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December 14, 2012

By Hand Delivery
and
By Email to policy.ddot@dc.gov

Alice Kelly
Manager
Policy Branch,
Policy, Planning and Sustainability Administration
District Department of Transportation
55 M Street, S.E. 5th Floor
Washington, DC 20003

Dear Ms. Kelly,

Please find attached comments and suggested revisions to Chapter 10 of Title 13, entitled BILLBOARDS ON PRIVATE PROPERTY in the *NOTICE OF PROPOSED RULEMAKING* published by the Office of the Mayor on August 16, 2012.

My Client is the owner of two billboards authorized under the laws of the District of Columbia. My client acquired these two billboards in the late 1980's after performing its due diligence review of the sellers' files, permits and leases. In order to simplify your review, Attachment A -1 is a clean copy of the Proposed Rulemaking incorporating our suggested revisions. Attachments A-2 is a redline of Chapter 10 delineating our comments from the original Proposed Rulemaking. Attachment C sets forth our opinion as to characterization of non-conforming vs. illegal signs that has been brought up at numerous meetings with the Working Group. Further, in the presentations made by the Working Group, we were advised to provide section-by-section review of the proposed Rulemaking and we have also included specific comments as appropriate.

Our understanding is that in order to respond to concerns of the Federal Highway Administration regarding the District of Columbia's sign regulations, the Working Group is proposing a consolidated Title to govern all signs in the District of Columbia. In this regard, all regulations would be set forth in Title 13 and the agencies and officers administering the different sections of the sign regulations would be clearly identified. We support this clarification.

Given this background, we noted in the Proposed Rulemaking that many sections were simply lifted in totality from current regulations even though certain portions of those current regulations are no longer applicable or in force. For example, in Chapter 10, governing Billboards, the Proposed Rulemaking defines an "authorized billboard as those in the "Authorized List of Billboards, Three Sheet Poster Boards, and Wall Signs dated November 30, 1931 as amended through the effective date of this chapter." However, it states on the DCRA's website that List was last updated in 1971! Compounding this error, the Proposed Rulemaking sets forth a list of those Authorized Billboards that is completely incorrect – some of the billboards are no longer in existence and others are not as described in the List. In fact, based on the type of construction of 3 of the 4 remaining billboards on the List, these structures could not have been erected prior to the late 1970's. It also should be noted that DC Building Code permitted new billboard construction after 1984 pursuant to Section 1405.6.

Our comments on Chapter 10 are submitted as Attachment A-1 (clean copy) and Attachment A-2 (red lined) . If you wish to discuss these comments, I may be contacted at the above address or by telephone at 202-841-5178 or by email at lmurphyesq@aol.com.

Sincerely,



Lynda M. Murphy, Esq.

Enclosed 3 Attachments

ATTACHMENT A-1
CHAPTER 10 BILLBOARDS ON PRIVATE PROPERTY

1000 APPLICABILITY

1000.1 This chapter shall govern billboards on private property in the District.

1001 PERMITTING AND ENFORCEMENT OFFICIAL

1001.1 The permitting and enforcement official responsible for issuing permits and enforcing the provision of this title shall be the Director of DCRA.

1002 PERMITS FOR NEW BILLBOARDS PROHIBITED

1002.1 A permit shall not be issued for the erection of a new billboard that is not on the Authorized List in §1004.2.

1003 PERMITS FOR AUTHORIZED BILLBOARDS

1003.1 The owner of an authorized billboard listed in § 1004.2 shall submit to the permitting official an application for annual billboard permit renewal. The owner must submit its contact information at the time of renewal.

[This revision was made because this is not an application for a new permit as set forth in § 202 but for a renewal of a billboard permit. 1003.3 sets forth the specific requirements for a renewal. Thus, the more general provisions in § 202 are not applicable. Further, the owner of the Billboard should provide its contact information to the DCRA at the time of renewal.]

1003.2 The applicant shall renew the permit annually.

1003.3 The applicant shall submit sufficient information to allow the permitting official to determine that the billboard:

- (a) Contains no mechanical moving parts;
- (b) Contains no flashing, intermittent, moving, or neon lights but may be a digital display;

- (c) Will be lighted so as not to permit beams of light to be directed at any portion of a public right-of-way or to cause glare or impair the vision of any motor vehicle driver, or otherwise interfere with a driver's operation of a motor vehicle;
- (d) Will not obstruct or undermine the traffic information systems of signs and lights;
- (e) Has not been changed from its permitted height, size, dimensions, height above grade, or any other matter that effects its location, except as set forth in §1005; and
- (f) Conforms to all applicable building and electrical codes.

1003.4 The permitting official shall issue an annual billboard permit renewal if the conditions in §1003.3 are met.

[Section 1003.5 is eliminated because there has never been any requirement for renewal of a billboard permit. Most of these billboards have been in existence for more than 20 years. When the DCRA develops a procedure for annual renewal process of these few existing billboards it should notify the agent or owner of the billboard. The owners of the billboards should be required to provide to the DCRA the contact information of their agents for purposes of this annual permit renewal. See 1003.1.]

1004 AUTHORIZED LIST

1004.1 Only those billboards that were in existence on the effective date of this chapter and that are described in this chapter or those billboards whose owners provide the necessary verification set forth in §1006 herein are authorized to remain in place, subject to the requirements of this chapter.

1004.2 The Authorized List of Billboards, as amended through the effective date of this chapter ("Authorized List") and as may be amended pursuant to §1006, is as follows:

1. Third Street & Florida Ave NE	1 Billboard	14X48
2. 1021 Brentwood Road, NE	2 Billboard	12X25
3. 1815 Montana Avenue, NE	2 Billboard	12X25
4. 190 Riggs Road, NE	1 Billboard	14X48
5. New York Avenue & Florida Ave, NE	1 Billboard	14X48
6. 1601 Potomac Street and S Capitol St, SE	1 Billboard	14 X48

[This revision eliminates reference to a 1931 Authorized Billboard List. The so-called “Authorized List” referenced in the proposed regulations Billboards is patently inaccurate, as follows:

- 1. 211 Second Street SW is non-existent. The space where a billboard would be is now the US Department of Health and Human Services.**
- 2. 1428 Maryland Avenue NE does not have a billboard located on it. It is the rear of commercial buildings that back onto a residential Street.**
- 3. Third Street and Florida Avenue, NE is a 14X48 Billboard not 12X25. The single pole structure was not available in the billboard industry until late 1970’s and early 1980’s. Thus, the billboard could not have been on the 1931 Authorized List, which was last updated in 1971 in its current configuration. This is the same for the two billboards set out in (4) and (5) below.**
- 4. 1815 Montana Avenue is not 12X28 or a single Billboard. It is a 2 faced billboard 12X25 that is on a single pole structure which was not available until the late 1970’s and early 1980’s.**
- 5. 190 Riggs Road, NE is not a 12X48 but a 14X48 and again is on a single pole structure.**
- 6. 1021 Brentwood Road, NE is accurate in that it is two panels side by side billboard 12X25 with the I-Beam structure that was built in the 1950’s -1970.**
- 7. The list does not include legally permitted Billboards that were construction in the late 1980’s pursuant to the DC Building Code in effect at that time, such as New York Avenue and Florida Avenue NE and 1601 Potomac Street and South Capitol Street SE. These billboards should be added to the Authorized List.**

The DC Building Code permitted Billboards to be constructed pursuant to Section 1405.6. Billboards were permitted until a new law was enacted in the mid 1990’s that made any new billboards legal but commercially infeasible. Before that time at least 6 new billboard permits were issued by DCRA in the late 1980’s. Of the 6 billboards, 4 were taken down due to the development of the properties. Further, the so-called “Authorized List” was updated through 1971 according to the DCRA’s website. It would have been impossible for the Billboards with “Single Pole Construction” that are on the list to have been erected prior to late 1970’s early 1980’s. The “Authorized List” patently ignores the fact the DC issued billboard permits pursuant to Section 1405.6 of the DC Building Code that went into affect after 1984.]

1005 RAZED, DEMOLISHED, OR REMOVED BILLBOARDS

- 1005.1 A billboard included in the Authorized List in § 1004.2 that is razed, demolished, or removed shall be considered stricken from the list and shall**

not be replaced in any form or in any location, provided however, if the owner of a property on which a billboard is located requests the owner of the billboard to relocate within 1000 feet of the original location, the billboard may be relocated. Any new location must comply with all DC and Federal requirements.

1006 UNAUTHORIZED BILLBOARDS

1006.1 For billboards that are not included in the Authorized List in § 1004.2, the owners must produce evidence that a permit was issued for their construction or other information that the billboard was authorized pursuant to the laws of the District of Columbia. If an owner of a billboard cannot provide sufficient evidence that the billboard was legally constructed that billboard is deemed unauthorized and shall not be replaced in any form or in any location.

1006.2 The enforcement official shall notify the owner of the unauthorized billboard and shall order the removal of the unauthorized billboard.

[The changes to this section place the affirmative burden on the billboard owner to provide evidence that a billboard is authorized. Failing to provide such evidence would then characterize the billboard as unauthorized.]

In our research, we have found that due to numerous reasons, the records of billboards and other permits are not easily obtainable from the DCRA or predecessor entities. Therefore, because of problems in record keeping, a billboard that has been in existence for over 20 years should not be deemed unauthorized, if any evidence can be produced that construction was permitted or the billboard could not have been constructed without the necessary permits.

Further, the removal of a billboard is a costly project. The property owner does not own the billboard or the structure and normally will have a lease with the billboard owner. Therefore, the property owner would have any legal rights to demolish or remove the structure without incurring liability.]

1007 MAINTENANCE AND REPAIR

1007. An authorized billboard listed in § 1004.2 may be relocated as set forth in § 1005, repaired, altered, or rebuilt under the authority of a permit issued by the permitting official.

[This change omits a permit to “maintain” a billboard. We think

the purpose of this section is to require a permit when there are structural changes that would in the normal course of commerce require a building permit.]

- 1007.2 Whenever the permitting official finds that a billboard included in the Authorized List in § 1004.2 is not maintained in good repair and has deteriorated to such an extent that it cannot be used for advertising purposes or the structure is unsafe, the permitting official shall notify the owner of the billboard and order the repair of the billboard within a specified time, but not less than thirty (30) days.
- 1007.3 If after been given notice and time to repair the billboard as set forth in section 1007.2, the permitting official finds that the billboard has not been repaired within the time specified in the repair notice, the permitting official shall notify the owner of the billboard to remove the billboard from the property within a specified time, but not less than sixty (60) days.

[There is no criteria for an enforcement office to determine “replacement value” and correspondingly to know when a billboard has deteriorated to 50% of replacement value. This change requires that the enforcement official make a reasonable and objective judgment as to the safety of the construction and/or whether the billboard is currently being used for advertisement purposes. Since there is now an annual renewal process, DCRA will have the contact information for the owner of the billboard and should notify it. Further, the time to repair or remove has been lengthened to permit adequate time to hire the necessary equipment to undertake any repairs or removal.]

- 1007.4 All billboards ordered to be removed shall be stricken from the Authorized List in § 1004.2 when the time limit set in the removal notice ends. Failure to comply with a removal order shall subject the relevant owners, upon adjudication, to the fines provided for in chapter 12.

1007.5 NON-CONFORMING BILLBOARDS

Any billboard in existence on the effective date of this chapter that does not conform to the provisions of this chapter, or any subsequent amendment of this chapter, may be continued, operated, occupied, repaired, and maintained, and the rights granted pursuant to the Code as it existed at the time of the construction or erection of the billboard shall not otherwise be superseded provided that except for maintenance, repair shall remain substantially the same as it was on the effective date of this chapter.

[This addition creates a specific “grandfather” clause governing lawfully erected billboards that for some reason may not conform to the new requirements of this chapter. The provision reflects the same policies that are reflected in chapter 2000 of the District’s Zoning regulations, and insure that the District does not inadvertently trigger the just compensation provisions of section 131(g) of the Highway Beautification Act which would require the District to pay compensation upon the removal of any lawfully erected non-conforming billboard adjacent to a federal-aid-road. Alternatively, the proposed Sign Regulations could include a more general non-conforming use provision that would apply to all of the chapters of the proposed title.]

**CHANGES TO CHAPTER 12 THAT RELATE TO ABOVE
COMMENTS**

Displaying an unauthorized billboard. (13 DCMR § 1003)	Yes (DC Code § 42-3131.01 <i>et seq.</i>)			\$ 2000
Failure to repair a billboard within the specified amount of time. (13 DCMR § 1007.1)	Yes (DC Code § 42-3131.01 <i>et seq.</i>)			\$ 500
Failure to remove a billboard within the specified amount of time. (13 DCMR § 1007.2)	Yes (DC Code § 42-3131.01 <i>et seq.</i>)			\$ 500

ATTACHMENT A-2
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[This revision was made because this is not an application for a new permit as set forth in § 202 but for a renewal of a billboard permit. 1003.3 sets forth the specific requirements for a renewal. Thus, the more general provisions in § 202 are not applicable. Further, the owner of the Billboard should provide its contact information to the DCRA at the time of renewal.]

1003.2 The applicant shall renew the permit annually.

1003.3 The applicant shall submit sufficient information to allow the permitting official to determine that the billboard:

- (a) Contains no **mechanical** moving parts;
- (b) Contains no flashing, intermittent, moving, or neon lights; **but may be a digital display;**
- ~~a.~~ **(c)** Will be lighted so as not to permit beams of light to be directed at any portion of a public right-of-way or to cause glare or

10. Third Street and Florida Avenue, NE is a 14X48 Billboard not 12X25. The single pole structure was not available in the billboard industry until late 1970's and early 1980's. Thus, the billboard could not have been on the 1931 Authorized List, which was last updated in accordance 1971 in its current configuration. This is the same for the two billboards set out in (4) and (5) below.
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13. 1021 Brentwood Road, NE is accurate in that it is two panels side by side billboard 12X25 with § 1007- the I-Beam structure that was built in the 1950's -1970.
14. The list does not include legally permitted Billboards that were construction in the late 1980's pursuant to the DC Building Code in effect at that time, such as New York Avenue and Florida Avenue NE and 1601 Potomac Street and South Capitol Street SE. These billboards should be added to the Authorized List.

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1006 UNAUTHORIZED BILLBOARDS

ATTACHMENT B-NONCONFORMING SIGNS

There is one overarching issue that effects all provisions of the proposed rulemaking beyond these section-by-section comments that must be noted.

Whatever the final form that the proposed rule might take, it is likely that individual or broad categories of existing signs that were lawfully erected under regulations applicable at the time that they were constructed, or exempt from regulation, may now become prohibited or subject to different restrictions than were in effect when they were initially constructed.

Chapter 2000 of the District of Columbia Zoning Code includes provisions that generally accord “grandfather” rights to nonconforming uses in the District of Columbia. However, these provisions while general in scope, were not written specifically for nonconforming sign and contain some ambiguity in that regard. Indeed, the government representatives participating at the November 29, 2012 Public Briefing seemed to indicate that while it is their intent to grant “grandfather” status to nonconforming signs, they shared others participant’s concern that the proposed rules do incorporate a clear statement of that policy.

The Highway Beautification Act makes it particularly critical that the District take care to include an additional provision within the proposed rule that expressly grants “grandfather” status to lawfully erected nonconforming outdoor advertising signs, displays and devices. The Highway Beautification Act, 23 U.S.C.131(g), separately provides as an element of “effective control” that just compensation must be paid if the District regulation compel effectively requires the removal of any existing lawfully erected off-premise sign within a control area that is rendered nonconforming under the provisions of the proposed rule.

(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display or device erected under State Law...whether or not removed pursuant to or because of this section.

Section 131(g) further requires that the just compensation obligation extends to losses suffered by the sign owner and the property owner as well.

Accordingly, we recommend that the proposed rules are further revised to include the following additional Chapter 14 that addresses nonconforming signs directly and assures that the District does not run afoul of the just compensation provisions of the HBA.

CHAPTER 14: NONCONFORMING SIGNS

14.01 Nonconforming Sign Defined. A Nonconforming Sign is a Sign, including its foundation and supporting structure, that was lawfully erected but does not comply with the provisions of District

Columbia law or regulations adopted at a later date or later fails to comply with such law or regulations or due to changed conditions, which may include a lawfully erected sign of a type, location or other characteristic that at a later date is no longer authorized.

14.02 All lawfully erected Nonconforming Signs in existence on the date that this Title becomes final and is enacted into the laws of the District of Columbia, or the date that any subsequent amendment to this Title becomes final and is adopted, may be continued, operated, occupied or maintained unless abandoned.

14.03 In the event that more than fifty percent (50%) of a Nonconforming Sign is destroyed by fire, collapse or other casualty, or by Act of God, such Sign shall not be restored or reconstructed except in conformity with all provisions of this Title.

14.04 Any Special Signs that may become nonconforming under this title shall be governed by the separate provisions of chapter 910 and not by the provisions of this chapter .