



MORGANTOWN PLANNING COMMISSION

January 10, 2013
6:30 PM
City Council Chambers

Planning Commissioners:

Sam Loretta, 1st Ward
Tim Stranko, 2nd Ward
William Wyant, 3rd Ward
Bill Petros, 4th Ward
Michael Shuman, 5th Ward
Peter DeMasters, 6th Ward
Carol Pyles, 7th Ward
Ken Martis, Admin.
Jennifer Selin, City Councilor

STAFF REPORT

CASE NO: TX12-03 / Administrative / ISOD, Interstate Sign Overlay District

REQUEST:

Administratively requested text amendments to Article 1329.02 "Definition of Terms"; 1359 "ISOD, Interstate Sign Overlay District"; Table 1369.06.01 "Permitted Signs"; Table 1369.09.01 "Freestanding Sign Height Limits"; and, Article 1369.10 "Prohibited Signs and Devices" as they relate to pole or pylon signs and billboard signs as well as an administratively requested zoning map amendment to the Interstate Sign Overlay District boundaries.

BACKGROUND:

Staff provided an informational presentation of the subject administratively requested text amendments during the December 13, 2012 Planning Commission hearing. As discussed during the presentation, it appears that the Morgantown community sought to significantly restrict the development of billboards or off-premise pole or pylon signs under the major zoning ordinance amendment enacted in January 2006. In doing so, an overlay district was created in proximity to federal interstate rights-of-ways within which these types of signs are permitted. Article 1359 establishes the ISOD, Interstate Sign Overlay District and the official zoning map illustrates the boundaries for same.

In reviewing the zoning ordinance text and zoning map, there is a conflict between how the overlay district's boundary is described and how it is illustrated. Specifically, Article 1359 describes the overlay district boundaries as to within 500 feet of a federal interstate right-of-way. However, the official zoning map illustrates the ISOD Overlay District boundary to, what appears to be, 500 feet from the I-68 centerline. The resultant overlay district as illustrated on the zoning map is contained entirely within the I-68 right-of-way. The West Virginia Division of Highways (WVDOH) does not permit signs to be erected within a right-of-way for which it controls and maintains.

Article 1329.01(D) "Rules of Construction, Intent, and Usage" provides that, "In case of conflict between regulations the more restrictive shall apply."

In this case, the official zoning map is more restrictive but results in an area where these types of sign may not be erected due to WVDOH restrictions. As such, the City of Morgantown inadvertently enacted restrictions that make the development of these types of signs impossible.

The City Attorney maintains that, in West Virginia, all land use types must be permitted somewhere within a community that has enacted land use and land development regulations. On this basis, the City of Morgantown must therefore identify an acceptable area for billboards and off-premise pole or pylon signs to be permitted.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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ANALYSIS:

Addendum B of this report presents Staff recommended revisions. The purposes of the subject administratively requested text and map amendments are to:

- To avoid unnecessary and costly litigation;
- To recognize and provide for “billboards” in the zoning ordinance; and,
- To recognize and provide for digital technologies and reasonable restrictions.

The following summarizes the revisions provided in Addendum B.

1. Official Zoning Map. Staff recommends that the ISOD, Interstate Sign Overlay District boundaries be removed from the Official Zoning Map so that the geography of the overlay district is simply described in Article 1359.

Because the only documentation currently held by the WVDOH that describes or illustrates the I-68 right-of-way are surveys from the early 1970s, removing the overlay district from the zoning map places the determination or burden of proof concerning the location of the federal interstate right-of-way and the proximity of a proposed billboard or off-premise sign on the developer seeking to erect the sign. Additionally, describing the boundary and not illustrating it provides flexibility for future annexations that may include areas adjoining a federal interstate without having to amend the zoning map accordingly.

2. Article 1329.02 “Definition of Terms”. Staff recommends that the term “Billboard Sign” be included in the definitions section and that the current geography description provided in the definition for “Pole Sign” be removed.
3. Article 1359 “ISOD, Interstate Sign Overlay District”. Staff recommends that Article 1359 be struck entirely and replaced as presented in Addendum B of this report. Recommended revisions provide necessary geographical context in the absence of the overlay district being illustrated on the zoning map as well as provide standards for electronic and/or digital billboards that are becoming more of an industry standard.
4. Table 1369.06.01 “Permitted Signs”. Staff recommends that “Billboard Sign” be added to the table that identifies where said signs are permitted.
5. Table 1369.09.01 “Freestanding Sign Height Limits”. Staff recommends that “Billboard” type signs be added to the table that identifies height restrictions as off-premise signs are currently provided.
6. Table 1369.10 “Prohibited Signs and Devices”. Staff recommends that “Billboard” type signs be added to the list of prohibited signs as off-premise signs are currently provided.

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STAFF RECOMMENDATION:

The Planning Department advises the Planning Commission to forward a favorable recommendation to City Council to enact the Planning and Zoning Code amendments as presented in Addendum B hereto attached.

STAFF REPORT ADDENDUM A

TX12-03 / Administrative / ISOD, Interstate Sign Overlay District

Article 1359 "ISOD, Interstate Sign Overlay District" (current)

ARTICLE 1359 ISOD, Interstate Sign Overlay District

1359.01 PURPOSE.

The purpose of the Interstate Sign Overlay District is to provide owners of property within 500 feet of a Federal Interstate Highway right-of-way the ability to erect pole or pylon signs, whether on or off premise in nature, for the convenience of the motoring public. This district may not be applied over any residentially zoned property.

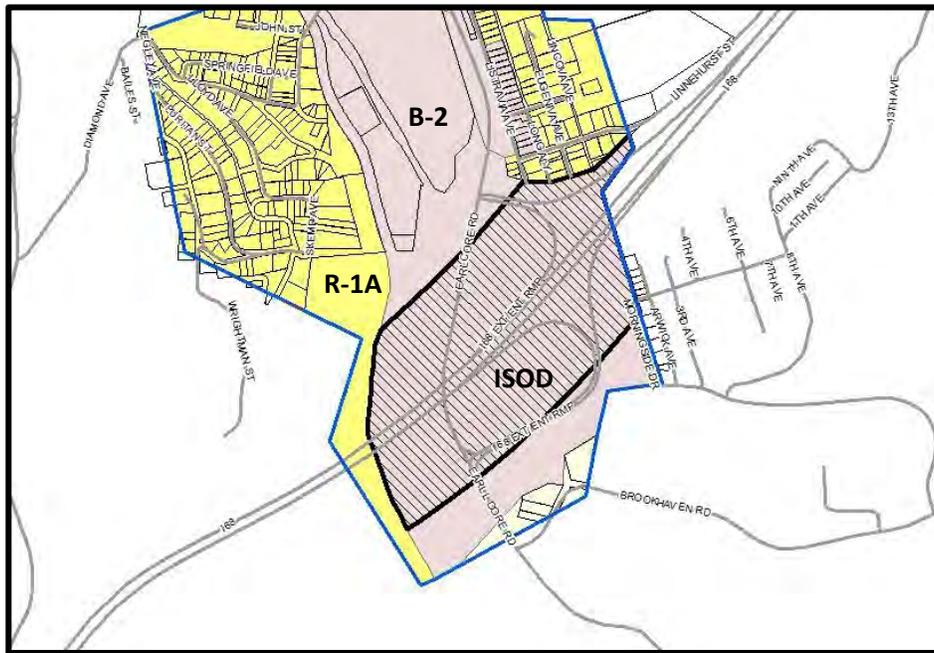
1359.02 REGULATIONS.

- (A) A conditional use permit shall be required for any pole or pylon sign, whether of the on-premise or off-premise variety.
- (B) No more than one pole or pylon sign of any type may be located on a parcel.
- (C) Off-premise pole or pylon signs shall not be located within 100 feet, measured radially, of any other off-premise pole or pylon sign. No such spacing limit shall apply to on-premise pole or pylon signs.
- (D) Maximum sign height shall be determined by the Board of Zoning Appeals, after considering evidence supplied by the applicant that clearly demonstrates, to the satisfaction of the Board, that the requested height is necessary. The Board shall take into account the horizontal distance the sign will be from the travel lanes of the Interstate, the difference in elevation between the property grade and the highway grade, and the advice of the City Engineer and/or Planning Director. The Board may approve the height requested by the applicant, or any other height that it deems is warranted given the facts of the case.
- (E) The maximum size of any pole or pylon sign, whether on- or off-premise in nature, shall not exceed 250 square feet, or whatever smaller size the Board of Zoning Appeals approves, considering the same criteria as for height. This shall be in addition to any other signs permitted by these regulations. The regulations regarding computation of sign area for double-sided signs shall apply.
- (F) As part of the conditional use application procedure for pole or pylon signs, the applicant shall provide a certified land survey prepared by an engineer or surveyor licensed to practice in West Virginia that shows the following:
 - (1) Parcel boundaries.
 - (2) Distance between the right of way of the Interstate Highway in question and the subject parcel. If the parcel is entirely contained within the 500-foot boundary, the survey shall so indicate. If only a portion of the parcel falls within the 500-foot zone, the survey must indicate which portions of the property fall within it, and which are outside of the boundary.
 - (3) The location of any existing or proposed buildings, structures, or other pole or pylon signs on the subject property.

- (G) Utilizing the survey, the applicant shall then indicate:
- (1) The exact location of the proposed sign; and
 - (2) The proposed height, square footage, and construction details of the proposed sign. Signs shall be designed by a licensed engineer and shall conform to the regulations of the West Virginia State Building Code.

(H) No permit for such signs shall be issued unless all existing non-conforming signs, of any type, on the subject property are first removed or brought into compliance with this ordinance.

Zoning Map and Aerial Photograph Illustration



STAFF REPORT ADDENDUM B

TX12-03 / Administrative / ISOD, Interstate Sign Overlay District

Staff recommended revisions to related Planning and Zoning Code provisions.

1. Official Zoning Map

Staff recommends that the ISOD, Interstate Sign Overlay District boundaries be removed from the Official Zoning Map so that the geography of said overlay district is described in Article 1359 rather than illustrated to put the burden of proof establishing the federal interstate right-of-way on the developer's surveyor and to remain flexible for future annexations that may include areas adjoining a federal interstate.

2. Article 1329.02 – “Definition of Terms”

Staff recommends the following amendments to related definitions (deleted matter struck-through; new matter underlined).

SIGN, BILLBOARD – An off-premise sign, usually of the pole or pylon sign type, for which a static message or copy on the sign can be changed manually (e.g. paint, paper, vinyl, etc.), mechanically (e.g. tri-action, etc.), or electronically (e.g. digital displays using LED or similar technology controlled via electronic communication through a secure network). Such signs are prohibited within the City, except as provided in Article 1359 “ISOD, Interstate Sign Overlay District” and Article 1369 “Signs”.

SIGN, POLE – A sign that is mounted on a freestanding pole(s) or other support so that the bottom edge of the sign face is six feet or more above the grade. Such signs are prohibited within the City, except ~~within 500 feet of a Federal Interstate Highway~~ as provided in Article 1359 “ISOD, Interstate Sign Overlay District” and Article 1369 “Signs”. Also called a PYLON SIGN.

3. Article 1359 – “ISOD, Interstate Sign Overlay District”

Staff recommends that Article 1359 be struck entirely and replaced as follows (new matter underlined).

1359.01 PURPOSE.

The purpose of the Interstate Sign Overlay District is to provide an area within 500 feet of a Federal Interstate Highway right-of-way within which on-premise pole or pylon signs or billboard signs may be erected for the convenience of the motoring public. This overlay district may not be applied over any residentially zoned property.

1359.02 GENERAL REGULATIONS.

- (A) Conditional use approval by the Board of Zoning Appeals shall be required for on-premise pole or pylon signs and billboard signs.
- (B) No more than one pole or pylon sign or billboard sign may be located on a parcel.

- (C) Spacing.
- (1) Billboard signs shall not be located within 1,000 feet of any other billboard sign. This distance requirement shall include in its calculation any billboards located outside the corporate boundaries of the City.
 - (2) Billboard signs shall not be located within 200 feet of a residential zoning district. If illuminated by internal, external or digital/electronic means, said signs shall not be located within 300 feet of a residential zoning district.
 - (3) No such spacing limit shall apply for on-premise pole or pylon signs.
- (D) Height. Maximum sign height for on-premise pole or pylon signs or billboard signs shall be determined by the Board of Zoning Appeals, after considering evidence supplied by the applicant that clearly demonstrates, to the satisfaction of the Board, that the requested height is necessary. The Board shall take into account the horizontal distance the sign will be from the travel lanes of the roadway, the difference in elevation between the property grade and the roadway grade, and the advice of the City Engineer and/or Planning Director. The Board may approve the height requested by the applicant, or any other height that it deems is warranted given the facts of the case.
- (E) Area. The maximum area for on-premise pole or pylon signs shall not exceed 250 square feet; for billboard signs 450 square feet; or, whatever smaller area the Board of Zoning Appeals approves, considering the same criteria as for height. This shall be in addition to any other signs permitted by these regulations. For the purposes of this section, the surface display area of a pole or pylon sign or a billboard sign shall be measured to include the entire area within a regular geometric form or combinations thereof comprising all of the display area of the sign, including all of the elements of the matter displayed. Frames and structural members, excluding necessary supports or uprights, shall be included in computation of the surface display area. In the case of a sphere, spheroid, or similar shaped sign (e.g. a ball), the total surface display area shall be divided by two for determine the maximum surface display area permitted. The regulations regarding computation of sign area for double-sided and V-type signs in Article 1369 shall apply.
- (F) Setback. No on-premise pole or pylon sign or billboard sign may be located within 15 feet of any parcel boundary line of the property on which the subject sign is located.
- (G) Distance requirements provided in this section shall be measured radially from the leading edge of the sign face.
- (H) No on-premise pole or pylon sign or billboard sign may be located on top of, cantilevered over or otherwise suspended above any building or structure.
- (I) An on-premise pole or pylon sign or billboard sign having more than one surface display area which are tandem (side-by-side) or stacked (one above the other) are considered two billboards and are prohibited.
- (J) Illumination. On-premise pole or pylon signs may only be internally illuminated. Billboard signs may be illuminated provided such illumination is consistent with the requirements for a digital billboard as set forth herein, or is concentrated on the surface of said sign and is located so as to avoid glare or reflection onto any portion of an adjacent street or highway, the path of oncoming vehicles or any adjacent premises.

(K) Appearance.

- (1) Except for time and temperature signs or digital billboards as otherwise regulated herein, all on-premise pole or pylon signs and billboard signs must be static or stationary and may not contain any visible moving parts, alternating or moving messages or have the appearance of having moving parts or messages. Provided, each message or copy displayed on a mechanically changed billboard sign (e.g., tri-action, etc.) shall remain fixed for at least ten (10) seconds; must accomplish the change between messages within an interval of two (2) seconds or less; and must contain a default design that will freeze the sign in one position if a malfunction occurs.
- (2) Under no circumstances may any type of on-premise pole or pylon sign or billboard sign contain a message or display that appears to flash, undulate, pulse, move, scroll, or portray explosions, fireworks, flashes of light, or blinking lights or otherwise appears to move toward or away from the view, expand or contract, bounce, rotate, spine twist or make other comparable movements.
- (3) The frames, borders, and all structural members of a billboard sign shall be black, with no illumination and no writing or symbols other than the identification (name and/or logo) of the sign owner/operator.

(L) Permitting. Every on-premise pole or pylon sign and billboard sign requires a City building permit before installation or modification. Permits shall be reviewed and issued consistent with the terms of this section as well as all other applicable ordinances of the City as amended from time to time. Every applicant for an on-premise pole or pylon sign or billboard sign shall file with the building permit application a certificate of insurance naming the City as coinsured and certifying that the applicant and City are insured against bodily injury and for property damage arising out of the erection, maintenance, repair, and replacement of the sign. Each applicant, if the permit is granted, shall be required to maintain said insurance and keep a certificate of insurance currently effective on file with the City so long as the sign is in existence. The certificate shall provide that the City shall receive ten (10) days written notice in case of cancelation of the policy. Any on-premise pole or pylon sign or billboard sign in violation of the insurance requirements of this section shall be removed immediately and the cost of such removal shall be charged against the owner/operator of the sign.

(M) Other Applicable Requirements and Laws. An on-premise pole or pylon sign or billboard sign must otherwise comply with all other relevant regulations and ordinances of the City and comply with all applicable provisions of federal and state law.

1359.03 DIGITAL OFF-PREMISE AND BILLBOARD SIGN REGULATIONS

The City recognizes that billboards are, by their nature, different in scope and purpose from other types of signage in the City. Billboards are significantly larger in size than other types of signage allowed in the City and their principal purpose is to dramatically attract the attention of the travelling public. The potential impact of a billboard on adjacent areas is significantly greater than other types of signage. Advancements in technology and efficiencies enable signs to change static message or copy electronically (e.g. utilizing an LED or digital type of sign). These newer technologies exacerbate the potential impact of a billboard in terms of adversely dominating the environment in which they operate due to light spillover and light pollution, unless regulated in a reasonable fashion. The intent of this section is to establish standards and regulations for billboards, including addressing those utilizing these newer technologies, in order to minimize the secondary effects that can accompany the unregulated display of these types of signs; preserve the character and repose of adjacent areas, with a principal focus on residential neighborhoods; protect property values in all areas of the City; and, reduce traffic and similar hazards caused by undue distractions.

(A) Locations. In addition to the spacing and setback standards provided in this section, digital or electronic billboard signs are prohibited on the same site as a National Register designated historic structure or within a National Register designated historic district. Digital or electronic billboard signs are prohibited within 500 feet of a National Register designated historic structure, except where a federal interstate highway separates the digital or electronic billboard sign from the National Register designated historic structure.

(B) Display.

(1) The display or message on a digital billboard sign may change no more frequently than once every ten (10) seconds. Any change in message or copy shall be completed instantaneously.

(2) The display, message, or copy must otherwise comply with subsection 1359.02(K) and the digital billboard sign must have a light sensing device to adjust brightness as ambient light conditions change in order to insure that the message meets the following brightness standard.

Maximum brightness levels for digital billboards shall not exceed 0.2 (two tenths) foot-candles over ambient light levels measured within 150 feet of the sign. Certification must be provided to the City demonstrating that the sign has been preset to automatically adjust the brightness to these levels or lower. Certified re-inspection and recalibration shall be annually required by the City, in its reasonable discretion, at the sign owner/operator's expense to ensure that the specified brightness levels are maintained at all times.

(3) Brightness of digital billboards shall be measured as follows:

(a) At least 30 minutes following sunset, a foot-candle meter shall be used to obtain an ambient light reading for the location. This is done while the sign is off or displaying black copy. The reading shall be made with the meter aimed directly at the sign area at the pre-set location.

(b) The sign shall then be turned on to full white copy to take another reading with the meter at the same location.

(c) If the difference between the readings is 0.2 (two tenths) foot-candles or less, the brightness is properly adjusted.

(4) Consecutive messages on a single digital or electronic sign face (digital slots) are prohibited when the second message answers a textual question posed on the prior slot, continues or completes a sentence started on the prior slot, or continues or completes a story line started on the prior slot. Nothing in the subsection shall prohibit consecutive messages by the same advertiser or consecutive messages for the same product or service; provided, that the second of such advertisements does not answer a textual questions posed on the prior advertisement slot, continue or complete a sentence started on the prior advertisement slot, or continue or complete a story line started on the prior advertisement slot. For example, consecutive advertisements by a single grocery store advertising the same or multiple products are permitted provided that such advertisements do not answer textual questions from one slot to the next slot, continue or complete a sentence from one slot to the next slot, or continue or complete a story line from one slot to the next slot.

(5) The sign shall have a default mechanism or setting that will cause the sign to turn off or show a "full black" image if a visible malfunction or failure occurs.

(6) The sign shall not be configured to resemble a warning or danger signal. The sign shall not resemble or simulate any lights or official signage used to control traffic.

- (C) The Board of Zoning Appeals, in reviewing the conditional use application, may require, as a reasonable condition, that an approved digital billboard sign be turned off or display a "full black" image during nighttime hours to preserve the character and repose of adjacent residential areas.
- (D) The owner/operator of the digital billboard sign shall maintain a secure electronic communication network that controls the display and display changes.
- (E) Prior to the issuance of a permit for construction of a digital billboard sign, the owner/operator of the sign shall enter into an agreement with the City providing for public service announcements or a regular basis without charge. Such announcements shall be provided as specified in the agreement and shall include messages of significant public interest related to safety and traffic matters (e.g. AMBER Alerts, Cop Killer Alerts, severe weather, disaster, evacuation bulletins/notices, etc.).

1359.04 CONDITIONAL USE APPLICATION

- (A) As part of the conditional use application for on-premise pole or pylon signs and billboard signs, the applicant shall provide a certified land survey prepared by an engineer or surveyor licensed to practice in West Virginia that shows the following:
 - (1) The parcel boundaries for the property on which the proposed sign is to be located.
 - (2) The right-of-way boundary of the Federal Interstate Highway used to establish the applicable ISOD Overlay District.
 - (3) The exact location of the proposed sign.
 - (4) The distances between the subject Federal Interstate Highway right-of-way, the property on which the proposed sign is to be located, and the exact location of the proposed sign. If the parcel is entirely contained within the 500-foot ISOD Overlay District boundary, the survey shall so indicate. If only a portion of the parcel falls within the 500-foot ISOD Overlay District boundary, the survey must indicate which portions of the property fall within it, and which are outside of the boundary.
 - (5) The location of any existing or proposed buildings, structures, and other on-premise pole or pylon and billboard signs on the subject property.
 - (6) Floodplain boundaries, as may be required by the City Engineer.
- (B) In addition to the survey, the applicant must submit the following:
 - (1) A scaled photo simulation of the proposed on-premise pole or pylon sign or billboard sign from no less than two (2) points of view, the locations of which must be agreed to by the Planning Director.
 - (2) The proposed height, square footage, and construction details of the proposed sign. Signs shall be designed by a licensed engineer and shall conform to the regulations of the West Virginia State Building Code and design standards provided herein.
 - (3) If the proposed sign is a billboard sign, a map must be submitting illustrating the following:
 - (a) Any and all billboard signs within 1,500 feet, measured radially, of the proposed billboard sign location along with the distances between same.
 - (b) The distance of the proposed billboard sign, measured radially, to the closest residential zoning district.

4. Table 1369.06.01 “Permitted Signs”

Staff recommends that Table 1369.06.01 “Permitted Signs” be amended to include billboard signs as follows. (NOTE: revisions below highlighted in yellow)

Table 1369.06.01: Permitted Signs

SIGN TYPE	R-1, R-1A, R-2, R-3	B-1, B-2, B-5, PUD	I-1	B-4	OI, PRO	ISOD	Required Permits
Ground							
Directory	√	√	√	√	√	--	BP, FP, SP
Directional	√	√	√	√	√	--	BP, FP, SP
Menu Board	--	√	--	√	--	--	BP, FP, SP
Monument	√	√	√	√	√	--	BP, FP, SP
Post and Panel	--	√	√	√	√	--	BP, FP, SP
Pole or Pylon Sign	--	--	--	--	--	√	BP, FP, SP
<u>Billboard Sign</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>√</u>	<u>BP, FP, SP</u>
Sandwich Board	√	√	--	√	√	--	BP, FP, SP
Building							
Construction	√	√	√	√	√	--	SP, FP
Directory	√	√	√	√	√	--	BP, FP, SP
Electronic, scrolling message	--	√	√	--	---	--	BP, FP, SP
Marquee	--	√	--	√	--	--	BP, SP
Suspended	--	√	--	√	√	--	BP, SP
Temporary	√	√	√	√	√	--	FP, SP
Wall	√	√	√	√	√	--	BP, SP
Other							
Off Premise Sign	--	--	--	--	--	√	BP, FP, SP
Public Event Banner	√	√	√	√	√	--	BP, SP*

BP – building permit; required for signs costing more than \$250 which includes labor and materials

FP - floodplain permit

SP - sign permit

* The manner of attachment may determine whether or not a BP is required.

5. Table 1369.09.01 “Freestanding Sign Height Limits”

Staff recommends that Table 1369.09.01 “Freestanding Sign Height Limits” be amended to include billboard signs as follows. (NOTE: revisions below highlighted in yellow)

Table 1369.09.01: Freestanding Sign Height Limits (inches)

Sign Type	Residential Districts	Commercial Districts	Industrial Districts	OI & PRO District	ISOD District
Construction	48	48	48	48	
Directory, Logo/Name	48	48	48	48	
Directory, Detailed	60	60	60	60	
Menu Board	--	60	--	--	
Political	48	48	48	48	
Principal Ground	48	48	48	48	
Pole/Pylon, Billboard					*
Monument	72	72	72	72	

* To be determined by the Board of Zoning Appeals

6. Table 1369.10 “Prohibited Signs and Devices”

Staff recommends that Article 1369.10 “Prohibited Signs and Devices” be amended to include billboard signs as follows. (NOTE: revisions below highlighted in yellow)

1369.10 PROHIBITED SIGNS AND DEVICES.

All signs not expressly permitted under this Ordinance or exempt from regulation hereunder in accordance with the previous section are prohibited. Such signs include, but are not limited to:

- (A) Any sign that copies or imitates an official sign or purports to have official status;
- (B) Beacons;
- (C) Windblown devices;
- (D) Pennants, streamers, strings of light bulbs except for holiday decorations;
- (E) Animated signs;

- (F) Signs with moving or flashing lights, except as noted in the electronic scrolling message sign section. Neon signs may be used anywhere signs are permitted, except in residential districts, and provided they are one of the permitted types (wall, monument, etc.);
- (G) Any sign attached to an accessory structure if such sign is legible from the public right-of-way or from other property;
- (H) Any other attention-attracting device, except for those conforming to the dimensional, design, lighting and other standards applicable to a sign in the same location;
- (I) Any sign that obstructs or substantially interferes with any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, ingress, or egress to any building;
- (J) Any sign attached to gas pumps or gas pump islands that can be read or understood from a public street by most persons of normal vision;
- (K) Off-premise **and billboard** signs of any kind except those allowed under this section;
- (L) Pylon signs, except those allowed under this section;
- (M) Signs mounted on or above the roofline of any building, except in the B-4 districts, where they may be permitted as a conditional use and shall count towards the total sign allotment of the site; and
- (N) Portable signs; and,
- (O) Any sign located in a public right-of-way except as provided for in Section 1369.14.