



## **Billboards and Frequently Asked Questions October 4, 2008**

**Question: Do billboard restrictions violate First Amendment protections for free speech?**

**Billboard restrictions do not violate protections for free speech, as long as they do not regulate subject or content.<sup>1</sup> The U.S. Supreme Court has found that aesthetics and highway safety are acceptable reasons to control billboards. A community's authority to control billboards derives from its police power. Thus, zoning restrictions are permitted on billboard sizes, locations, distances from neighborhoods, distances from intersections, distances from highways, distances from each other, use of lights and movement, and other physical conditions.<sup>2</sup>**

**Question: Do billboard restrictions violate property right protections?**

**Property rights are respected. Property owners can determine whether or not to allow billboards, if they are first in the neighborhood. Like any other property owner, they must meet zoning requirements, such as on size, distance, etc. Once a billboard is allowed on a property, adjacent owners may be prohibited from having a billboard subsequently, due to distance requirements in sign ordinances. Billboard companies favor spacing requirements to improve visibility of signs. Property values are likely to be reduced for those with properties adjacent to the property with the billboard.<sup>3</sup>**

**Question: In a market-based free enterprise economy, what is the property rights and economic rationale for billboard restrictions?**

**In a word, externalities. Property rights dominate when the use of property only has private costs and private benefits. But use of property may also cause social costs and social benefits, called externalities by economists because they occur external to the property.<sup>4</sup> The classic situation with external costs is air pollution from a factory that damages health, property and visibility. Billboards cause social costs, such as: disturbing scenic views, neighborhood blight, decreases in adjacent property values, and highway accidents. Billboard advocates suggest there are social benefits, such as: travel information, more business for advertisers and job creation for the billboard industry. Billboard opponents claim the benefits are small compared to their large external social costs.<sup>5</sup>**

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<sup>1</sup> Southern Environmental Law Center, *Visual Pollution and Sign Control: A Legal Handbook on Billboard Reform*, 1988, p. 27.

<sup>2</sup> For example, see El Paso County Development Services Code, effective April 2, 2007.

<sup>3</sup> Correspondence with Ted Shonts, El Paso County Assessor, February 5, 1992.

<sup>4</sup> Campbell R. McConnell and Stanley L. Brue, *Economics: Principles, Problems and Policies*, McGraw-Hill Irwin, 2008, p. 548.

<sup>5</sup> Southern Environmental Law Center, *Visual Pollution and Sign Control: A Legal Handbook on Billboard Reform*, 1988, p. 1.

**Question:** Are billboards necessary to serve tourists?

Acceptable alternatives for tourist information are the well-designed, easy-to-read, blue LOGOs placed at highway intersections to post logos for food, lodging and gasoline. Some of the most prominent tourist states ban billboards, including Maine, Vermont, Hawaii and Alaska. A Vermont tourism official claims: “Although there was initial sensitivity that removing billboards might hurt tourism, it has had the opposite effect.”<sup>6</sup> In Colorado, leading tourist counties ban billboards including Summit (Breckenridge) and Pitkin (Aspen). Other counties allow legacy billboards but ban new locations, such as Douglas, Teller, Larimer, Boulder, and Rhout.<sup>7</sup>

**Question:** Do billboards create employment for advertisers on the signs?

Billboard advertisers may expect greater sales and employment. But there is likely employment for those that choose not to advertise on billboards. For example, billboard advertising by a casino may create more sales and employment for it at the expense of its competitor. Thus, a competitor feels compelled to advertise as well to maintain market share.<sup>8</sup> One can argue that billboard advertising is a zero sum activity with no net private benefit, while society suffers costs of billboard pollution.

**Question:** Do billboards create employment in the advertising industry?

Billboards probably create employment for the billboard company, but not necessarily for the advertising industry as a whole. Advertisers often establish an ad budget that is then allocated to various media, such as TV, radio, newspaper, internet, sports arenas, buses, bus benches, promotions, and billboards, among many other competing advertising and promotional opportunities. What is spent on billboard advertising, usually comes at the expense of less spending for other media and less employment in other media.<sup>9</sup>

**Question:** Do billboards cause social costs by becoming a highway safety hazard?

Yes. Studies, going back decades, demonstrate that billboards cause distraction and compromise driving safety.<sup>10</sup> A study for the National Highway Traffic Safety Administration of driving behavior found that “...glances of two seconds or greater doubled the risk of crashes or near-crashes.”<sup>11</sup> Driver safety risk is increased particularly for billboards placed at intersections<sup>12</sup> and bends in the highway.<sup>13</sup> A study by the Wisconsin Department of Transportation reported a 35% increase in crashes related to a variable message advertising sign.<sup>14</sup> The billboard industry regularly touts the distracting attributes of billboards.<sup>15</sup>

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<sup>6</sup> Vermont Travel Division, Scenic America, “Sign Control Helps Tourism”

<sup>7</sup> Scenic Colorado, Inventory of Billboards by City and County, 2002.

<sup>8</sup> Phillip Kotler, *Marketing Management*, Prentice-Hall, 1984, p. 639.

<sup>9</sup> Phillip Kotler, *Marketing Management*, Prentice-Hall, 1984, p. 645.

<sup>10</sup> U.S. Department of Transportation, Federal Highway Administration, “Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction,” September 11, 2001. See Section 2.3.

<sup>11</sup> City of Minnetonka, “Dynamic Signage: Research Related to Driver Distraction and Ordinance Recommendations,” June 7, 2007, p. 11.

<sup>12</sup> City of Minnetonka, “Dynamic Signage: Research Related to Driver Distraction and Ordinance Recommendations,” June 7, 2007, p. 25.

<sup>13</sup> City of Minnetonka, “Dynamic Signage: Research Related to Driver Distraction and Ordinance Recommendations,” June 7, 2007, p. 7.

<sup>14</sup> U.S. Department of Transportation, Federal Highway Administration, “Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction,” September 11, 2001. Many studies are

**Question:** Are removed billboards fairly compensated?

**Yes. In Colorado and in most other states, billboard owners must be compensated when signs are removed based on a generous formula.<sup>16</sup> In the state of Colorado, it is most common to establish a value based on an appraisal.<sup>17</sup> The costs of billboard removal can be hundreds of thousands of dollars, including costs to compensate the land owner, the owner of the billboard structure, and the lease and advertising agreements running for many years. A billboard slated for removal at the busy intersection of Woodmen Road and Academy Boulevard in Colorado Springs is worth \$483,000 according to Lamar Advertising, the owner.<sup>18</sup> Electronic billboards may cost a half a million dollars each<sup>19</sup> and therefore millions to buy out once permitted. Removal regularly takes place when rights-of-way are expanded such as for highway widenings and interchange modifications.**

**Question:** Does the public really care about billboards?

**Surveys show the public opposes billboards about 70% to 30%. Those opposed to more billboards reached 90% in Florida, 81% in Houston, 78% in Missouri, 56% in New Hampshire, 67% in Rhode Island, 60% in Michigan.<sup>20</sup> Alaska voted against billboards in 1998 by 72%.<sup>21</sup> In Colorado, 71% believe billboards should be discouraged and 80% think scenery is more important than billboards.<sup>22</sup>**

**Question:** Should billboards be prevented altogether?

**It depends. It is expensive to use tax payer funds to buyout an existing billboard. Increasing numbers of jurisdictions tolerate existing billboards and prohibit new billboard locations. Or jurisdictions follow a cap and replace policy, which allows a new billboard location in exchange for reducing a legacy billboard, as in El Paso County. The City of Colorado Springs worked with the billboard companies to voluntarily remove existing ones in the downtown area in exchange for allowing new locations elsewhere.**

**Question:** Do Federal and state billboard rules take precedence over county and city rules.

**No. Local rules take precedence where they are judged more stringent.<sup>23</sup>**

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summarized, including on by the Wisconsin Department of Transportation reporting a 35% increase in crashes related to a variable message advertising sign. See Section 2.3.2.

<sup>15</sup> Tim Jameson, Clear Channel Outdoor, *Des Moines Business Record*, February 4, 2007.

<sup>16</sup> Southern Environmental Law Center, *Visual Pollution and Sign Control: A Legal Handbook on Billboard Reform*, 1988, p. 6.

<sup>17</sup> Sam Pisciotta and Larry Johnson, Colorado Department of Transportation, October 2, 2008.

<sup>18</sup> *Colorado Springs Gazette*, May 11, 2008

<sup>19</sup> Scenic America, "Billboards in the Digital Age: Unsafe (and Unsightly) at Any Speed," 2007, p. 1.

<sup>20</sup> Scenic America, [www.scenicamerica.org](http://www.scenicamerica.org).

<sup>21</sup> [www.elections.alaska.gov/elect98/general/results](http://www.elections.alaska.gov/elect98/general/results)

<sup>22</sup> Scenic Colorado, "Summary of Billboard Opinion Survey," January 6, 1992.

<sup>23</sup> Colorado Outdoor Advertising Act, 43-1-416.

**Question: Who owns most of the billboards?**

The large majority of billboards in the U.S. are owned by a few multi-billion dollar multinational companies – Clear Channel, CBS, and Lamar Advertising. In the Pikes Peak region, Lamar Advertising owns most of the billboards. Plus, Lamar gains revenue from bus bench ads, bus shelter ads, and LOGO and highway tourist oriented directional signs (TODS) management under contract with government authorities.<sup>24</sup> Lamar has a contract with the Colorado State Department of Transportation for LOGO signs.<sup>25</sup>

**Question: Should electronic billboards be allowed simply because it is a new technology?**

Billboards are a form of pollution, visual pollution.<sup>26</sup> Replacements of existing billboards (Litter on a Stick) with electronic billboards showing multiple bright messages per minute (Powerpoint on a Pole) are simply an increase in pollution. By way of comparison, a new manufacturing process that creates more air pollution would not be permitted to continue unabated. Electronic billboards should be strictly limited and even prohibited in order to avoid a dramatic increase in visual pollution.

**Question: Should electronic billboards be allowed because they may be used for Amber alerts and other public service messages.**

Many other mass media are available for such alerts, including radio, TV, cellphone and variable message signs in highway medians. Where electronic billboards are in place, there has been virtually no substantial use for such public services, as it detracts from revenue producing advertising. Conventional billboards can be used now for public service announcements; but in practice, the billboard industry is missing in PSA action.

**Question: Will electronic billboards reduce the demand for outdoor advertising?**

The demand for billboard advertising will increase. Electronic billboards will encourage more advertisers to buy specific time periods such as weekdays, or drive time, or night-time. An electronic billboard with six blinking rotating messages in Colorado Springs can bring in over \$20,000 per month to the billboard company, compared to \$3,700 per month for a standard billboard.<sup>27</sup>

**Question: Do electronic or liquid emitting diode (LED) billboards save energy?**

LEDs when used on a small scale can save substantial amounts of energy, such as when replacing incandescent lamps. But electronic billboards require LEDs on a large, large scale. An electronic or digital billboard can use 387,485 kWh/year.<sup>28</sup> This is equivalent to the use of 49 conventionally lighted billboards.<sup>29</sup> Or equivalent to the amount of electricity used by about 52 homes in Colorado Springs.<sup>30</sup> Such large electrical use has the further disadvantage of more light pollution and a greater carbon footprint.

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<sup>24</sup> Lamar Advertising Company, [www.lamaroutdoor.com](http://www.lamaroutdoor.com).

<sup>25</sup> Jerry Miller, Outdoor Advertising Program Manager, Colorado Department of Transportation, September 2, 2008.

<sup>26</sup> Southern Environmental Law Center, *Visual Pollution and Sign Control: A Legal Handbook on Billboard Reform*, 1988, p. 1.

<sup>27</sup> Based on rate schedules at Lamar Advertising Company, [www.lamaroutdoor.com](http://www.lamaroutdoor.com).

<sup>28</sup> U.S. Green Building Council, Central Balcones Texas Chapter.

<sup>29</sup> U.S. Green Building Council, Central Balcones Texas Chapter.

<sup>30</sup> Colorado Springs Utilities, average household usage was 7,769 kWh in 2007.

*“If a homeowner desires to construct a huge Coca Cola sign facing his own homestead rather than the public highway, in order to remind him, every time he looks out his window, that the time has come to pause and be refreshed, he certainly should be left free to do so. But if he wants to face the sign toward us, that is something else.”*

*William F. Buckley, conservative political commentator*

For more information, go to [www.sceniccolorado.org](http://www.sceniccolorado.org) and [www.scenics.org](http://www.scenics.org).

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