

City of Cambridge

MASSACHUSETTS

In City Council

9-18

1995

C. Triantafyllou

Executive Session to Discuss Litigation

YEA	NAY	ABSENT	PRESENT	
✓				Ms. Kathleen L. Born
✓				Mr. Francis H. Duehay
✓				Mr. Anthony Galluccio
✓				Mr. Jonathan S. Myers
✓				Mrs. Sheila T. Russell
<i>MS</i> ✓			<i>MS</i>	Mr. Michael A. Sullivan
	✓			Mr. Timothy J. Toomey, Jr.
✓				Ms. Katherine Triantafyllou
✓				Mayor Kenneth E. Reeves

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CITY OF CAMBRIDGE

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Assistant City Solicitor

September 12, 1995

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Litigation regarding the sign ordinance;
Council Order #46 of 4/3/95

Dear Mr. Healy:

The City Council requested a report concerning litigation over the provisions of the zoning ordinance (Article 7.000) banning billboards in Cambridge. Until yesterday, the City had not been served with any such litigation. Enclosed is a copy of the Complaint filed by Ackerley Communications in United States District Court challenging the constitutionality of Article 7.000 as a violation of free speech rights and as a taking of property without compensation.

There is also ongoing litigation between Ackerley and the City in Suffolk Superior Court in which state Outdoor Advertising Board permitting of billboards is at issue.

Very truly yours,

Russell B. Higley
Russell B. Higley

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

EFH

95-11205 RCL

ACKERLEY COMMUNICATIONS OF
MASSACHUSETTS, INC.,
Plaintiff,

v.

CITY OF CAMBRIDGE and
RALPH R. DUNPHY,
as he is Commissioner of
the Department of Public
Works in the City of
Cambridge,
Defendants.

CIVIL ACTION NO.

FILED IN CLERK'S OFFICE
U.S. DISTRICT COURT

DISTRICT OF MASS.

JUN 8 3 51 PM '95

COPY

COMPLAINT

(42 U.S.C. § 1983)

PRELIMINARY STATEMENT

This is an action in which plaintiff Ackerley Communications of Massachusetts, Inc. seeks to have the court declare unlawful, and enjoin defendants City of Cambridge and Ralph E. Dunphy from enforcing, a Cambridge zoning ordinance which requires the removal of existing signs used solely for non-commercial purposes while permitting the continued maintenance of a substantially greater number of identical signs used solely for commercial purposes. By operation and by intent, the ordinance, in combination with certain provisions of the Massachusetts General Laws, impermissibly favors commercial speech over non-commercial speech, imposes content-based restrictions on speech without materially advancing any substantial or compelling governmental interest, and deprives plaintiff of its property without just compensation, all in violation of 42 U.S.C. § 1983 and the First, Fifth and Fourteenth Amendments to the United

States Constitution. Plaintiff seeks declaratory and injunctive relief and an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

JURISDICTION

1. The court has jurisdiction of this action as it arises under the First, Fifth and Fourteenth Amendments of the United States Constitution, and under Title 28 of the United States Code, sections 1343, 2201 and 2202, and Title 42 of the United States Code, sections 1983 and 1988.

PARTIES

2. Plaintiff Ackerley Communications of Massachusetts, Inc. ("Ackerley") is a corporation organized under the laws of Massachusetts with a principal place of business in Stoneham, Massachusetts.

3. Defendant City of Cambridge is a municipal corporation in the Commonwealth of Massachusetts, with a principal place of business at Massachusetts Avenue, Cambridge, Massachusetts. The City of Cambridge is responsible for enacting, implementing, and enforcing the ordinance challenged herein.

4. Defendant Ralph E. Dunphy ("Dunphy") is an individual with a regular and ordinary place of business at Hampshire Street, Cambridge, Massachusetts. Dunphy is the Commissioner of the Department of Public Works in Cambridge, Massachusetts and is a defendant only in his official capacity. Dunphy would enforce the ordinance which is the subject of this action.

FACTS

5. Each and every act by defendants, as alleged herein, was done under color of statutes, ordinances, regulations, customs and usages of the Commonwealth of Massachusetts and the City of Cambridge.

6. Ackerley is lawfully engaged in the business of outdoor advertising, and maintains forty-six (46) signs on approximately thirty-two (32) structures in the City of Cambridge.

7. Ackerley's signs have, since 1991, displayed solely non-commercial messages, including political advertisements, public service announcements, editorial comment on public issues (by both public interest groups as well as by Ackerley itself) and other non-commercial uses. Prior to that time, Ackerley's signs were used to convey a mix of commercial and non-commercial messages.

8. Various merchants and store owners maintain a substantial number of on-premise signs in Cambridge. Such signs vary widely in height, placement and illumination and are used exclusively to advertise goods or services available for sale on the premises. The number of commercial on-premises signs in Cambridge is substantially greater than the number of non-commercial signs maintained by Ackerley.

9. The Outdoor Advertising Board ("OAB") is an agency of the Commonwealth of Massachusetts empowered by Mass. Gen. Laws ch. 93, § 29 to make and enforce rules and regulations for the control and restriction of off-premise signs. The OAB has no authority, pursuant to Mass. Gen. Laws ch. 93, § 30, to regulate commercial

on-premise signs.

10. All of Ackerley's signs are "off-premises" signs in that they do not advertise or identify businesses, goods or services available on the premises on which the signs are located.

11. All of Ackerley's Cambridge signs have existed at their present locations for at least 30-50 years. They are all located in areas zoned for business, commercial or industrial uses. They are all surrounded, to varying degrees, by commercial uses, heavy traffic, and assorted non-conforming uses whose removal is not and cannot legally be required.

12. Each of Ackerley's signs was erected pursuant to permits issued by the OAB and in full compliance with all OAB regulations. Thirty (30) of Ackerley's permits have been renewed by the OAB annually since issuance pursuant to repeated determinations by the OAB that such locations remain in full compliance with OAB regulations. The renewal of the remaining sixteen (16) permits are presently the subject of pending administrative appeals.

13. In 1991, the City of Cambridge enacted an amendment to Article 7.000 of its Zoning Ordinances. Article 7.000 relates to the regulation of signs. The ordinance, as amended, imposes new height, size and location restrictions, and other substantial limitations on outdoor signs. A copy of Article 7.00, as amended, is attached.

14. The amendment to Article 7.000 of the Zoning Ordinances enacted by the City of Cambridge added section 7.18.1 entitled "non-conforming signs." Section 7.18.1 requires that existing

signs that do not conform to various new restrictions must be removed within four years from the date of enactment of the ordinance. All of Ackerley's signs, and many commercial on-premises signs owned by other persons, do not comply with one or more of the restrictions contained in section 7.18.1.

15. On its face, section 7.18.1 appears to require the removal of non-conforming commercial on-premises signs as well as Ackerley's non-commercial signs.

16. Uses in lawful existence as of the date of enactment of a zoning change are generally allowed to continue as non-conforming uses subject to Mass. Gen. Laws ch. 40A, § 6. However, Mass. Gen. Laws ch. 40A, § 6, in conjunction with Mass. Gen. Laws ch. 93, § 30, specifically exempts from the statutory mandate of "grandfather" protection off premise signs only while conferring that protection on commercial on-premise signs as well as on all other lawful existing uses.

17. Section 7.18.1, in combination with Mass. Gen. Laws ch. 40A, § 6 and Mass. Gen. Laws ch. 93, § 30, operates to ban Ackerley's signs, which carry non-commercial messages, but to permit commercial on-premises signs which are identical to Ackerley's signs in every respect except for the messages they convey.

18. It was the purpose and intent of Cambridge that the ordinance would require the removal only of Ackerley's signs and not require the removal of any commercial, on-premise signs. During the enactment process, on-premise sign owners were

repeatedly reassured by Cambridge officials that, notwithstanding the wording of the ordinance, on-premise signs would not be affected. The ordinance was enacted by the Cambridge City Council on the explicit understanding that it would not affect on-premise, commercial signs and it would not have been enacted in the absence of this exemption.

19. In purpose and practical effect, Section 7.18.1 impermissibly discriminates against non-commercial speech in favor of commercial, on-premise speech.

20. Section 7.18.1, in combination with state statutes, unlawfully targets signs, a medium of communication, for removal.

21. The amendment to the City of Cambridge Zoning Ordinances was motivated in substantial part by hostility to some or all of the messages conveyed by the signs, including advertising of various lawful, but unpopular, products. The amendment was not solely or primarily intended to advance the aesthetic interests recited in its preamble.

22. Each of Ackerley's signs that would have to be removed pursuant to Section 7.18.1 is in an area zoned for business, commercial or industrial use, and is entirely surrounded by commercial uses, heavy traffic and non-conforming uses whose removal is not, and cannot legally be, required. Removal of the Ackerley signs in the absence of any plan, legal ability, requirement or intent to otherwise improve the areas surrounding each sign would have only a minimal impact on the surrounding area and, therefore, would fail to directly and materially advance any

substantial governmental interest.

23. Ackerley has a lease or other tenancy arrangement for each of the billboard locations it maintains in the City of Cambridge. Each lease grants to Ackerley a valuable and enforceable right to erect and maintain a billboard on the leased premises.

24. Ackerley has invested substantial amounts of money in order to maintain its billboard structures, renew its permits, renew its leases, advertise its billboard space, and otherwise lawfully pursue its outdoor advertising business. Ackerley has made such investment with the expectation that its use of its property would continue to be lawful and valid.

25. Ackerley's signs, permits and leases have no economically viable use unless they are used to support and maintain billboard advertising at their present locations.

26. Section 7.18.1 requires the removal of uses lawfully erected and in lawful existence prior to enactment and thus constitutes an unlawful taking of property without compensation.

COUNT I

27. Paragraphs 1-26 are incorporated herein by reference and made part of this Count.

28. Section 7.18.1, in the context of existing state statutes, is a content-based regulation of expressive activity.

29. The First Amendment requires that non-commercial speech must receive at least as much protection and deference as commercial speech.

30. Section 7.18.1, in combination with Mass. Gen. Laws ch. 40A, § 6 and Mass. Gen. Laws ch. 93, § 30, has the effect of prohibiting non-commercial speech displayed on Ackerley's signs, while permitting on-premises commercial speech, in violation of the First and Fourteenth Amendments to the United States Constitution.

31. Section 7.18.1, in the context of existing state statutes governing signs and as applied to each of Ackerley's signs, improperly limits non-commercial speech while permitting commercial speech to continue unrestricted in the same locations.

32. Such a suppression of non-commercial speech in favor of commercial speech constitutes a violation of the First and Fourteenth Amendments to the United States Constitution.

COUNT II

33. Paragraphs 1-32 are incorporated herein by reference and made part of this Count.

34. Section 7.18.1, in combination with Mass. Gen. Laws ch. 93, § 30 is a content-based restriction on speech.

35. Removal of the Ackerley signs, in the absence of any plan, legal ability or intent to regulate other non-conforming signs or uses or otherwise improve the surrounding areas, would not significantly advance any substantial governmental interest.

36. The substantial restriction of speech imposed by Section 7.18.1 in the absence of a real nexus between the ban and any significant accomplishment of valid governmental objectives, constitutes a violation of the First and Fourteenth Amendments to the United States Constitution.

COUNT III

37. Paragraphs 1-36 are incorporated herein by reference and made part of this Count.

38. The Fifth Amendment prevents any governmental entity from taking private property for public use without just compensation.

39. Section 7.18.1, in combination with Mass. Gen. Laws ch. 40A, § 6 and Mass. Gen. Laws ch. 93, § 30, denies all of the economically viable, beneficial or productive uses to which Ackerley's signs, permits and leases in Cambridge can be put, and deprives Ackerley of its reasonable, investment-backed expectations.

40. Section 7.18.1, in combination with Mass. Gen. Laws ch. 93, § 30 and as applied to Ackerley's signs, does not substantially advance legitimate state interests.

41. Thus, section 7.18.1, in combination with Mass. Gen. Laws ch. 40A, § 6 and Mass. Gen. Laws ch. 93, § 30, deprives Ackerley of its property without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

COUNT IV

42. Paragraphs 1-41 are incorporated herein by reference and made part of this Count.

43. Any unlawful deprivation of the freedom of speech guaranteed by the United States Constitution constitutes irreparable harm.

44. Enforcement of Section 7.18.1, in combination with Mass. Gen. Laws ch. 40A, §6 and Mass. Gen. Laws ch. 93, §30, would

unlawfully deprive Ackerley of its constitutionally guaranteed right to engage in non-commercial speech.

45. Unless granted the equitable relief requested herein, Ackerley will suffer immediate and irreparable harm. Ackerley has no adequate remedy at law to prevent the infliction of irreparable injury resulting from the deprivation of its rights guaranteed under the United States Constitution. The balance of harms favors granting the requested equitable relief, and such relief is favored by the public interest.

WHEREFORE, plaintiff respectfully requests the following relief:

- A. that the court declare that Section 7.18.1, on its face, in its effect and as applied to each sign in question, violates the First, Fifth and Fourteenth Amendments to the United States Constitution;
- B. that the court enter a preliminary injunction to restrain defendants or their officers, agents, servants, employees and all other person acting for or in participation with them from taking any action to enforce section 7.18.1;
- C. that the court enter a permanent injunction to restrain defendants or their officers, agents, servants, employees and all other person acting for or in participation with them from taking any action to enforce section 7.18.1;
- D. that the court award to plaintiff its costs in this action, including a reasonable attorney's fee, as provided in 42 U.S.C. §1988(b); and
- E. that the court award such other and further relief as it

may deem just and proper.

JURY DEMAND

Plaintiff hereby requests a trial by jury of all issues so triable.

Of counsel:

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ACKERLEY COMMUNICATIONS OF
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ATF122DE/2573-4



City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-One

AN ORDINANCE

In amendment to the ordinance entitled "Zoning Ordinances of the City of Cambridge."

Be it ordained by the City Council of the City of Cambridge as follows:

That Article 2.000 entitled "Definitions" be amended by deleting the definitions for Signs; Signs, area of; Signs, related definitions; and Signs, types of and substituting thereof new definitions.

Also by deleting Article 7.000 in its entirety and substituting in place thereof a new Article 7.000 entitled "Signs and Illuminations".

In City Council June 10, 1991.

Passed to be ordained as amended by a yea and nay vote:- Yeas 6;
Nays 3; Absent 0.

Robert W. Healy, City Manager.

ATTEST:- Joseph E. Connarton, City Clerk.

NOTE: Pursuant to the provisions of General Laws, Chapter 40, Section 32A, Tercentenary Edition, the ordinance as aforesaid which exceeds in length eight octavo pages of ordinary book print may be summarized for publication in a newspaper of general circulation in the city with the further provision that said Zoning Ordinance may be examined and obtained at the City Clerk's Office during the office hours and that any objection to its invalidity by reason of any defect in the procedure of adoption may only be made within ninety days after the posting or the second publication.

ATTEST:- Joseph E. Connarton, City Clerk.

MAY 21, 1991

REVISED ORDINANCE AS RECOMMENDED BY THE PLANNING BOARD

7.10 SIGN ORDINANCE

7.11 FINDINGS AND PURPOSES

- 7.11.1 FINDINGS
- 7.11.2 PURPOSES

7.12 APPLICABILITY

7.13 DEFINITIONS

- 7.13.1 SIGN
- 7.13.2 TYPES OF SIGNS
- 7.13.3 ILLUMINATION
- 7.13.4 PREMISES
- 7.13.5 SIGN FRONTAGE
- 7.13.6 FIRST FLOOR ESTABLISHMENT

7.14 CALCULATION OF AREA OF SIGNS

7.15 GENERAL LIMITATIONS ON SIGNS

7.16 PERMITTED SIGNS

7.16.1 EXEMPT, TEMPORARY AND NON COMMERCIAL SIGNS

- 7.16.11 EXEMPT SIGNS
- 7.16.12 TEMPORARY SIGNS
- 7.16.13 NONCOMMERCIAL SIGNS

7.16.2 ALL OTHER PERMITTED SIGNS

- 7.16.21 SIGNS IN RESIDENTIAL DISTRICTS
- 7.16.22 SIGNS IN BUSINESS, OFFICE, INDUSTRIAL

DISTRICTS

- 7.16.3 APPLICATION OF SIGN FRONTAGE FORMULA
- 7.16.4 SIGNS ON LOTS WITHOUT BUILDINGS
- 7.16.5 SIGNS IN PLANNED UNIT DEVELOPMENTS

7.17 NONCOMMERCIAL MESSAGES

7.18 NONCONFORMING SIGNS

7.19 DESIGN CONSULTATION PROCEDURE

[NOTE: Underlined portions of the text highlight changes made to the text of the original sign ordinance revision filed in November of 1990 and not adopted by the City Council]

Amend the text of the Zoning Ordinance of the City of Cambridge by doing the following.

- A. In Article 2.000 - Definitions, delete the definitions for *Signs*; *Signs, area of*; *Signs, related definitions*; and *Signs, types of* and substitute therefor the following:

Sign. Sign shall mean and include any permanent or temporary structure, device, letter, words, model, banner, pennant, insignia, trade flag, or representation used as, or which is in the nature of, an advertisement, announcement, or direction and which is designed to be seen from the outside of a building.

Sign frontage. The length of a building, or the length of a separate and distinct ground floor establishment, abutting a street. The length of the building or ground floor establishment shall be that as defined in Section 5.24.4 of this Ordinance.

Signs, illumination of.

1. Natural - natural or ambient light.
2. External - artificial illumination from a light source which provides light directly onto the sign face, or portions of the sign face, or its background, which light is then reflected back to the viewer.
3. Internal - artificial illumination from a light source located behind the sign face and which transmits light through the sign face or portions of the sign face to the viewer. Exposed neon tubing and similar lighting shall be considered internal illumination.
4. Indirect - placement of the artificial light device such that the source of light cannot be seen from a public way.

Signs, types of.

1. Free-Standing Sign - A sign that is attached to or part of a completely self-supporting structure and which is not attached to any building or other structure.
2. Projecting Sign - Any sign, other than a wall sign or free standing sign, that is attached to and projects from a building face. A projecting sign shall include marquee, canopy, and awning-mounted signs.
3. Wall Sign - Any sign affixed in such a way that its exposed face and all sign area is parallel or approximately parallel to the plane of the building

which it attached. A wall sign shall be considered a projecting sign if the sign face projects more than twelve (12) inches from the face of the building. Wall signs shall include signs located on or behind the surface of windows; such a sign may not in total area exceed thirty (30) percent of the glass area of any window to which it is appurtenant.

Signs, related definitions.

1. Ground floor establishment - A separate and distinct use, business, enterprise, or institution having a separate public entrance to the outside of a building, which entrance is at grade or within six feet of grade as measured at the street line.
2. Premises - That part of a lot, building or structure occupied by a business, enterprise, institution, or other person and which is distinct and separate from the place occupied by any other business, enterprise, institution or other person.

B. In Article 11.000, Section 11.60, delete the existing Subsections 11.66 - 11.66.7 in their entirety and renumber subsequent Subsections as appropriate.

C. In Article 14.000, delete the existing Section 14.60 - Signs in its entirety and substitute therefor a new Section 14.60 to read as follows:

14.60 - Signs

Signs in the MXD District shall be regulated as required in Article 7.000. For purposes of Section 7.10 the MXD District shall be considered a business, office and industrial district.

D. Delete Article 7.000 in its entirety and substitute therefor the following:

7.000 SIGNS AND ILLUMINATION

- 7.10 SIGNS
- 7.20 ILLUMINATION
- 7.30 SEVERABILITY

7.10 SIGNS

7.11 FINDINGS AND PURPOSE

7.11.1 Findings

This Article is based upon the following findings:

- A. The City of Cambridge has been and is now taking appropriate action, through exercise of its zoning and other municipal authority, to improve the aesthetics and physical appearance of the City by means including the regulation of signs.
- B. The regulation of signs is necessary in order to preserve and enhance the substantial governmental interests of the City of Cambridge in its natural, scenic, historic, cultural, and aesthetic qualities.
- C. There is a substantial governmental interest in enhancing the physical appearance of all parts of the City of Cambridge, including residential, commercial, and industrial areas.
- D. Regulating signs will improve the City's appearance; make the City's commercial, residential, and industrial areas more attractive for commercial and residential uses and commercial development; and enhance the economic climate of the City.
- E. The regulations set forth in this Article will directly advance the public interest in aesthetics and other qualities of life by preserving and enhancing the appearance of residential, commercial and industrial buildings and areas; preserving and enhancing the appearance of public streets, parks and other public properties; and minimizing the intrusiveness of sign structures.
- F. Nonconforming off-premise signs, which traditionally have been used primarily to advertise commercial goods and services not available on the same premises, have a significantly greater adverse aesthetic impact than on premises signs because of their larger sizes, greater heights, less attractive appearances, and/or more intrusive locations.
- G. The public interest is served by use of signs by businesses and services to identify their premises, or the products or services there available, or to display noncommercial messages.
- H. The City finds that it is in the City's interest to require removal of certain nonconforming signs after the grace period provided by Section 7.18 has expired.
- I. The City in enacting this ordinance does hereby adopt the findings, conclusions, and recommendations of the Planning Board in its report dated June 4, 1991.

7.11.2 Purposes

The purposes of this Article are to preserve and enhance the substantial interests of the City of Cambridge in the appearance of the City; to preserve and enhance the public interest in aesthetics; to preserve and increase amenities of the City; to control and reduce visual clutter and blight; and to carry out the authority conferred by General Laws Chapter 40A.

7.12 APPLICABILITY

No signs or advertising devices of any kind or nature shall be erected or maintained on any premises or affixed to the inside or outside of any structure to be visible from the outside of any structure except as specifically permitted in this Article 7.000.

7.13 DEFINITIONS

7.13.1 Sign - Sign shall mean and include any permanent or temporary structure, device, letter, words, model, banner, pennant, insignia, trade flag, or representation used as, or which is in the nature of, an advertisement, announcement, or direction and which is designed to be seen from the outside of a building.

7.13.2 Types of Signs:

- A. Free-Standing Sign - A sign that is attached to or part of a completely self-supporting structure and which is not attached to any building or other structure.
- B. Projecting Sign - Any sign, other than a wall sign or free standing sign, that is attached to and projects from a building face. A projecting sign shall include marquee, canopy, and awning-mounted signs.
- C. Wall Sign - Any sign affixed in such a way that its exposed face and all sign area is parallel or approximately parallel to the plane of the building to which it is attached. A wall sign shall be considered a projecting sign if the sign face projects more than twelve (12) inches from the face of the building. Wall signs shall include signs located on or behind the surface of windows.

7.13.3 Illumination:

- A. Natural - natural or ambient light.
- B. External - artificial illumination from a light source which provides light directly onto the sign face, or portions of the sign face, or its background.

which light is then reflected back to the viewer.

- C. Internal - artificial illumination from a light source located behind the sign face and which transmits light through the sign face or portions of the sign face to the viewer. Exposed neon tubing and similar lighting shall be considered internal illumination.
- D. Indirect - placement of the artificial light device such that the source of light cannot be seen from a public way.

7.13.4 Premises:

That part of a lot, building or structure occupied by a business, enterprise, institution, or other person and which is distinct and separate from the place occupied by any other business, enterprise, institution or other person.

7.13.5 Sign Frontage:

The length of a building, or the length of a separate and distinct first floor establishment, abutting a street. The length of the building or ground floor establishment shall be that as defined in Section 5.24.4 of this Ordinance.

7.13.6 Establishment, Ground Floor:

A separate and distinct use, business, enterprise, or institution having a separate public entrance to the outside of a building, which entrance is at grade or within six feet of grade as measured at the street line.

7.14 CALCULATION OF AREA AND HEIGHT OF SIGNS

- A. For a free-standing sign or sign attached to a building, the area of the sign shall be considered to include all lettering, wording, and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed, but not including any supporting framework and bracing which are incidental to the display itself.
- B. For a sign painted upon or applied to a building, the area of the sign shall be considered to include all lettering, wording, and accompanying designs or symbols, together with any background of a color different from that of the building.
- C. Where the sign consists of individual letters or symbols attached to or painted on a surface, wall or window, the area of the sign shall be considered to be that of the smallest rectangle or other geometric shape

which encompasses all letters and symbols.

- D. Only one face of a two-sided sign shall be counted in computing the area of a sign, provided the sign faces are parallel and of equal size.
- E. The height of a sign shall be the vertical distance between the top of a sign and the mean grade of the ground adjoining that portion of the building to which the sign is attached; or that ground within ten feet of a free-standing sign.

7.15 GENERAL LIMITATIONS FOR ALL SIGNS PERMITTED IN THE CITY OF CAMBRIDGE

- A. Signs shall be stationary and may not contain any visible moving or moveable parts.
- B. All lighting shall be indirect, continuous, and installed in a manner that will prevent direct light from shining onto any street or adjacent property. Flashing or intermittent light creating flashing, moving, changing or animated graphics is prohibited, except that a warning sign, a device intended to tell the time and temperature, or official traffic and directional signs may have intermittent illumination.
- C. No illumination shall be permitted after 11 P.M. in any Residence A, B, C, or C-1 district.
- D. No sign, portion of a sign, or structural support for such sign may extend above the lowest point of the roof of a building, except that for one-story buildings having a continuous parapet above the lowest point of the roof, signs may be placed below the highest point of such parapet rather than below the lowest point of the roof.
- E. Except as may be provided elsewhere in this ordinance for temporary signs, all signs shall be permanently mounted on a building or structure or permanently implanted in the ground. All graphic images on a sign shall be of durable material.

7.16 PERMITTED SIGNS

The signs and advertising devices which are permitted in the City of Cambridge are set out below.

7.16.1 Exempt, Temporary and Noncommercial Signs

The following signs shall be exempt from restrictions as to type, location, height,

and size of signs or limitations as to the total area of signs permitted on a lot or business, as those limits are set forth in Section 7.16.2. Except as otherwise noted, such signs shall be naturally or externally illuminated only and shall be subject to all other provisions of this Article 7.000.

7.16.11 Exempt Signs

A. In all districts:

1. Signs not visible from a public way. (All illumination permitted.)
2. Official traffic and directional signs. (All illumination permitted.)
3. Signs necessary for public safety and convenience not exceeding six (6) square feet per sign face, provided such signs contain no advertising.
4. Flags of a city, state or country.
5. Memorials such as grave stones and corner stones.
6. Historical site plaques installed or approved by a public agency or duly established historical society.
7. Window display of merchandise or signs incidental to such display.

B. In business, office and industrial districts:

1. Permanent nonilluminated signs behind the glass of a window above the ground floor, provided:
 - (a) The total area of the sign(s) does not exceed 20% of the area of the glass of the window;
 - (b) The window is part of the premises to which the sign is accessory;
 - (c) The sign consists of individual letters or symbols affixed to the window or mounted on a clear, transparent background;
 - (d) The individual symbols or letters do not exceed 6" in height.
2. Permanent nonilluminated signs mounted on awnings on the ground floor of a building provided:

- (a) The total area of the sign does not exceed 2 square feet and the height of individual symbols or letters does not exceed 6";
- (b) The sign consists of individual letters or symbols affixed to the fabric of the awning;
- (c) No other graphic material appears on the awning.

7.16.12 Temporary Signs

- A. One for sale or for rent sign not exceeding six (6) square feet in residential districts or twenty (20) square feet in nonresidential districts and advertising only the premises on which the sign is located.
- B. Building contractor's, promotional, leasing and other similar signs maintained on a lot during construction on that lot not exceeding in total area that area permitted by the application of the formula: one (1) square foot for each linear foot of sign frontage on the lot (after construction), or one hundred (100) square feet in business, office and industrial districts or twenty (20) square feet in residential districts, whichever is smaller. However, where a specific sign dimension is mandated by any city, state, or federal subsidy or support program providing assistance to the construction on the lot, which sign is greater in area than would be permitted in this paragraph, then the larger sign shall be permitted.
- C. Temporary signs of a noncommercial nature, including political signs of any kind, not exceeding twenty (20) square feet in area.
- D. In business, office, and industrial districts, temporary signs pertaining to special sales or events lasting no more than fifteen days, affixed to the inside of windows, provided that their total area does not exceed 30% of the area of the window glass to which they are affixed.

7.16.13 Non Commercial Signs

In all districts, noncommercial signs which contain only noncommercial messages, including political messages of any kind, may be displayed, provided the sign does not exceed ten (10) square feet in area. This Section 7.16.13 shall not limit the effect of Section 7.17 on the display of noncommercial messages on permitted signs.

7.16.2 All Other Permitted Signs

7.16.21 Signs in Residence Districts

A. Identification Sign for Residential Uses:

Total Area of Signage Permitted per Lot: as permitted below.

Maximum Permitted

- Area of sign: 1 sq. ft./dwelling unit to a maximum of 10 sq.ft./dwelling
- Number of signs: One (1)/dwelling
- Height of sign: 4 ft. if free-standing; 10 ft. if on a building
- Location: On building or a minimum of 3 feet from street line if free standing.
- Illumination: Natural or external lighting only
- Limitations: For the display of street number, name of occupant of the premises, and/or identification of an accessory professional office or other permitted accessory uses including customary home occupation.

B. Identification Sign, Bulletin Board or Announcement Board for Permitted Nonresidential Uses Other than Permitted Hotel and Office Uses.

Maximum Permitted

- Area of sign: One at 10 sq. ft., one at 20 sq. ft.
- Number of signs: Two/building
- Height of sign: 4 ft. if free-standing
- Location: On building or minimum of 1/2 the depth of required front yard if free-standing
- Illumination: Natural or external lighting only

C. Signs for Lawfully Maintained Nonconforming Uses.

Total Area of Signage Permitted per Lot: One (1) sq. ft. for each linear foot of sign frontage on the lot or 10 sq. ft. per ground floor establishment, whichever is less. However, individual signs shall be further limited as set forth below.

Maximum Permitted

- Area of sign: 10 sq. ft.
- Number of signs: One per ground floor establishment plus one per building
- Height of sign: 20 ft. if attached to building, 4 ft. if free-standing
- Location: On building or 1/2 depth of required front yard if free-standing
- Illumination: Natural or external lighting only

D. Permitted Hotel and Office Use:

Total Area of Signage Permitted Per Lot: One (1) sq. ft. for each linear foot of sign frontage on the lot or 200 sq. ft. per building, whichever is less.

Maximum Permitted

- Area of sign: As permitted in Section 7.16.22
- Number of signs: As permitted in Section 7.16.22
- Height of sign: As permitted in Section 7.16.22
- Illumination: Natural or external lighting only

7.16.22 All Business, Office, and Industrial Districts

Total Area of Signage Permitted per Lot: One and a half (1 ½) sq. ft. for each linear foot of sign frontage on the lot for sign frontage located one hundred (100) feet or less from the street line; provided that the total area of all signs on the exterior of the building, including free standing signs, shall not exceed one (1) square foot for each linear foot of sign frontage; or two (2) sq. ft. for each linear foot of sign frontage on the lot for sign frontage located more than one hundred feet from all street lines from which the sign frontage is visible. However, signs shall be further limited as set forth below.

Maximum Permitted

A. Free-Standing Signs:

- Area of sign: 30 sq. ft.

Number of signs: Two, provided the total area of all such signs shall not exceed 30 sq. ft. on any lot.

Height of sign: 15 ft.

Illumination: Natural or external lighting only

B. Projecting Signs:

Area of sign: 13 sq. ft.

Number of signs: One (1)/ground floor establishment, plus one (1) for any public building entrance not serving a ground floor establishment

Height of sign: 20 ft., provided it is below the sill line of the second floor windows or the lowest point of the roof, whichever is less

Illumination: Natural or external lighting only

C. Wall Signs:

Maximum Permitted

Area of sign: No individual sign may exceed sixty (60) sq. ft. in area. However, for any building or ground floor establishment having a sign frontage less than sixty (60) ft., the maximum area of any individual sign shall be the product of the formula: sign frontage x one (1) sq. ft.

Number of signs: Not Limited

Height of sign: 20 ft., provided it is below the sill line of the second floor windows or the lowest point of the roof, whichever is less

Illumination:

1. Natural or external lighting;
2. Exposed neon or gas ultra-violet tube type lighting behind the glass of windows, not exceeding five (5) sq. ft. in area;
3. Other internal illumination including any other exposed neon type lighting not included in (2) above under the following conditions:

- a. Either the vertical or horizontal dimension of the sign does not exceed thirty (30) inches; and
- b. The sign:
 - (1) is located behind the glass of a window, or
 - (2) is mounted such that the sign face does not extend more than two (2) inches beyond the plane of that portion of the building facade to which the sign is attached, or if extending more than two (2) inches beyond the plane of the building, only that portion of the sign face consisting of letters and numerals is illuminated, or
 - (3) consists of independent, individual letters or graphic symbols mounted directly to the surface of the building facade to which the sign is attached or is mounted on an unilluminated raceway or channel which is then directly attached to the building facade.

D. Special Use Signs:

1. Wall and Free-Standing Signs Accessory to Theaters and Cinemas.

A wall or free-standing sign accessory to a theater or cinema which announces the current program at the theater or cinema shall not be subject to the limitations of paragraphs A or C above or of Section 7.16.3, paragraphs A and B, provided the following conditions are met.

(a) The maximum area does not exceed one hundred (100) square feet for all signs not meeting the requirements of paragraphs A and

C. of this Section 7.16.22.

(b) If internally illuminated, the maximum area shall be limited to forty (40) square feet for a single theater, plus an additional twenty (20) square feet for each additional theater served by the same sign, up to the maximum permitted in paragraph (a) above.

(c) The maximum height of the free-standing sign shall not exceed twenty (20) feet.

(d) The total area of all signs on the lot shall not exceed the Total Area of Signage Permitted per Lot as limited in this Section 7.16.22.

2. Wall signs for Hotels and Motels.

One or more wall signs accessory to a hotel or motel not exceeding two hundred (200) square feet in total area or one hundred (100) square feet for any individual sign shall not be subject to the limitations of paragraph C above or of Section 7.16.3, paragraphs A and B, provided the following conditions are met.

(a) If internally illuminated, the sign shall consist of independent letters or graphic symbols mounted directly to the surface of the building to which the sign(s) is attached.

7.16.3 Application of Sign Frontage Formula

Where the total permitted area of all signs on a lot or building is determined by the product of the formula: sign frontage x one (1), one and one half (1.5), or two (2) sq. ft., the following rules shall apply.

- A. The total area of signs accessory to a ground floor establishment shall not exceed that determined by the application of the sign frontage formula to that ground floor establishment. Where two ground floor establishments occupy the same sign frontage the total permitted area of signs shall be shared equally by the two establishments.

- B. The total area of all signs on any single building wall shall not exceed that determined by the application of the formula to the sign frontage for that wall; provided, a wall having no sign frontage may share the sign area permitted on any wall of the building having sign frontage.

7.16.4 Sign Area For Lots Having No Buildings

In any district where the number or area of signs permitted on a lot is determined by the number of buildings located on said lot, one building shall be assumed to be present for the purposes of Section 7.10 for any use not contained within a building.

Where the total area of signs permitted on a lot is determined by the application of the sign frontage formula, a maximum of 30 sq. ft. of signs shall be permitted on any lot having no sign frontage.

7.16.5 Signs Permitted in Planned Unit Development Districts

The sign requirements of the base zoning district shall apply, except that when business, office or industrial uses are authorized by the Planned Unit Development special permit the requirements of Section 7.16.22 shall apply to those portions of the Planned Unit Development containing those uses, in lieu of the base district requirements.

7.17 NONCOMMERCIAL MESSAGES

Any sign permitted under this Article may contain, in lieu of or in addition to any other copy, any noncommercial message.

7.18 NONCONFORMING SIGNS

7.18.1 Signs Required to be Removed

The following nonconforming signs shall be removed within four (4) years from June 10, 1991, or the first date that the sign became nonconforming, whichever is later:

- A. Signs located on rooftops.
- B. Free-standing signs in excess of thirty (30) square feet in area.
- C. Wall signs in excess of sixty (60) square feet in area.
- D. Projecting signs in excess of ten (10) square feet in area.

7.18.2 Other Signs

- A. Nonconforming signs not covered by Section 7.18.1 above may be altered, provided the basic supporting structure is not altered and further provided that any alterations made to a sign within the past three (3) years do not exceed fifty (50%) percent of the current replacement value of the sign.
- B. Notwithstanding the limitations of Section 7.18.2 A above, where it is proposed to replace an existing sign where the ground floor establishment or the building as a whole contains a total area of legal non-conforming signs exceeding the maximum permitted under this Article 7.000, said new sign may be installed and may contain an area of six (6) square feet or that area permitted by the application of the formula: One (1) sq. ft. x sign frontage of the ground floor establishment, to the establishment to which the sign is accessory, whichever is greater; provided, the total area of signs accessory to the ground floor establishment or the building is not increased and all other size limitations for signs are met.

7.19 COMMUNITY DEVELOPMENT DEPARTMENT CERTIFICATION

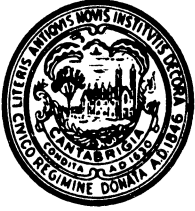
All proposals for signs exceeding twenty-five (25) square feet in area shall be submitted to the Community Development Department for certification. The applicant for such a sign certification shall submit all information necessary for the Department to review the proposed sign for conformance to the requirements of this Article 7.000. The Department shall, within ten (10) business days, provide the applicant with a certification that the proposed sign conforms to the requirements of Article 7.000 or shall notify the applicant that the requirements have not been met. Said certification shall accompany the application for a building permit for the sign to the Inspectional Services Department.

7.20 ILLUMINATION

In Residence A, B, C, and C-1 districts no outdoor floodlighting or decorative lighting, except lighting primarily designed to illuminate walks, driveways, outdoor living areas, or outdoor recreational facilities, and except temporary holiday lighting in use for not longer than a four week period in any calendar year, shall be permitted. Any permanent lighting permitted by the preceding sentence shall be continuous, indirect, and installed in a manner that will prevent direct light from shining onto any street or adjacent property.

7.30 SEVERABILITY

The City by enacting this Article intends to regulate signs in order to carry out and achieve the findings and purposes of this Article. The City also wishes to require removal of certain non conforming signs to the maximum extent lawfully possible and in accordance with the effective date and removal schedule set forth in Section 7.18.1. Therefore, should any part of the City's Ordinance be declared invalid by a court of competent jurisdiction, then it is the specific intent of the City that the remainder of the Ordinance not specifically declared invalid shall continue in full force and effect as if and when originally enacted by the City.



H.

CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

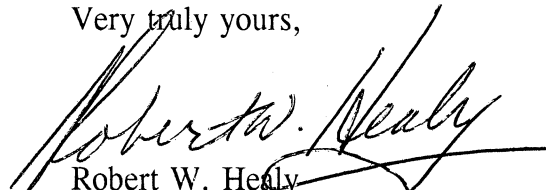
RICHARD C. ROSSI
Deputy City Manager

September 18, 1995

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 16, regarding the City's litigation on the provisions of the Sign Ordinance which bans billboards, received from City Solicitor Russell B. Higley.

Very truly yours,


Robert W. Healy
City Manager

RWH/mec
attachment

Consent Agenda # 4 5-287

Response to Awaiting Report Item Number
Sixteen, regarding the City's litigation
on the provisions of the Sign Ordinance
which bans billboards.

*for original order see
1995 - City manager
Requests # 127.*

In City Council,

Sept. 18, 1995

*Council moved to
Executive Session
8-1-0.*

*Report Placed on
file*