off-premise signs and billboards;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE THAT:

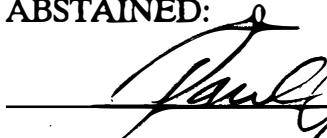
Section 1. Findings. The Staff report dated February 28, 1995 and the minutes of the January 25, 1995 Planning Commission hearing, each of which is incorporated by reference herein, shall constitute findings of fact in support of the proposed text amendment.

Section 2 Text Amendment to the Development Code. Based on the above findings, the Troutdale Development Code (Ordinance No. 491-0) is hereby amended to incorporated changes contained in Exhibit A.

YEAS: 7

NAYS: 0

ABSTAINED: 0


Dated: 3-30-95 _____

/or


George Martinez

Adopted: 3-28-95 _____

TROUTDALE DEVELOPMENT CODE
(Ordinance No. 491-0)

PROPOSED AMENDMENT

TEXT AMENDMENT NO. 5
(Relating to Off-premise Signs)

City of Troutdale
Department of Community Development
February 1995

The following amendment to Section 10.060G(3) of the Troutdale Development Code is proposed in order to bring the sign provisions of the code into conformance with Oregon court rulings that it is unconstitutional to prohibit off-premise signs or billboards.

G. The Following Signs Are Not Permitted.

1. Roof signs.
2. Temporary signs which do not have permanent structural support, or which are not attached to a permanent structural support, or which function as a temporary sign.
- ~~3. Off-site signs or billboards which advertise a business, service or facility not located on the same lot as that sign, except for joint use in commercial planned developments, shopping or business centers, or industrial parks.~~
43. Signs placed or painted on a motor vehicle or trailer and parked with the primary purpose of providing a sign not otherwise allowed by this Chapter.
54. Benches which contain an advertising message.
65. Signs in public rights-of-way other than traffic control signs installed by the State, County or City.

**AGENDA ITEM - STAFF REPORT
TROUTDALE CITY COUNCIL MEETING
DATE: February 28, 1995**

SUBJECT: Text Amendment No. 5 to the Troutdale
Development Code (Relating to Off-Site Signs)

DEPARTMENT : Community Development

STAFF CONTACT: Rich Faith

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| <p>EXHIBITS: A - Proposed Amendment to the Troutdale Development Code.
B - Memorandum Dated January 4, 1995 from City Attorney, Tim Sercombe.
C - Minutes of January 25, 1995 Planning Commission Hearing.</p> |
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BACKGROUND

Chapter 10 of the Troutdale Development Code (TDC) regulates signs. This chapter sets forth various regulations for the placement, size and appearance of signs within the City. One of the key provisions of the sign code is that it prohibits signs or billboards that advertise a business, service or facility not located on the same lot as that sign. This provision has been the subject of numerous legal opinions and court cases around the nation. Within the State of Oregon the courts have ruled on several occasions that it is unconstitutional to ban billboards and similar "off-premise" advertising signs.

The issue came to the City's attention last spring when Mr. Chris Carlile, representing the billboard industry, applied for a development permit to erect a billboard along I-84 in Troutdale. When the applicant was informed that billboards are prohibited by the City's development code, he raised the constitutionality question and threatened to challenge the City's sign code. A review of this matter by the City Attorney confirmed that the applicant's claim was probably correct and, if this provision were challenged, a court would likely overturn the City's current prohibition of off-premise signs. The challenge never occurred because Mr. Carlile withdrew his application when he learned that the State had acquired the billboard

rights many years ago to the property in question.

Late last summer Mr. Carlile again applied for a developed permit to locate a billboard on a different piece of property along I-84. Once again he was informed of the City's prohibition on billboards and once again he threatened a legal challenge if denied the permit. A development permit was eventually issued on the basis that the application was actually for an on-premise sign consisting of a blank copy (no message contained on the face of the sign). Mr Carlile bluntly admitted that after the sign is erected he would change the sign copy to off-premise advertising (i.e. a billboard).

Since the issuance of the development permit for this sign, Mr. Carlile has been waiting for a permit from the Department of Transportation which also regulates billboards along state highways. Upon the advice of the City Attorney, this proposed amendment to the sign chapter of the TDC is being proposed in order to correct its current unconstitutional ban of off-premise signs and billboards. The repeal of this provision of the sign code eliminates the specter of having to either ignore this regulation completely or face a solid legal challenge.

The City's sign code contains a number of regulations which, in the City Attorney's opinion, are suspect under the Oregon Constitution. These regulations pertain primarily to sign content. His memorandum of January 4, 1995 (Exhibit B) discusses these regulations. In this memorandum he points out that it would be advisable for the City to eliminate these "content distinctions" within the code at some time in the future. These legally questionable distinctions in the sign code can either be addressed through individual amendments as problems arise (such as the case with billboards) or collectively through a revision of the entire sign code.

CONCLUSION

Although there are a number of legally questionable provisions with the City's sign code as a result of Oregon court rulings, this proposed amendment offers a quick and simple solution to the most pressing problem with the code. It would be prudent to address the immediate controversy surrounding off-premise signs and billboards since the City's ban of these signs can not be enforced without facing costly litigation that we have little chance of winning. Other provisions of the sign code should be considered for revision when and if they arise as a problem.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission held a public hearing on January 25, 1995 and recommends that the City Council adopt this text amendment to the Troutdale Development Code.

NAYS: 0
ABSTAINED: 1 [Grande]

Pg. 8 remove section c replace with exhibit c.

MOTION: Regelein moved to remove pg. 8 lines 14 - 30 and replace with Exhibit C.
Seconded by Prickett.

YEAS: 5 [Maydew, Stonewall, Regelein, Prickett, Hymel]
NAYS: 0
ABSTAINED: 1 [Grande]

Grande discussed wording to work with stub streets.

Faith pointed out the Planning Commission could simply stick by the transportation rule and use public opinion or public input in the hearing process when neighborhoods come out in full force and state why shouldn't be connected. That's where the Planning Commission as a ruling body makes a decision or determining factor. Deal with it on a case by case basis as opposed to dealing with it in this document.

Grande stated in response to public opinion. As long as that can be done, then he was satisfied.

MOTION: Maydew moved to accept with changes made. Stonewall seconded.

YEAS: 5 [Maydew, Stonewall, Regelein, Prickett, Hymel]
NAYS: 0
ABSTAINED: 1 [Grande]

* AGENDA ITEM #5 - PUBLIC HEARING: Text Amendment No. 5 to the Troutdale Development Code [relating to Off-Site Signs]

Faith stated the issue was the development code opposed billboards other than on site. Subject of litigation throughout country. I-84 billboard individual has stated it will be challenged. Savvy enough and in a position of suing us if denied a permit. Legal counsel has been involved and stated yes a good case and in position of winning if taken into court. During that review of sign code has pointed out other portions that may need review at a later date.

Tonight's objective was the billboard issue. Prohibition of off premises signs is unconstitutional. Recommendation that PC forward to CC with recommend to approve it out.

MOTIONS: Stonewall moved to close the public hearing. Regelein seconded.

YEAS: 5 [Maydew, Stonewall, Regelein, Prickett, Hymel]
NAYS: 0
ABSTAINED: 1 [Grande]

Grande asked about the abuse of right?

Regelein stated in pushing the boundaries it could then be subject to retribution.

Faith stated they should express themselves freely, no one had the right to walk into private establishment and preach whatever.

MOTION: Stonewall recommended it be forwarded to City Council with recommendation to approve and adopt. Maydew seconded.

YEAS: 5 [Maydew, Stonewall, Regelein, Prickett, Hymel]
NAYS: 0
ABSTAINED: 1 [Grande]

AGENDA ITEM #6 - PLANNING COMMISSION INITIATIVES AND CONCERNS

Maydew stated during discussions at the City Council meeting of 1/24/95 regarding street names and changing Hewitt Avenue to 12th Street he didn't hear any discussion of Cherry Park Road.

Barker stated more changes will be needed as streets are developed.

Faith stated this was an acknowledgement that more things would occur. After a personal visit with a staff report it was concluded that they didn't understand what it was about and needed to make another effort.

AGENDA ITEM #7 - ADJOURNMENT

MOTION: Maydew moved to adjourn. Prickett seconded.

YEAS: 6 [Maydew, Stonewall, Regelein, Grande, Prickett, Hymel]
NAYS: 0
ABSTAINED: 0

Frank Grande, Planning Commission President

ATTEST:
