

# AGENDA

City of Aurora  
**PLANNING COMMISSION MEETING**  
Tuesday, February 07, 2012, 7:00 p.m.  
Council Chambers  
21420 Main Street N.E., Aurora, Oregon

1. **Call to Order of Planning Commission Meeting:**
2. **City Recorder Calls Roll**

**Chairman, Schaefer**  
**Commissioner, Willman**  
**Commissioner, Gibson**  
**Commissioner, Graham**  
**Commissioner, Fawcett**  
**Commissioner, Braun**  
**Commissioner, TBA**

3. **Consent Agenda**

All matters listed within the Consent Agenda have been distributed to each member of the Aurora Planning Commission for reading and study, are considered to be routine, and will be enacted by one motion of the Commission with no separate discussion. If separate discussion is desired, that item may be removed from the consent Agenda and placed on the Regular Agenda by request.

### **Minutes**

- I. Aurora Planning Commission Meeting –January 03, 2012
- II. City Council – December 12 , 2011

### **Correspondence**

- I. **Mid-Willamette Council of Governments letter to Joseph Schaefer, re: tax lot 3100 and 3800**

4. **Visitor**

Anyone wishing to address the Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Council could look into the matter and provide some response in the future.

5. **New Business**

- A. **Discussion and or Action on Staff Direction and review of City County Insurance Sign Code.**

**6. Old Business**

- A. Discussion and or Action on Transportation Planning Rule**
- B. Discussion and or Update on 99E Corridor Study.**
- C. Discussion and or Update on Historic Review Board Design Guideline Update.**

**7. Commission Action/Discussion**

- A. City Planning Activity (in Your Packets)**  
Status of Development Projects within the City.

**8. Adjourn**

# **CONSENT AGENDA**

Meeting Minutes

Correspondence

Financials

Other Items

**Minutes**  
**Aurora Planning Commission Meeting**  
Tuesday, January 06, 2012 at 7:00 P.M.  
Aurora Commons Room, Aurora City Hall  
21420 Main St. NE, Aurora, OR 97002

**STAFF PRESENT:** Kelly Richardson, City Recorder  
Renata Wakeley, City Planner

**VISITORS PRESENT:** Amy Willman, Aurora  
Jason Sahlin, Aurora

**1. Call to Order of Planning Commission Meeting**

The meeting was called to order by Temporary Planning Chair Joseph Schaefer at 7:01 p.m.

**2. City Recorder Did Roll Call**

Chairman, TBA -  
Commissioner, TBA  
Commissioner, Gibson absent  
Commissioner, Graham Present  
Commissioner, Fawcett Present  
Commissioner, Braun Present  
Commissioner, Schaefer Present

**3. Consent Agenda**

**Minutes**

- I. Aurora Planning Commission Meeting –December 06, 2011
- II. City Council – November 08 , 2011

**Correspondence**

A motion to accept the consent agenda for the December 06, 2011 as presented was made by Commissioner Braun and seconded by Commissioner Fawcett. Motion Passes Unanimously.

**4. Visitor**

Anyone wishing to address the Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Planning Commission could look into the matter and provide some response in the future.

**5. New Business**

- A. **Discussion and or Action on perspective applicant Amy Willman**, asks the Planning Commission what they like about being on the board and areas that peek their interest. **Commissioner Schaefer**, states he likes to see the other side of the situation and views and as a long time resident I like seeing the practical implications within the City. I would like to see a woman and a younger person views on the board.

**Commissioner Graham**, I took some planning classes and I have always been curious and want to give a helping hand, as far as change I would like to see more participation in the community.

**Commissioner Braun**, I work for Concordia College and the college has really encouraged us to get out in our local community and participate. One area that has always interested me is the Historic District and I hope to help encourage the board in some way. I have concerns about the Airport and noise control as well. It would be great to have a young person on the Commission.

**Commissioner Fawcett**, I have been interested in the inner workings of the planning of this community. There is a need for a female perspective.

A motion to recommend to City Council is made by Commissioner Graham and seconded by Commissioner Braun. Motion Passes Unanimously.

- B. **Discussion and or Action on Senate Bill 264**, there is no action however I would like to discuss it, Commissioner Schaefer explains. In regards to access management for highways, the legislature last year decided to overhaul this admin rule. There is a lot of new policy for commercial real estate and the ability to gain access easier and maintain the access. A question as to what to do about the access that do not have the proper paperwork or permits in place.
- C. **Appointment of New Officers for the 2012 year**, Temporary Chairman Schaefer lets the Commission know that he is willing to continue as Chairman if so moved.

A motion is made by Commissioner Graham to recommend Commissioner Schaefer to continue as Chairman of the Board and seconded by Commissioner Fawcett. Motion Passes Unanimously.

Commissioner Braun volunteers for the Vice Chair position and a motion is made by Commissioner Graham and seconded by Commissioner Fawcett to nominate Commissioner Braun as vice chairman for 2012. Motion Passes Unanimously.

## 6. Unfinished Business

- A. **Discussion and or Action on Transportation Planning Rule**, we have talked about this in recent months and this is an administrative adoption at this point there are a few items left to finish. This is to help ODOT loosen restrictions on citizens. There is a brief discussion about multi-modal mixed use.
- B. **Discussion and or Update on 99E Corridor Study**. There are two areas of interest; they are really not focused on Aurora its more Hubbard and Woodburn. So far not specific to Aurora.
  - 1. **DKS firm**, points out that the shell station in Aurora has driveway access on both sides and that they are too close to the intersection then would be preferred. (it would not be unusual to restrict the access somehow because of traffic issues, and we should keep an eye on it.
  - 2. **Pending changes in flood plains**, in this memo we are out of the flood plain and this is not an issue, however I think this person who wrote the memo is not up on all of the new FEMA guidelines.
  - 3. **Commissioner Fawcett** asks about the status of the Sherbarin Development, on Ehlen and Airport Rd and would they run into compliance issues with the Historic Guidelines at all.

**7. Commission Action/Discussion**

- A. City Planner Activity Sheet (in your packets)  
Status of Development Projects within the City: Attached.**

City Planner Wakeley was not present and Chairman Schaefer read the report.

City Recorder Richardson asks the Planning Commissioners for help developing pages and information for the new City website.

**8. Adjourn 7:50 P.M.**

**A motion to adjourn the January 03, 2012 meeting is made by Commissioner Braun and seconded by Commissioner Fawcett. Motion Passes Unanimously.**

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Chairman, Schaefer

**ATTEST:**

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Kelly Richardson, City Recorder

**Minutes**  
Aurora City Council Meeting  
Tuesday, December 13, 2011 at 7:00 P.M.  
City Council Chambers, Aurora City Hall  
21420 Main St. NE, Aurora, OR 97002

STAFF PRESENT:                   Otis Phillips, Waste Water Superintendent  
  Kelly Richardson, City Recorder,  
  Jan Vlcek, Finance Officer  
  Brent Earhart, Chief of Police  
  Bob Southard, Water Superintendent

STAFF ABSENT:                   None

VISITORS PRESENT:               Stephanie Rawson, DEQ Portland  
  Audrey O'Brien, DEQ Portland  
  Mark Anderson, Aurora  
  Scott Mills, Aurora  
  Henry Bremer, Aurora

1. Call to Order of Regular Meeting

The meeting was called to order by Mayor Greg Taylor at 7:01 p.m.

2. City Recorder does Roll Call

Councilor Graupp - Absent  
Councilor Roberts – Present  
Councilor Sahlin – Present  
Councilor Vlcek – Present  
Mayor Taylor – Present

3. Consent Agenda

- I. City Council Meeting Minutes – November 11, 2011
- II. Planning Commission Meeting Minutes – November 01, 2011
- III. Historic Review Minutes – October 2011, Notice of Decisions sent out.

A motion to approve the consent agenda for the Council meeting minutes with corrections on pg 2 for November 11, 2011 was made by Councilor Vlcek and seconded by Councilor Roberts. Motion Passes Unanimously.

**Correspondence**

- I. Letter from Grove, Mueller & Swank, P.C.
- II. Letter from Wave Broadband for Rate Increase

- III. **Letter from ODOT on Special City Allotment Grant**, disappointed that this didn't happen especially since we have received this for years. This project was to use on Liberty Street and the discussion included as to whether or not this was an identifier in the TSP or not.
- IV. **Meeting Notice Department of Land Conservation and Development**
- V. **Memo to American Commerce Insurance Company**

A motion to approve the correspondence was made by Councilor Vlcek and seconded by Councilor Roberts. Motion Passes Unanimously.

#### 4. **Visitor**

Anyone wishing to address the City Council concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the City Council could look into the matter and provide some response in the future.

No Visitors Spoke at this time.

#### 5. **Discussion with the Parks Committee**

- o **Parks Committee Report (not in packet)** Chairman Lori Sahlin notified the Council that the Parks Committee is interested in accepting the birch tree bid and move forward with the birch tree trimming. The parks committee will look at the other tree's at a later date.
- o The consensus of the Council was to move forward with the trimming of the birch trees at the appropriate time.

#### 6. **Discussion with Traffic Safety Commission**

- a. **Traffic Safety Report (not Included in your packet) Council** No one from Traffic Safety was in attendance and they did not have a November meeting.

#### 7. **Reports**

- A. **Police Chief's Report** – (included in your packet) Brent Earhart read his report for the last and final time.
  - It was a relatively peaceful month
  - 61 Tickets were issues
  - Speed is up
  - Been having instances of refusing to give proper identification at traffic stops.
  - Routine vehicle maintenance.

Chief Earhart thanked the Council and The City of Aurora for the opportunity to serve the City and it is with great regret this will be my last meeting.

**No more questions of the Chief. The City Council thanked Earhart for helping to get the police department back on track and portraying a better image to the citizens of Aurora.**

#### B. **Finance Officer's Report – Financials** (included in your packets)

1. **Revenue & Expense Report**
  - Currently we are only off by 149.00 dollars from the bank totals.

- The audit report is very close to completion.

No more questions.

**C. Public Works Department's Report – ( included in your packet)**

1. Monthly Status Report (Storm Water) Mayor Taylor reads Public Works report.
  - Water leak in park restrooms is now fixed.
  - Water leak on Ottaway and Jenny Marie
  - Repair on water main near the park paved in January

**A. Waste Water Treatment Plant Update (from Otis Phillips) there was not a lot of discussion on the report as submitted.**

- Discharged 4.5 million
- Working on projects around the plant
- Looking for sapling storage options.

There were no more questions from the Council.

**D. City Recorder's Report (included in your packet)**

Gives a brief overview of the written report as submitted and there was no discussion.

No questions from the Council.

**E. City Attorney's Report – (not Included in your packet)**

- Brief Discussion on House Bill 2712 which effects our Courts, it is determined that the League of Oregon Cities interpreted it to allow additional amounts to the fine schedule.
- Discussion with CIS, I found out if we initiate a conversation on any issue it helps to reduce our deductible.
- Memo from Building Codes Division to make sure we have everything in place.

**There were no more questions of City Attorney, Koho.**

**8. Ordinances and Resolutions**

**A. Discussion and or Action on Resolution Number 639, Fees Related For City of Aurora.**

Motion to approve Resolution Number 639 as written made by Councilor Sahlin and seconded by Councilor Roberts. Motion Passes Unanimously.

**B. Discussion and or Action on Resolution Number 640, Policy for Records Requests.**

Motion to approve Resolution Number 640 as amended in section 9 was made by Councilor Vlcek seconded by Councilor Roberts. Motion Passes Unanimously.

**C. Discussion and or Action on Resolution Number 641, Establishing A Administrative Fee for Court Payment Plans.**

Motion to approve Resolution Number 641 as written was made by Councilor Sahlin and seconded by Councilor Roberts. Motion Passed Unanimously.

**D. Discussion and or Action on Resolution Number 642 updating Business License fee and delinquent charges.**

Motion to approve Resolution Number 642 as amended making clear delinquent fee is 10.00 a month was made by Councilor Vlcek and seconded by Councilor Roberts. Motion Passes Unanimously.

**E. Discussion and or Action on Ordinance Number 466 Regulation of Certain Wells for Irrigation purposes.**

Motion to approve first reading of Ordinance Number 466 is made by Councilor Sahlin and seconded by Councilor Roberts. Motion Passes Unanimously.

**F. Discussion and or Action on Ordinance Number 467, Criminal History Checks,**

Motion to approve the first reading on Ordinance Number 467 history checks on certain volunteers was made by Councilor Roberts and seconded by Councilor Vlcek. Motion Passes Unanimously.

**9. Old Business**

**A. Discussion and or Action on Service Contract with Roth Heating for City Hall and Public Works Updated.**

Motion to approve the updated service agreement with Roth Heating to service City Hall and Public Works is made by Councilor Vlcek and second by Councilor Roberts. Motion Passes Unanimously.

**B. Discussion and or Clarification on report for SDC Charges, brief discussion on how and when to implement rate increases in January and July. After the discussion it is decided to have the November report in the January Council Packets for a final review before making a determination. Discussion on the Water Rate increase is to have an increase of the base fee and a half a cent of the consumption in January and the other half a cent increase in consumption in June or July both of which have been recommended by Ray Bartlett and his office.**

**10. New Business**

**A. Discussion and or Action on Request for Comments, on Proposed Composting Site.**

- Mark Anderson, speaks to traffic and odor, my wife will not allow smell and traffic I do not feel this will be an issue. All three locations is a composting site and everything will be done on site so it will eliminate a lot of the moving of equipment and traffic.
- There will be approximately 20,000 thousand tons of debris.
- Audry Obrien, DEQ is responsible for issuing this permit, we applied our new process and to look at environmental, odor and nuisance, we felt this would be a low nuisance situation. When we put this application out for public comment we received

a lot of phone calls and letter, so that is why we are here to hear questions and such for the application.

- Stefanie Rawson, DEQ, gives a more in depth look at how they are going to manage storm water, and other contributing factors and how is the material going to be managed, in proximity to neighbors. Citizens are very concerned and we have been notified by citizens and groups such as yourselves.
- Scott Mills 21314 Liberty Street Aurora, OR 97002 States his concerns about the situation, noise and hours of operations are the two main concerns along with additional traffic issues, the applicant used to run a bike track and issues arose then and when contacted the owners did not really care. I am concerned that the operation will be long hours with a chipper and shredder and loud equipment. I think that he should agree to be a good neighbor and have good practices with the neighbors. Many letters are coming to DEQ because we are very concerned about this and hours of usage.  
It also concerns me that this is a continual permit I understood it to be a one time deal.

Mr. Anderson wants to get along with neighbors and agrees verbally that he will operate the grinder Monday through Friday 8 to 5 pm.

- Stephanie Rawson, DEQ informs the Council of a few points below along with Audry O'Brien, DEQ.

Hydrologist states that this is not near or conflict with any wells in the area. Will this affect the wells in the future because of drainage. Likely hood of it traveling towards river and wells in the future should absorb into the soils.

Most of it will come through garbage trucks and 5% will be hauled back out, its screened in and filtered out.

Looking at a low level risk so DEQ will not monitor this permit we will assume this is being operated as proposed.

**B. Discussion and or Action on Council Liaison Positions.**

Council President Terri Roberts remains Council President and HRB Liaison with addition of Parks Committee meetings.

Councilor Sahlin is assigned Planning Commission Liaison

Councilor Vicek was assigned Police and Fire Liaison.

Mayor Taylor will continue as Administration Liaison

Councilor Graupp was assigned Public Works Liaison.

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**Further discussion after all business concluded,**

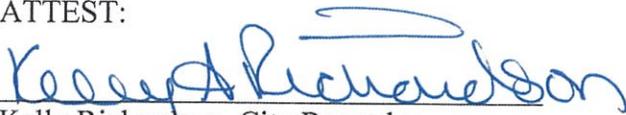
Mayor Taylor has had a meeting with Olinger and Fawcett and proposed free water and then they will disconnect their wells and use for irrigation. For a period of time as long as they own their house or annex in and it does not go with the sale of the house. Councilor Sahlin and Vlcek request a cap on usage and then discuss what the cap would be. ¾ meter .

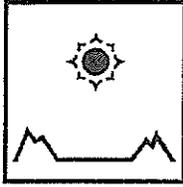
A question is asked as to why we are using 1' meter sizes Bob Southard will need to clarify this for the council.

**11. Adjourn**

A motion to adjourn the December 13, 2011 meeting at 9:25 pm was made by Councilor Roberts and seconded by Councilor Vlcek. Motion Passes Unanimously.

  
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Greg Taylor, Mayor

ATTEST:  
  
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Kelly Richardson, City Recorder



# Mid-Willamette Valley Council of Governments

105 HIGH STREET S.E. • SALEM, OREGON 97301-3667 • [www.mwvcog.org](http://www.mwvcog.org)  
PHONE: 503-588-6177 • FAX: 503-588-6094 • email: [mwvcog@mwvcog.org](mailto:mwvcog@mwvcog.org)  
*An equal opportunity lender, provider, and employer*

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*Getting things done together!*

January 19, 2012

Joseph Schaefer  
[jssoregon@yahoo.com](mailto:jssoregon@yahoo.com)

RE: Map Number 41W12BA, Tax Lots 3100 and 3800

Dear Mr. Schaefer:

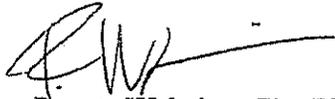
You've requested a determination regarding whether the above-referenced tax lots. Tax lot 3100 is zoned Commercial (C) with a Historic Commercial Overlay. Tax lot 3800 is zoned Low Density Residential (R1) with a Historic Residential Overlay and requires a minimum lot size of 10,000 square feet. Tax lot 3800 is approximately 9,148 square feet.

In March 1980, a zone change application and variance were approved contingent upon the property being partitioned. See Ordinance 255. Lot 3100 was sold by Mallicott to Anderson in October 1988. Lot 3800 was sold by Mallicott to Anderson in October 1988. (Deed 10/13/88 24530125 WD). The two lots were never lawfully established units of land as there were applicable planning and partition ordinances and regulations in place that were required to be completed as a condition of approval. See Oregon Revised Statute (ORS) 92.010.B.ii.b. However, ORS 92.176 does allow a city to approve an application to validate a unit of land that was created by a sale if the unit of land could have complied with the criteria in effect that the unit of land was sold. It is staff's determination that the partition would have met the minimum zone requirements in place at the time of zone change approval, based upon the applicable staff report recommending approval.

In summary, staff has made the determination that while Lots 3100 and 3800 are not currently legal lots, a Minor Partition application conforming to the original zone change application and conditions of approval may be submitted to the City of Aurora for processing and the governing body shall consider and may approve an application for the creation of lots or parcels (ORS 92.177)..

I have enclosed applicable sections of the Oregon Revised Statute, as reference above, for your records.

Regards,

A handwritten signature in black ink, appearing to be 'RW' followed by a long horizontal line.

Renata Wakeley, City Planner

CC: Kelly Richardson, City Recorder  
Aurora Planning Commission

**92.010 Definitions for ORS 92.010 to 92.192.** As used in ORS 92.010 to 92.192, unless the context requires otherwise:

(1) "Declarant" means the person who files a declaration under ORS 92.075.

(2) "Declaration" means the instrument described in ORS 92.075 by which the subdivision or partition plat was created.

(3)(a) "Lawfully established unit of land" means:

(A) A lot or parcel created pursuant to ORS 92.010 to 92.192; or

(B) Another unit of land created:

(i) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or

(ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.

(b) "Lawfully established unit of land" does not mean a unit of land created solely to establish a separate tax account.

92.176 Validation of unit of land not lawfully established. (1) A county or city may approve an application to validate a unit of land that was created by a sale that did not comply with the applicable criteria for creation of a unit of land if the unit of land:

(a) Is not a lawfully established unit of land; and

(b) Could have complied with the applicable criteria for the creation of a lawfully established unit of land in effect when the unit of land was sold.

(2) Notwithstanding subsection (1)(b) of this section, a county or city may approve an application to validate a unit of land under this section if the county or city approved a permit, as defined in ORS 215.402 or 227.160, respectively, for the construction or placement of a dwelling or other building on the unit of land after the sale. If the permit was approved for a dwelling, the county or city must determine that the dwelling qualifies for replacement under the criteria set forth in ORS 215.755 (1)(a) to (e).

(3) A county or city may approve an application for a permit, as defined in ORS 215.402 or 227.160, respectively, or a permit under the applicable state or local building code for the continued use of a dwelling or other building on a unit of land that was not lawfully established if:

(a) The dwelling or other building was lawfully established prior to January 1, 2007; and

(b) The permit does not change or intensify the use of the dwelling or other building.

(4) An application to validate a unit of land under this section is an application for a permit, as defined in ORS 215.402 or 227.160. An application to a county under this section is not subject to the minimum lot or parcel sizes established by ORS 215.780.

(5) A unit of land becomes a lawfully established parcel when the county or city validates the unit of land under this section if the owner of the unit of land causes a partition plat to be recorded within 90 days after the date the county or city validates the unit of land.

(6) A county or city may not approve an application to validate a unit of land under this section if the unit of land was unlawfully created on or after January 1, 2007.

(7) Development or improvement of a parcel created under subsection (5) of this section must comply with the applicable laws in effect when a complete application for the development or improvement is submitted as described in ORS 215.427 (3)(a) or 227.178 (3)(a). [2007 c.866 §2]

or improvement is submitted as described in ORS 215.427 (3)(a) or 227.178 (3)(a). [2007 c.866 §2]

92.177 Creation of lot or parcel following improper formation. Where application is made to the governing body of a city or county for approval of the creation of lots or parcels which were improperly formed without the approval of the governing body, the governing body of a city or county or its designate shall consider and may approve an application for the creation of lots or parcels notwithstanding that less than all of the owners of the existing legal lot or parcel have applied for the approval. [1993 c.436 §2; 1995 c.595 §14]

2 "Lawfully established unit of land" means: (A) A lot or parcel created pursuant to ORS 92.010 to 92.190; or

(B) Another unit of land created:

(i) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or

(ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.

(b) "Lawfully established unit of land" does not mean a unit of land created solely to establish a separate tax account.

92.178 Creation of parcel previously approved but not acted upon. (1) The governing body of a county may approve an application requesting formation of one parcel if the county issued a land use decision approving the parcel prior to January 1, 1994, and:

(a) A plat implementing the previous land use decision was not recorded; or

(b) A condition of approval of the previously approved land use decision requiring consolidation of adjacent lots or parcels was not complied with by a previous owner of the land.

(2) An application under this section is not subject to ORS 215.780.

(3) Approval of an application under this section does not affect the legal status of land that is not the subject of the application.

(4) As used in this section:

(a) "Lot" has the meaning given the term in ORS 92.010.

(b) "Parcel" has the meaning given the term in ORS 92.010. [2005 c.240 §1]

# **NEW BUSINESS**

# Memorandum

MID-WILLAMETTE VALLEY COUNCIL OF GOVERNMENTS  
105 HIGH STREET S. E. SALEM, OREGON 97301-3667  
TELEPHONE: (503)588-6177 FAX: (503)588-6094

TO: Aurora Planning Commission  
FROM: Renata Wakeley, City Planner  
RE: Enforcement of sign code prohibitions  
DATE: January 24, 2012

Staff has received several inquiries from property owners regarding the current AMC sign code and section 16.44.070.K. prohibition of off-premise signage. While staff has enforced the prohibition to date, additional guidance has been provided by City Council Insurance Services (attached) advising jurisdictions that the prohibition is not constitutional under Oregon law.

Staff is requesting Planning Commission review and discussion on the attached guidance and consideration of the follow three potential requests to the Aurora City Council:

1. Request City Council concurrence for continued enforcement of 16.44.070.K. prohibition for off-premise signage.

**OR**

2. Request City Council concurrence in directing staff to no longer enforce 16.44.070.K.

**OR**

3. Request City Council authorization for staff, legal counsel and/or Planning Commission amendment to AMC 16.44 to remove the prohibition of off-premise signage.

## Oregon Constitution

In Oregon, the state constitution is more restrictive of sign regulation than the federal constitution. Some sign regulation allowed under the First Amendment is not permitted under Article I, Section 8 of the Oregon Constitution. For instance, the “off premises” v. “on premises” distinction, acceptable under the First Amendment, violates the Oregon Constitution. Outdoor Media Dimensions, Inc. v. Dept. of Transp., 340 Or. 275, 132 P.3d 5 (2006). Also, under the First Amendment, there is a distinction between commercial and non-commercial speech and greater regulation of commercial speech is allowed. The Oregon Constitution does not permit this. Ackerley Communications, Inc. v. Multnomah County., 72 Or. App. 617, 696 P.2d 1140 (1985), *rev. dismissed*, 303 Or. 165, 734 P.2d 885 (1987).

This does not mean that the Oregon Constitution prohibits any regulations of signs. In Outdoor Media, the Oregon Supreme Court stated that “Article I, Section 8 does not bar every content-neutral regulation of the time, place and manner of speech.” Sign regulations must be reasonable and make no reference to the content of the sign. However, under Article I, Section 8, the appellate courts have set no specific standards or limits as to what are acceptable “time, space and manner” regulations.

Finally, under Article I, Section 8, any regulation that proscribes one or more modes of expression as a means to an end (i.e., prohibiting certain types of signs for reasons other than censorship, such as aesthetics or safety) is subject to “closer scrutiny” in order to determine “whether it appears to reach privileged communication or whether it can be interpreted to avoid such overbreadth.” State v. Robertson, 293 Or 402, 649 P2d 569 (1983).

## “Facial” and “As Applied” Challenges

In a “facial challenge,” the person challenging a statute alleges that the statute is always, under all circumstances, unconstitutional. This type of challenge would be asserted where a sign regulation, on its face, is not content-neutral.

In contrast, an “as applied” challenge seeks relief from the application of a facially valid statute or ordinance because the regulation has been applied in an illegal or impermissible manner. Thus, even where care is taken to pass content-neutral sign regulations, it is important during implementation and enforcement to base all decisions on uniform rules and procedures. Otherwise, the application of the regulations will be challenged.

## Land Use Regulation or Not?

Is the Sign Code intended to be a “Land Use Regulation” of the city? And what difference will it make if it is a land use regulation?

surrounding buildings or vegetation, or other factors over which the applicant has no control.

- b. Approval of a roof sign shall be subject to the following standards:
  - 1. The sign is installed on a gabled, hipped mansard, or otherwise sloped roof;
  - 2. Sign area for the roof sign shall not exceed eight percent of the roof elevation area, with a maximum area of one hundred twenty square feet;
  - 3. The highest point of the roof sign shall not exceed the height of the ridge of the roof; and
  - 4. Issuance of a building permit and final approval of the installed sign by the building department.
- B. Maximum Sign Height. Monument signs shall be no more than six feet in height.
- C. Illumination. The illumination of signs within the industrial park and research park sign district shall meet the standards contained in Section XX.XX.120 of this chapter.
- D. Other Limitations.
  - 1. A comprehensive sign plan may be submitted for industrial and research business complexes and shall comply with Section XX.XX.105 of this chapter.

### **XX.XX.075 Billboard districts and permits.**

*Comment: Billboards need not be authorized within a city. See generally G.K. Travel v. Lake Oswego, (no constitutional right to communicate via pole signs). If permitted, there should be no distinction between on-premise / off-premise billboard. Outdoor Media Dimensions, Inc. v. Dept. of Transp., 340 Or. 275, 132 P.3d 5 (2006)*

*Comment: If included, it is recommended that the billboard restrictions be in a separate section from the rest of the sign code. Billboard regulation is frequently challenged; it would be harder to also challenge other parts of your sign code in attempting to demonstrate unconstitutionality as it relates to billboard signs, and thus reduces the possible challenge to the entire sign code.*

- A. No billboard shall be constructed or maintained within the city unless the owner obtains a billboard permit from the [City Manager]. A billboard permit is a type of sign permit required under Section XX.XX.020 of this chapter.
- B. An owner of a billboard site may apply for a billboard permit as provided in Section XX.XX.125 of this chapter. The [City Manager] shall issue or deny the billboard permit within thirty days of receipt of the permit application. If there is more than one complete application for a billboard permit, the [City Manager] may select an application for approval by chance. A billboard permit is a type of sign permit. A billboard permit shall be issued under the provisions of Sections XX.XX.125 and XX.XX.135 of this chapter.

## Wakeley, Renata

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**From:** Dennis Koho [dkoho@koholaw.com]  
**Sent:** Thursday, December 15, 2011 3:55 PM  
**To:** Wakeley, Renata  
**Cc:** Kelly Richardson; mayor@ci.aurora.or.us; jsahlin@ci.aurora.or.us  
**Subject:** RE: Off Premise Billboard Advertising 21187 99E

Renata –

I don't control the agenda, but I agree those are good topics for discussion. This is a great example of an area where the council liaison would be very helpful in helping to fashion what goes to the council and when. Some of these issues require a bit of technical background, and we are fortunate to have Councilor Sahlin as the Planning Commission liaison. I think it makes sense to bring him into the conversation now rather than have him first see the issue at a council meeting.

I have copied him on this email. He and the Mayor can discuss the best way to approach it. Since policy questions are involved, I would appreciate their guidance from the start. Thanks.

dk

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Dennis E. Koho            5305-B River Road North  
Koho & Beatty            PO Box 20790  
Attorneys at Law, PC     Keizer, Oregon 97307  
[dkoho@koholaw.com](mailto:dkoho@koholaw.com)     503-390-3501  
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**From:** Wakeley, Renata [mailto:renatac@mwvcog.org]  
**Sent:** Thursday, December 15, 2011 3:17 PM  
**To:** Dennis Koho  
**Cc:** Kelly Richardson; mayor@ci.aurora.or.us  
**Subject:** RE: Off Premise Billboard Advertising 21187 99E

Dennis,

Can we add a line item to the next council meeting under New Business and you can bring the information below to the Council to have them weigh in? While the email correspondence below may need to be included in the council packets, I do have some questions you might want to present to them during the discussion:

- a) Do they want the sign code to be phased into the development code updates (upon completion of the Historic Review Guidelines Title 17 update)? If so, should a budget line item be added in the 2012-2013 budget?
- b) Pending a decision to complete a sign code update in the future, does the Council wish to provide guidance to staff on whether the off-premise sign prohibition should remain after the code update?
- c) Pending a decision to complete a sign code update in the future, does the Council wish to provide guidance to staff on whether the billboard prohibition should remain after the code update?

Until then, I will continue to enforce the off-premise sign prohibition as the code is clear on the prohibition.

Renata Wakeley, Planner  
Mid-Willamette Valley Council of Governments  
105 High Street SE, Salem OR 97301  
p: 503 540 1618  
f: 503 588 6094

**From:** Dennis Koho [mailto:dkoho@koholaw.com]  
**Sent:** Monday, December 12, 2011 9:59 PM  
**To:** Wakeley, Renata  
**Cc:** Kelly Richardson; mayor@ci.aurora.or.us  
**Subject:** RE: Off Premise Billboard Advertising 21187 99E

Renata –

I have now discussed this in depth with the legal counsel for the League of Oregon Cities. He generally agrees with my assessment. Before I get into that however, you misunderstood my earlier advice. I do not believe I ever stated that content-based restrictions are permissible. They are not and that has been established law for many years. To the extent that I was unclear, I apologize. I'm not sure how I conveyed that to you, and I'm sorry for doing so. I've worked with sign ordinances for 20 years and it has always been the case that content-based restrictions are invalid. That said, the courts have told us that deciding whether a sign is on or off premises by looking at what it advertises is NOT a content-based restriction. That's a very fine line, but the courts have been consistent.

Cities may regulate, as a land use matter, signs based on whether they are on or off-premises, but the manner in which they must do so is very limited. The ordinance must among other things contain certain findings regarding what essentially amounts to visual pollution. The ordinance must lay out in detail why the Council finds the restriction necessary in terms of land use regulation. If it does not, the courts will find the restrictions invalid. The League's chief attorney agrees with this point.

He and I also agree that what a city can do is not always what it should do. That choice is a policy one for the Council, of course, but it will want to consider the cost of defending its ordinance in court if challenged. For example, the billboard companies have spent hundreds of thousands of dollars trying to get ordinances invalidated. I doubt the city would want to take on that expense, but that is not my call to make.

As a practical matter, our particular ordinance might not withstand challenge in the courts. I'd have to compare it carefully to the line of cases that developed the law, but I suspect a defect or two could be found. Presuming that to be true, the Council should decide if it wants to enforce the prohibition against off-premises signs. It will want to balance the cost of doing so against the potential harm from the number of signs that may sprout up. I am happy to help the Council with whatever decision it makes.

I hope this is of some help. Please feel free to call if any of this is unclear. It is important that we understand each other and find agreement wherever we can. I am certain the Council does not want conflicting advice from its staff, and I'd like to work out any differences we may have in advance so they don't have that burden. Thanks.

dk

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# **OLD BUSINESS**

# **PLANNING ACTION/DISCUSSION**

February 2012 Update

**LAND USE APPLICATIONS**

<u>Project</u>	<u>Status</u>
Building Permits	
Sign Permits	<ul style="list-style-type: none"> <li>Request to Mayor has been submitted that legal counsel discuss prohibition of "off-premise" signage under 16.44.</li> </ul>
Manufactured Home Permit	
Land Use Applications	

**ADDITIONAL PLANNING**

<u>Project</u>	<u>Status</u>
Transportation System Plan	<ul style="list-style-type: none"> <li>Adoption of a street tree ordinance. Request has been submitted to City Attorney to draft an ordinance adopting the City of Aurora Street Tree List to meet AMC 16.34.030.U. (attached).</li> </ul>
ODOT 99E Corridor Study	<ul style="list-style-type: none"> <li>No meetings have been scheduled. No new information has been released. Staff did forward PC December alignment concerns regarding 99E southbound traffic at Liberty Street.</li> </ul>
Urban Renewal District Feasibility Study	
Development Code/HRB updates	<ul style="list-style-type: none"> <li>No new information has been received since the 12/28 response email to ODA regarding compliance with Airport Planning Rule.</li> </ul>
Water Master Plan	
Newsletter/Community Updates	
Misc.	

## Wakeley, Renata

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**From:** Wakeley, Renata  
**Sent:** Wednesday, December 28, 2011 1:52 PM  
**To:** 'Kelly Richardson'  
**Subject:** FW: 21187 Hwy 99E Sign Permit  
**Attachments:** img-Z28115702-0001.pdf

Kelly,

Bob Southard, the property owner, needs to sign the application under "property owner" as I state in my memo. Can you phone the applicant and inform him the application is incomplete.

Also please provide the information below to Mr. Koho and the Mayor:

I would like the City Attorney to review the sign application, pending the Mayor's approval. The issue of the legality of prohibiting off-premise signs has been discussed between Mr. Koho and I and while Mr. Koho does believe the prohibition is permitted, he has expressed concern over case law and defending it in court.

I feel strongly that since the applicant has decided to proceed with the application that Mr. Koho should review and comment. There has been previous correspondence on this but I am not sure the attorney or city council have had an opportunity to discuss.

Renata Wakeley, Planner  
Mid-Willamette Valley Council of Governments  
105 High Street SE, Salem OR 97301  
p: 503 540 1618  
f: 503 588 6094

-----Original Message-----

**From:** recorder [<mailto:recorder@ci.aurora.or.us>]  
**Sent:** Wednesday, December 28, 2011 12:01 PM  
**To:** Wakeley, Renata  
**Subject:** 21187 Hwy 99E Sign Permit

Renata,

I gave your December 15, 2011 memo of determination to this applicant and he still wants to proceed, So he signed it and gave additional information as requested in your memo. I explained to him that our code doesn't support his request however he still wanted to move forward for your final decision.

He has paid a 60.00 dollar deposit please make sure you give me your billing for additional time spent along with your decision so I can bill him accordingly.

Than you,

Kelly Richardson  
City Recorder  
City of Aurora

## Wakeley, Renata

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**From:** Wakeley, Renata  
**Sent:** Thursday, January 05, 2012 4:42 PM  
**To:** 'Kelly Richardson'  
**Cc:** 'Joseph Schaefer'  
**Subject:** FW: Street Tree Ordinance  
**Attachments:** SKMBT\_C55011122911540.pdf; SKMBT\_C55011122911541.pdf

Hi Kelly,

This is not time sensitive as I know that Dennis has some higher priority agenda items for next week but I would appreciate if you could follow up with the Mayor and Dennis on this for the February agenda?

Thanks,  
Renata

**From:** Wakeley, Renata  
**Sent:** Thursday, December 29, 2011 11:00 AM  
**To:** 'Kelly Richardson'  
**Cc:** 'jschaefer@ci.aurora.or.us'  
**Subject:** Street Tree Ordinance

Kelly,

With the Mayor's approval, please forward the information below to the City Attorney:

Mr. Koho,

In 1999, the City of Aurora adopted an update to their Transportation System Plan (TSP). At that time, the City also adopted provisions for street trees but the consulting firm did not have within their contract assisting the City with adoption of a Street Tree List as included under 16.34.030.U (attached). Staff has worked with the Planning Commission to develop a City of Aurora Street Tree List (attached) and the Planning Commission is prepared to recommend to the City Council adoption of the Street Tree List.

Could you please draft an ordinance for City Council adoption of the attached City of Aurora Street Tree List?

Feel free to call with questions or concerns.

Renata Wakeley, Planner  
Mid-Willamette Valley Council of Governments  
105 High Street SE, Salem OR 97301  
p: 503 540 1618  
f: 503 588 6094

**CITY OF AURORA STREET TREE LIST**

A. Spacing. The spacing of street trees shall be in accordance with the species, size, classes listed in the official tree list of this chapter, and trees shall be planted not less than one tree per twenty-five (25) feet of street frontage.

B. Recommended Street Trees. The following tree species are recommended for use as street and parking lot trees:

**Four (4) to six (6) foot planting strip- With or without overhead lines**

Species Name	Common Name	Minimum Planter Width	Permitted Under Wires?	Mature Height/Width
Acer griseum	Paperbark Maple	4	Yes	25/20
Lagerstroemia cultivars	Crape Myrtle	4	Yes	20/20
Malus 'Prairifire'	Prairifire Crabapple	4	Yes	20/20
Parrotia persica	Persian Parrotia	4	Yes	35/20
Stryax japonicas	Japanese Snowbell	4	Yes	25/25
Stryax obassia	Bigleaf Snowbell Tree	4	Yes	35/25

**Four (4) to six (6) foot planting strip- With overhead lines**

Species Name	Common Name	Minimum Planter Width	Permitted Under Wires?	Mature Height/Width
Acer griseum	Paperbark Maple	4	Yes	25/20
Cornus controversa 'June Snow'	June Snow Giant Dogwood	4	No	40/30
Fragus sylvatica 'Purpurea Tricolor'	Tricolor Beech	4	No	35/25
Lagerstremia cultivars	Crape Myrtle	4	Yes	
Ginkgo biloba 'Saratoga'	Saratoga Ginkgo	4	No	35/30
Magnolia gradiflora 'Edith Bogue'	Edith Bogue Magnolia	4	No	30/15
Malus 'Prairifire'	Prairifire Crabapple	4	Yes	20/20
Parrotia persica	Persian Parrotia	4	No	35/20

**Great than six (6) foot minimum planting strip- With or without overhead lines**

Species Name	Common Name	Minimum Planter Width	Permitted Under Wires?	Mature Height/ Width
Acer griseum	Paperbark Maple	6	Yes	25/20
Lagerstroemia cultivars	Crape Myrtle	6	Yes	20/20
Magnolia gradiflora 'Edith Bogue'	Edith Bogue Magnolia	6	Yes	30/15
Ginkgo biloba 'Saratoga'	Saratoga Ginkgo	6	Yes	35/30

**Greater than six (6) foot minimum planting strip- Without overhead lines**

Species Name	Common Name	Minimum Planter Width	Permitted Under Wires?	Mature Height/ Width
Acer X freemanii 'Autumn Blaze'	Autumn Blaze Maple	6	No	60/45
Acer X freemanii 'Celzam'	Celebration Maple	6	No	45/25
Acer rubrum 'Franksred'	Red Sunset Maple	6	No	45/35
Carpinus betulus	European Hornbeam	6	No	50/35
Ostrya virginiana	American Hophornbeam	6	No	35/35
Tilia cordata	Littleleaf Linden	6	No	50/30
Zelkova serrata 'Green Vase'	Green Vase Zelkova	6	No	50/40
Zelkova serrata 'Village Green'	Village Green Zelkova	6	No	40/38

**Prohibited Street Trees**

All other trees are prohibited from installation within public rights-of-way as they cause one or more of the following problems: (1) Their roots damage sewer lines or pavement; (2) They are particularly subject to disease or insects; (3) They cause visibility problems along streets or intersections; (4) They create messy sidewalks and pavements, usually due to fruit drop.