

CITY OF NEWPORT

ORDINANCE NO. 2037

**AN ORDINANCE AMENDING CHAPTER 10.10 OF THE NEWPORT
MUNICIPAL CODE (ORDINANCE NO. 1943, AS AMENDED)
RELATING TO ELECTRONIC MESSAGE SIGNS**

Findings:

1. Chapter 10.10 of the City of Newport Municipal Code (Ordinance No. 1943, as amended) contains standards regulating the time, place and manner in which signs may be constructed in order to protect and promote the health, safety, and welfare of the public and to improve the aesthetic appearance of the City.
2. After the adoption of Newport Municipal Code ("NMC") Chapter 10.10, technology has advanced to allow types of signage, including electronic message signs, which were not contemplated at the time the City originally established its signage regulations.
3. Although NMC Chapter 10.10 is not technically part of the Newport Zoning Ordinance ("NZO"), the City Council finds that the signage regulations contained in this chapter are effectively "land use regulations" for purposes of ORS 197.015(11) because they implement the City's acknowledged comprehensive plan and are closely tied to the use and development of property. Accordingly, the Council finds that it is both consistent with state law and in the public interest to process the Amendment as a proposed text amendment to the NZO, which will provide additional notice, review, and opportunity for public comment than the City's standard ordinance adoption procedures.
4. Pursuant to NZO 2-6-1.010.D, the City reviews proposed NZO text amendments under the City's Type IV review process. This process requires a public hearing and recommendation by the City Planning Commission followed by the Council conducting a public hearing and making a legislative decision on the request.
5. Pursuant to NZO 2-5-5.010, a property owner or authorized representative may initiate a text amendment by petitioning the City. The Council finds that ThomasFox Properties, LLC ("Applicant"), an owner of property in the City, has filed the application form and paid the applicable fee to initiate this request. Therefore, the Council finds that the Amendment has been properly initiated.
6. On or about January 10, 2012, the City provided notice on the applicable form to the Oregon Department of Land Conservation and Development ("DLCD"), more than 45 days prior to the initial legislative public hearing for the Amendment before the Planning Commission. This mailing satisfied the City's pre-hearing obligations for notice to DLCD.
7. On February 17, 2012 and April 27, 2012, the City published notice of the Planning Commission and City Council hearings relating to the Amendment. The published notice ran in

the in the Newport News-Times and listed the dates, times, and places of the Planning Commission and Council hearings, which was March 26, 2012 and May 7, 2012, respectively. These notices satisfied the City's pre-hearing obligations for notice to the public.

8. On January 9, 2012 and February 13, 2012, the Planning Commission held work sessions on the Amendment. They reviewed sample codes from other jurisdictions that have adopted standards for electronic message signs and viewed illustrations and video of electronic message signs that have been installed pursuant to those codes. Following those discussions, the Commission chose to consider language that expands the proposed Amendment to allow electronic message signs in all commercial and industrial zones with limitations. Specifically, the Commission proposed a trade-off that reduces freestanding sign heights to 20 feet and limits properties to one freestanding sign where an electronic message sign is proposed. The applicant's proposal that the display area for electronic message signs be limited to 35% of the allowable sign area per sign face, that information be displayed for at least five (5) minutes before a change is made, and that when a change occurs the entire display must turnover within 2 seconds were accepted, as were other, more minor elements of the proposal. The Commission also recommended changes to allow the Council to set fees for signs by resolution.

9. On March 26, 2012, the Planning Commission conducted a public hearing to discuss the Amendment. The entire Community Development Department file on the application was physically before the Planning Commission. The Planning Commission did not reject any part of the Community Development Department file. Derrick I. Tokos, AICP, then presented the City Community Development Department staff report ("Staff Report"), which included a description of the proposed amendment and relevant approval standards. No testimony was provided in favor or in opposition to the Amendment. At the conclusion of the hearing, the Planning Commission closed the public hearing and discussed the Amendment. A motion was then made, and seconded, to recommend that the Council approve the legislative change and adopt the Amendment based upon substantial evidence in the record as a whole. The Planning Commission voted to approve the motion.

10. On May 7, 2012, the Council opened a public hearing on the Amendment. The entire Community Development Department file on the application was physically before the Council. The Council did not reject any part of the Community Development Department file. Mr. Tokos then presented the Staff Report. Following the presentation, the Council accepted public testimony. Testimony was received from Frank Geltner in favor of the Amendment. Testimony was provided by Carla Perry, Joyce Gaffin, and Janet Webster in opposition to the Amendment. Written comments in opposition were received from Ms. Perry and Fran Recht. Brett Fox, testified on behalf of ThomasFox Properties in favor of the Amendment. At the conclusion of public testimony, the Council closed the public hearing and discussed the Amendment. Based upon the Planning Commission recommendation, the evidence before the Council (which included the evidence before the Planning Commission), and oral and written testimony presented to the Council, a motion was made, and seconded, to direct staff to prepare an ordinance and findings of fact in support of the Amendment for Council consideration at its May 21, 2012 meeting. The Council desired that the ordinance clarify that electronic message signs will not be permitted within marine zoning districts and the Historic Nye Beach Commercial District. They also expressed an interest in language requiring electronic message signs be turned off when businesses are closed. The Council voted to approve the motion.

11. On May 21, 2012, the Council considered the ordinance and findings of fact in support of the Amendment. After deliberation, a motion was made and seconded to adopt the ordinance and findings of fact. The council voted to approve the motion.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The above findings and those outlined in Exhibit "A," are hereby adopted as support for the Amendments, below.

Section 2. Chapter 10.10 of Ordinance No. 1943 (as amended), Signs, is repealed in its entirety and replaced with a new Chapter 10.10, as shown in Exhibit "B."

Section 7. This ordinance shall take effect 30 days after its adoption.

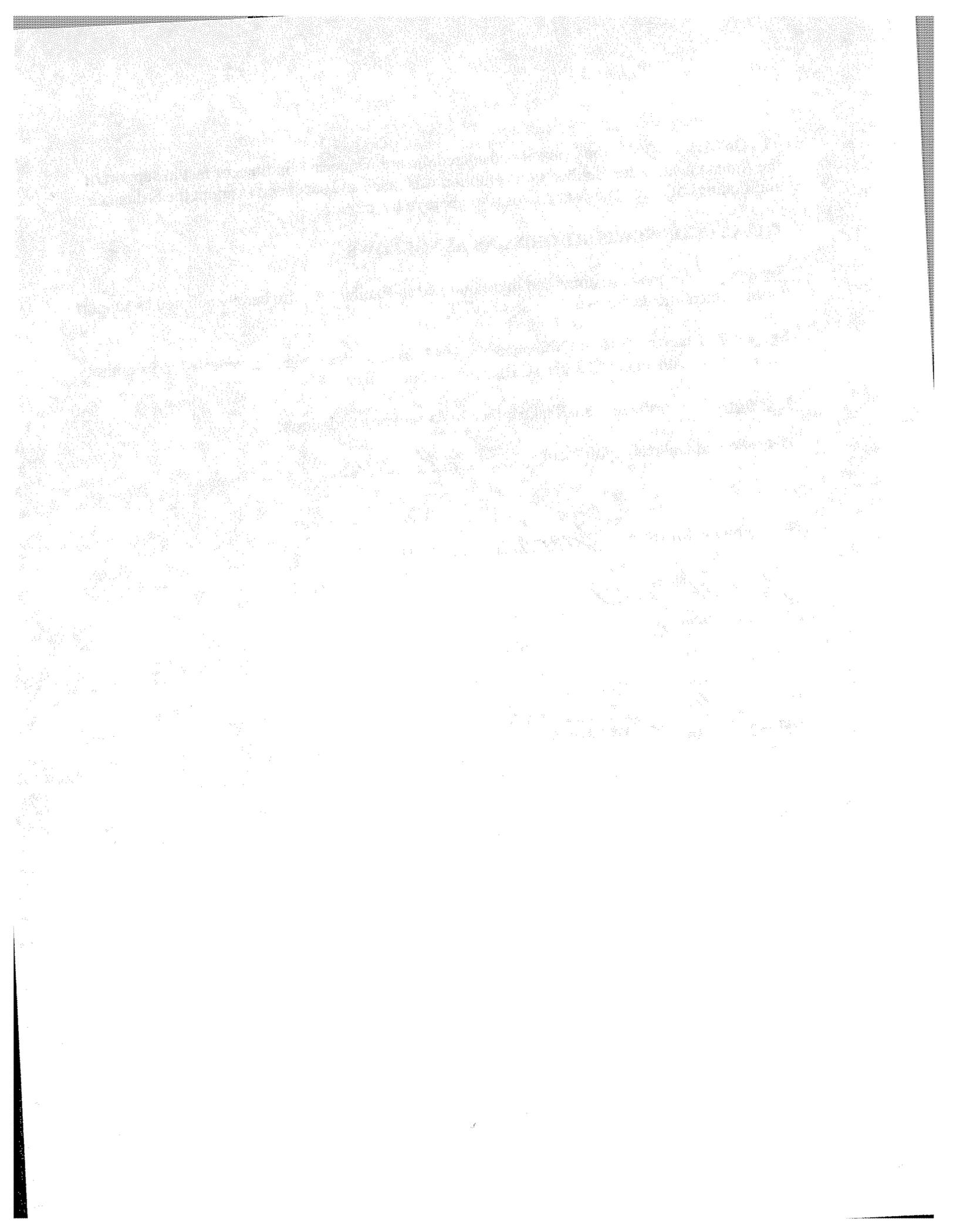
Date adopted and read by title only: May 21, 2012

Signed by the Mayor on June 4, 2012.

Mark McConnell
Mark McConnell, Mayor

ATTEST:

Margaret M. Hawker
Margaret M. Hawker, City Recorder



FINDINGS OF FACT

Case File No. 1-Z-12

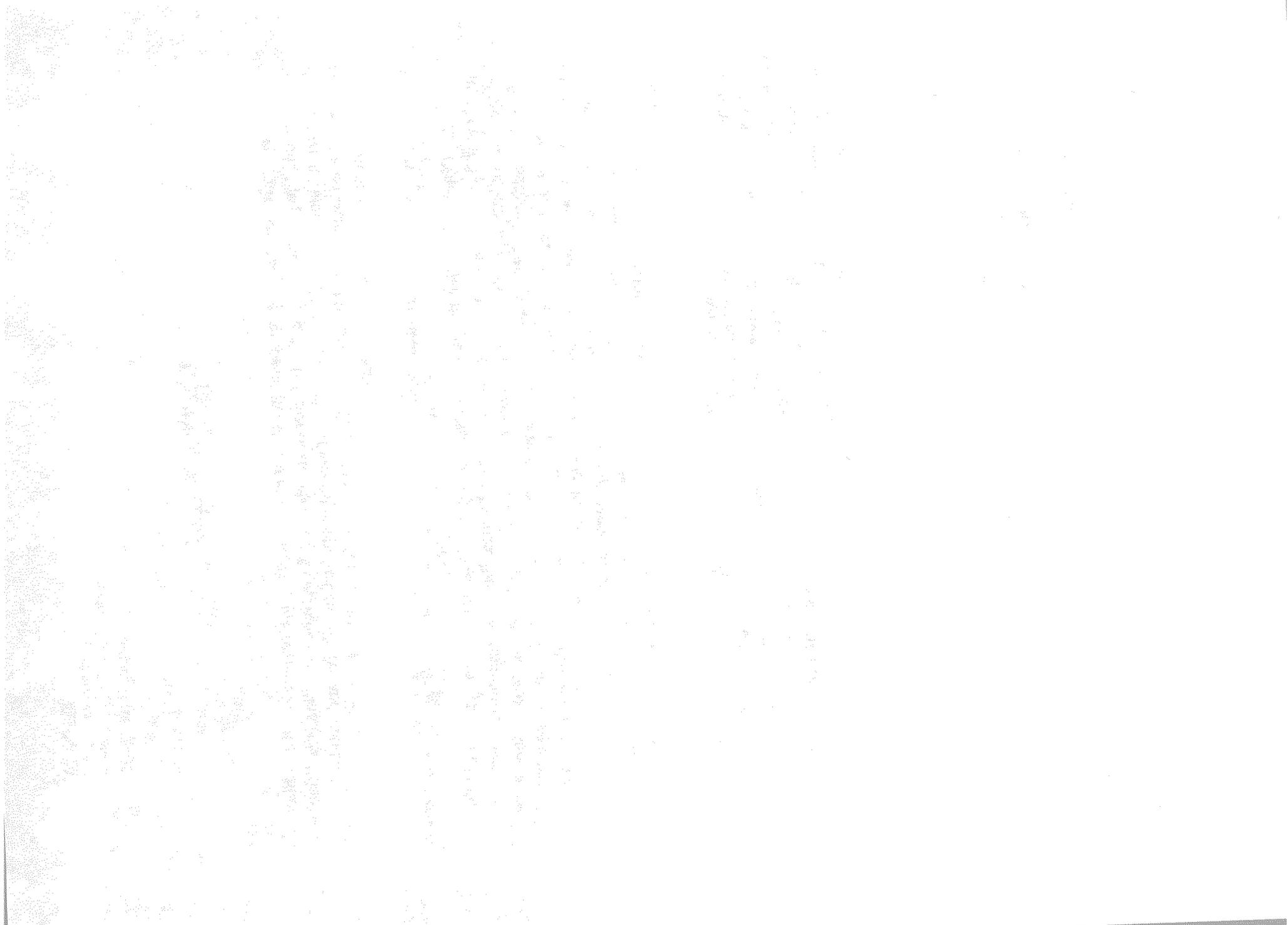
Legislative changes are reviewed to determine whether they are required by the public necessity and the general welfare, the policies of the Newport Comprehensive Plan (the "Plan"), the Statewide Planning Goals (the "Goals"), and any other applicable policies and standards adopted by the Council. For the reasons set forth below, the Council finds the applicable approval criteria met and adopts the Amendment.

A. The Public Necessity and General Welfare.

The Council finds that the public necessity and general welfare requires adoption of the Amendment for four reasons. First the Amendment will update the City's regulations to ensure that they do not unnecessarily prohibit a type of signs that was not technologically refined at the time the City adopted NMC Chapter 10.10. Currently, NMC Chapter 10.10 expressly permits certain types of signs and prohibits all others. As a result, any type of sign that was either not feasible or not contemplated from a technological standpoint at the time NMC Chapter 10.10 was adopted is currently prohibited. Electronic message signs, as defined in the Amendment, were not technologically refined at the time the City adopted NMC Chapter 10.10. As such, Chapter 10.10 prohibits electronic message signs. The Council finds that this prohibition to be antiquated.

Second, the Amendment may facilitate private economic development in the City by providing business owners an avenue for conveying information about products or services in a cost effective manner. Unlike conventional signs, electronic message signs do not require manual labor and expensive equipment to adjust content. Further, these signs do not utilize lettering that can be blown off or damaged by winds inherent to a coastal environment. The Applicant has advised that there is at least one potential end user of a property in the City's C-3 zoning district that has a strong desire to use this type of signage in conjunction with their new development.

Third, the Amendment will further the purpose and intent of the City's sign regulations. Among other things, the City's sign regulations are designed to improve the aesthetic appearance of the City, to prevent distraction of motorists, and to allow for the erection and maintenance of signs. NMC 10.10.010. The Amendment satisfies each of these purposes. It allows for the reasonable placement of electronic message signs, but it limits them to commercial and industrial zoning districts. Further, it places significant limits on the types of electronic message signs that are permitted. As set forth in the Amendment, the City's definition prohibits electronic message signs that contain or display animated, moving video, flashing, or scrolling messages. Further, these signs must remain static for five minutes and then accomplish a change within two seconds' time. In addition, they are limited to thirty-five percent (35%) of the total allowable sign area per sign face, must be turned off at the close of business, and are restricted to properties with only one freestanding sign that is no greater than 20 feet in height. These restrictions will ensure that the signs are installed and operated in a manner that is not distracting or dangerous but still



allows for reasonable communication of ideas or messages. Finally, updating the City's regulations may also improve aesthetics by facilitating the removal of nonconforming signage by property owners who have been awaiting the opportunity to implement the electronic message sign technology, and mitigating light pollution, once a business utilizing an electronic message sign is closed for the day.

Fourth, the Amendment is consistent with the requirements of the City's commercial and industrial zoning districts. These districts allow a range of uses, including office, retail sales and service, major event entertainment, light and heavy manufacturing, and most types of educational institutions. These districts are separated from residential areas and are concentrated along major thoroughfares. As a result, allowing electronic message signs as proposed by the Amendment will be both appropriately limited and compatible with the like type nature of surrounding development.

For these reasons, the City finds that the Amendment satisfies this criterion.

B. Consistency with Plan Goals and Policies.

This section addresses consistency with applicable goals and policies of the Plan. For the reasons set forth below, the City finds that the proposed Amendment satisfies these approval criteria.

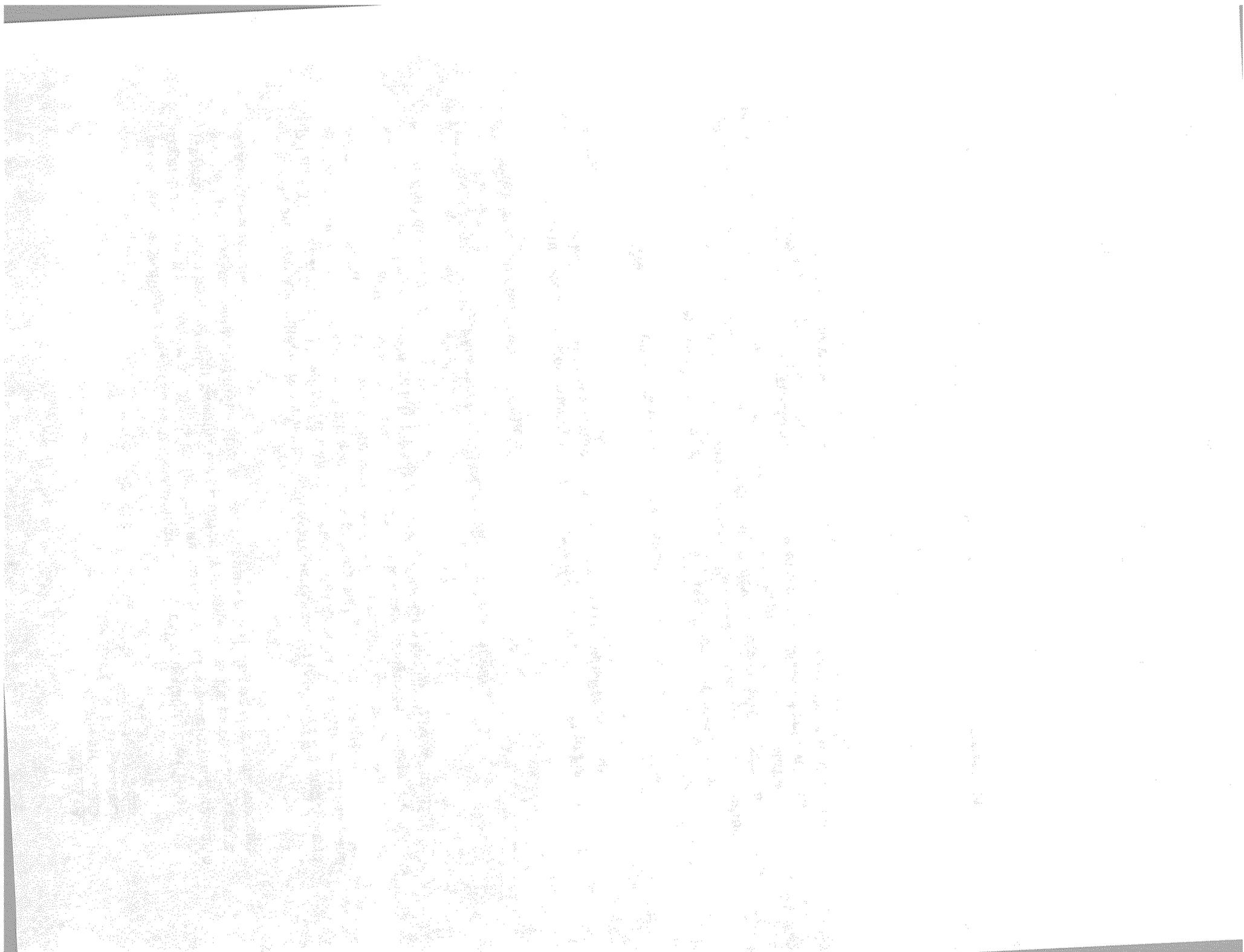
a. Citizen Involvement (Goal 1 of the "Administration" section)

Goal 1 of the "Administration" section of the Plan (p. 285 et seq.) requires the City to involve citizens in the development and implementation of the City's Plan and its implementing ordinances. Policy 1 of this Goal further requires the City to develop methods of community outreach that encourage participation in the planning process. Policy 2 of this Goal further requires the City to encourage the participation of citizens in the legislative rather than quasi-judicial stage of plan development and implementation. The City has an acknowledged citizen involvement program and an acknowledged process for securing citizen input on all proposed text amendments. The process by which this particular Amendment was adopted is consistent with the procedures provided in the Plan and in the NZO. The City held duly noticed public hearings before the Planning Commission, on March 26, 2012, and the Council on May 7, 2012, in compliance with all applicable City procedures under NZO 2-6.

Therefore, the Council finds its review and implementation of the Amendment consistent with the identified goal and policies.

b. Economic Development (Goal 2 of the "Economic" section)

Goal 2 of the "Economic" section of the Plan (p. 115 et seq.) requires the City to promote the expansion of current businesses and to seek diversification through the relocation of new businesses to the community. Policy 1 of this Goal requires the City to work with local business



efforts seeking expansion or relocation to the Newport area. Adoption of the Amendment is consistent with this goal and policy because the Amendment may facilitate private economic development in the City, as noted earlier in these findings. The Council finds the Amendment consistent with the identified goal and policy.

Considering the above, the Council finds the Amendment consistent with the applicable goals and policies of the Plan.

C. Consistency with Statewide Planning Goals.

This section addresses consistency with the applicable Goals. As described below, the Council finds the Amendment consistent with the Goals.

a. Goal 1 - Citizen Involvement

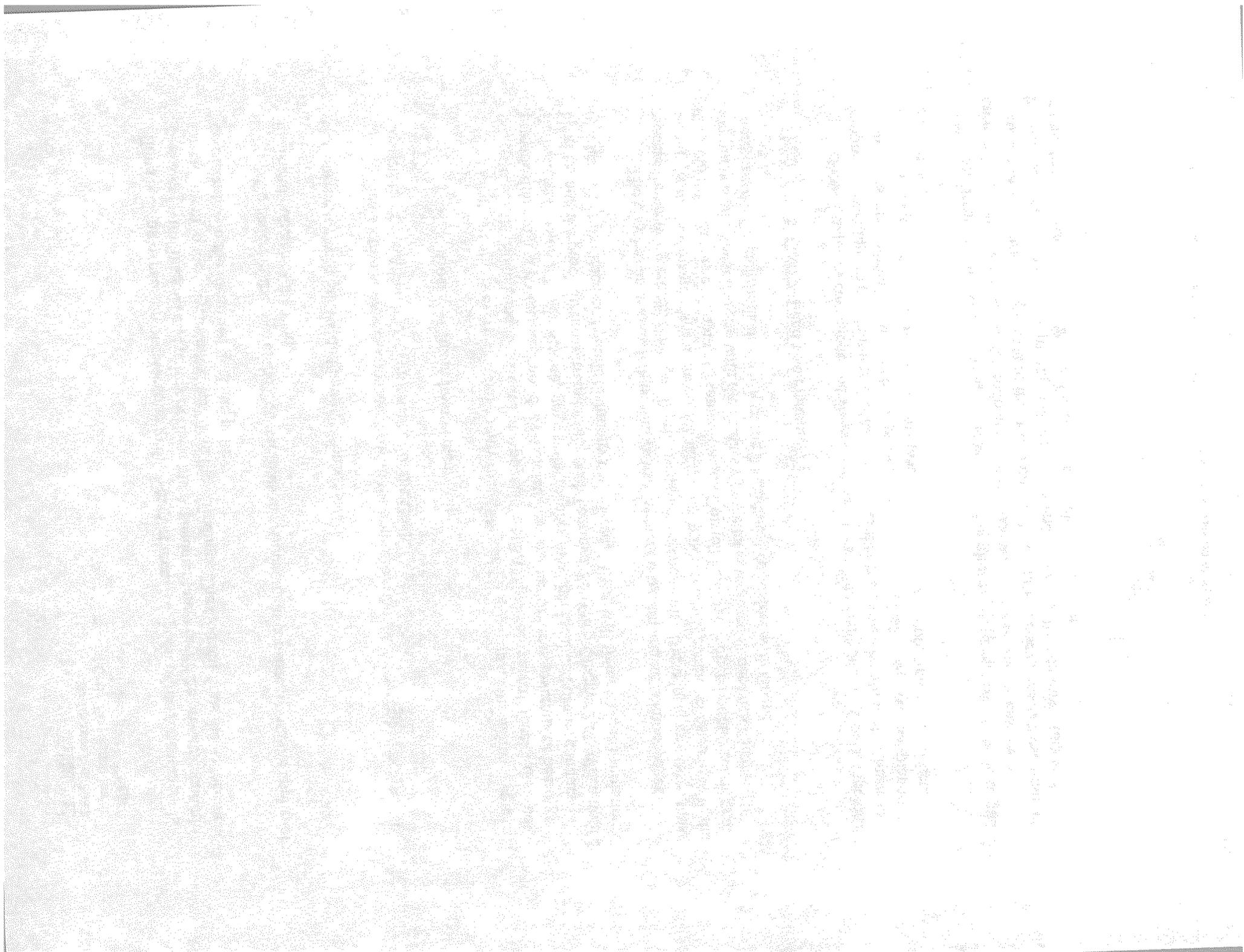
Goal 1 requires every city and county to develop and implement a citizen involvement program. As the State Land Use Board of Appeals ("LUBA") has recognized, Goal 1 does not provide due process protections, nor does it dictate the conduct of local government hearings. Rather, the Oregon Revised Statutes govern the manner in which local authorities conduct hearings and the procedural requirements for such hearings. See ORS Chapter 227. When notice of a hearing is provided and public testimony considered, LUBA will find no Goal 1 violation.

The City has an acknowledged citizen involvement program and an acknowledged process for securing citizen input on all proposed plan amendments. These local processes thus comply with state mandates, and the Amendment was processed in a manner consistent with the Plan and the NZO. The Planning Commission and Council held duly noticed public hearings in compliance with local law and with the statutory procedures required under ORS Chapter 197. Therefore, the Council finds its review of the Amendment consistent with Goal 1.

b. Goal 2- Land Use Planning

Goal 2 requires consistency between local comprehensive plans and the Goals, that local comprehensive plans maintain internal consistency, and that the implementation of ordinances remain consistent with acknowledged comprehensive plans. Goal 2 also requires that planning authorities make land use decisions with adequate factual bases and coordinate with affected jurisdictions.

The Plan and the NZO, as well as the Goals and applicable statutes, provide policies and criteria for the evaluation of the Amendment. Compliance with these measures ensures an adequate factual basis for approval of the Amendment. As discussed elsewhere in these findings, the Amendment is consistent with applicable policies and standards. By demonstrating such compliance, the Amendment satisfies the consistency element of Goal 2.



The City is required under ORS 197.610 to forward a notice of the Amendment to DLCD at least 45 days before the first evidentiary hearing on adoption. The City provided the requisite notice to DLCD on January 10, 2012. No state agency comments were received. The Council finds its review of the Amendment consistent with Goal 2.

c. Goal 3 - Agricultural Lands

The Amendment does not affect any farm lands, and thus the Council finds Goal 3 inapplicable.

d. Goal 4- Forest Lands

The Amendment does not affect any forest lands, and thus the Council finds Goal 4 inapplicable.

e. Goal 5- Open Space, Scenic and Historic Areas, Natural Resources

The Amendment does not affect any open space, scenic and historic areas, or natural resources. Thus, the Council finds Goal 5 inapplicable.

f. Goal 6- Air, Water, and Land Resources Quality

Goal 6 seeks to maintain and improve the quality of the air, water, and land resources in the state. Because the proposal does not authorize any specific development at this time, there can be no direct impact to air, water, or land resources. Therefore, The Council finds the Amendment consistent with Goal 6.

g. Goal 7- Areas Subject to Natural Hazards

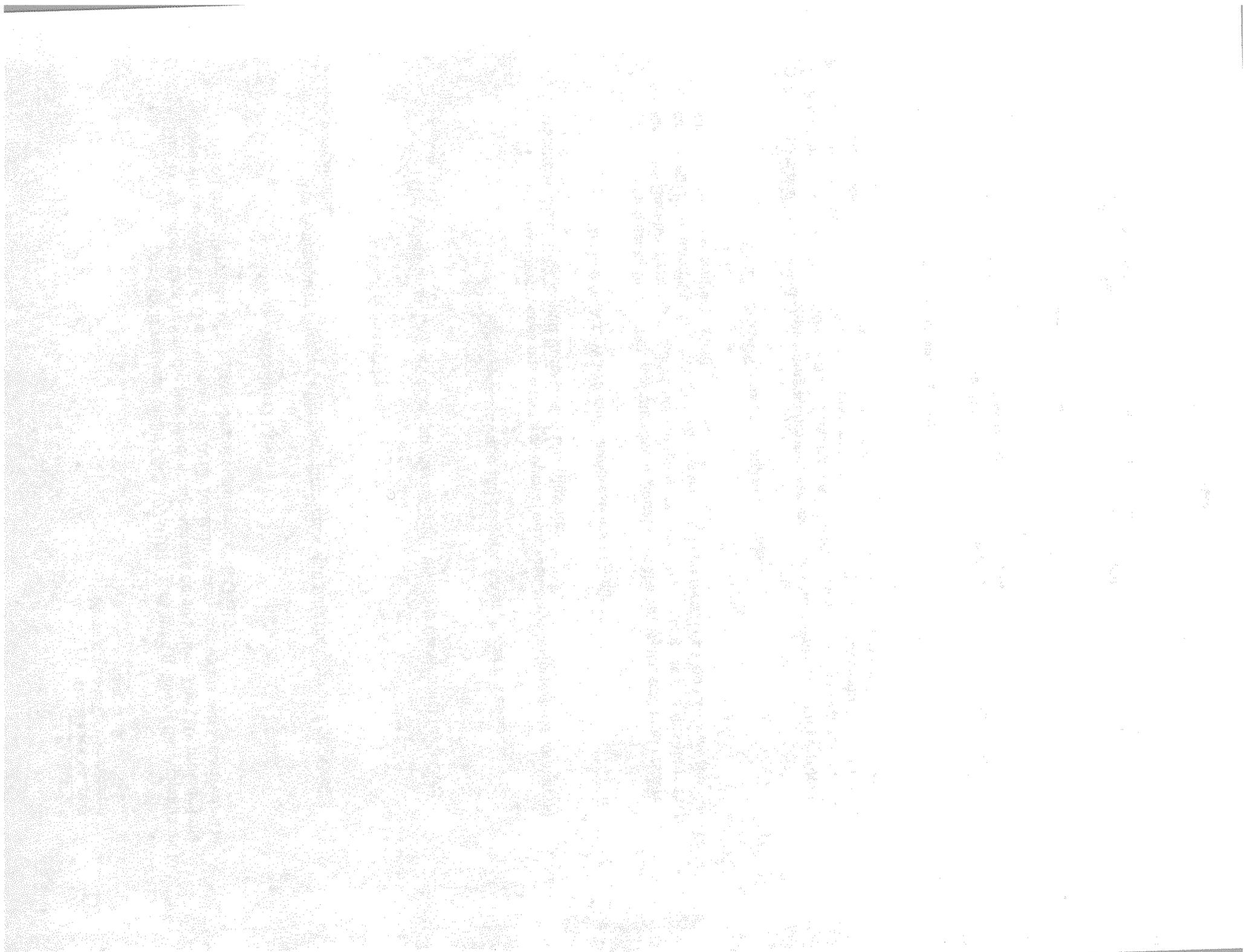
Goal 7 requires that planning authorities not locate development that could result in damage or loss of life in known areas of natural hazards and disasters without appropriate safeguards. Because the Amendment does not authorize any specific development at this time, it allows no development planned or located in known areas of natural hazards and disasters. The Council finds the Amendment consistent with Goal 7 in this instance.

h. Goal 8- Recreational Needs

The Amendment does not involve any designated recreational or open-space lands. Thus it does not affect access to any significant recreational uses in the area. The Council finds Goal 8 inapplicable in this instance.

i. Goal 9- Economic Development

Goal 9 requires that local authorities base their comprehensive plans and policies on an inventory of areas suitable for increased economic growth and activity, including for specified



land uses. Although the Amendment does not authorize any specific development activity, it provides a new medium for properties in commercial and industrial districts to communicate information. For the reasons explained above, this opportunity may facilitate economic development in the City consistent with Goal 9. The Council finds Goal 9 is satisfied in this instance.

j. Goal 10 - Housing

Goal 10 requires local governments to help provide for an adequate number of needed housing units and to encourage the efficient use of developable land within urban growth boundaries. The Amendment does not affect the provision or type of housing units in the City. Thus, the Council finds that Goal 10 is not applicable to the Amendment.

k. Goal 11 -Public Facilities and Services

Goal 11 creates guidelines for the timely, orderly, and efficient provision of public facilities and services, such as sewer, water, solid waste, and storm drainage. The Amendment does not specifically propose any new development that would utilize public facilities or services. Therefore, the Council finds Goal 11 inapplicable in this instance.

l. Goal 12- Transportation

Goal 12 requires that local governments provide and encourage a safe, convenient, and economic transportation system. Because the proposal does not authorize any specific development at this time, there can be no direct impact to transportation. Therefore, the Council finds the Amendment consistent with Goal 12. The City further finds that OAR 660-012-0060, the Transportation Planning Rule ("TPR") implements Goal 12. The Council addresses the TPR below.

m. Goal 13 - Energy Conservation

The Amendment does not impact any known or inventoried energy sites or resources. The Council finds Goal 13 inapplicable in this instance.

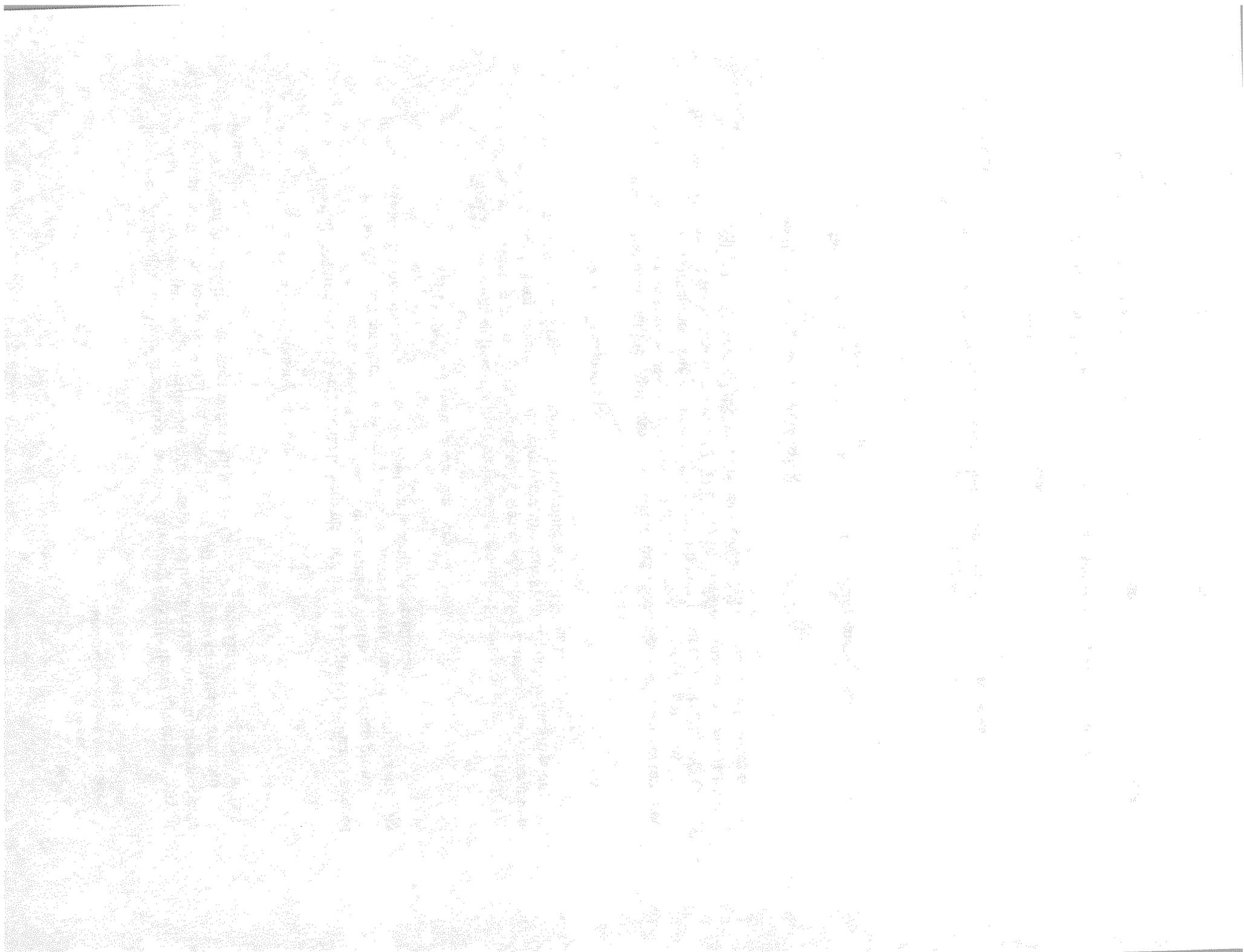
n. Goal 14- Urbanization

The Amendment does not involve a change in the location of the Urban Growth Boundary or a conversion of rural land to urban land. The Council finds Goal 14 inapplicable in this instance.

o. Goals 15- Willamette River Greenway

Goals 15 applies to the Willamette River Greenway and is; therefore, inapplicable.

p. Goals 16 – 19 – Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.



These goals apply to inventoried and mapped coastal resources. Commercial and industrial zoned lands within the City are not located within estuary, beaches and dunes, or ocean resource areas. Some commercial and industrial lands are located within coastal shorelands, namely hotels and restaurants along Elizabeth Street and industrial sites west of Highway 101 in South Beach. The City's acknowledged shorelands overlay zone regulates new development in these areas, including installation of signs because they require a building permit. The shoreland overlay contains standards designed to ensure that new development does not adversely impact inventoried significant habitat, parks and outstanding natural areas, or public access points. The provisions of this overlay are adequate to ensure that any electronic message signs promulgated as a result of this Amendment will not adversely impact these resources. Given the above, the Council finds Goal 16-19 to be satisfied.

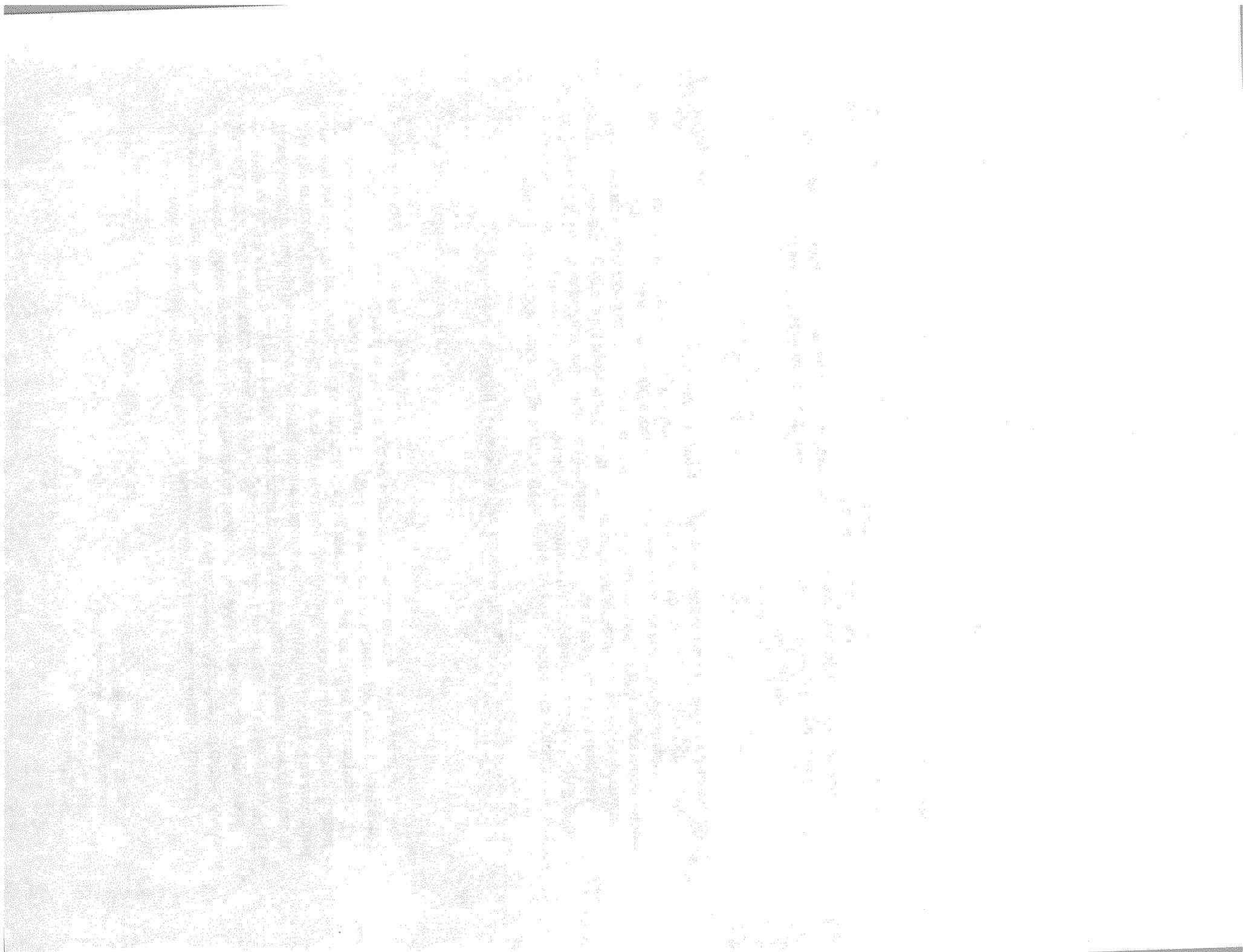
D. Oregon Administrative Rules

a. OAR 660-012-0060 (Transportation Planning Rule)

The TPR mandates that local governments impose mitigation measures when a land use regulation would "significantly affect an existing or planned transportation facility." OAR 660-012-0060(1). The Amendment is a land use regulation. A land use regulation that does not permit development that adds more traffic to the transportation system than could be permitted under zoning existing before the ordinance cannot "significantly affect" the transportation facility under the TPR. In the instant case, no specific development is proposed. Development of additional density and intensity is not allowed. Therefore, the Amendment will not add more traffic to the transportation system, and the Amendment will not have a significant effect on any transportation facilities.

Conclusion

The Council finds the Amendment consistent with applicable local and state laws. Further, the Amendment is warranted for several reasons. It is required by the public necessity and general welfare because it updates the NMC to permit a type of sign that was not contemplated at the time NMC Chapter 10.10 was adopted. Further, it may facilitate economic development in the City. Finally, it furthers the intent of the City's sign regulations and is consistent with the requirements of the City's commercial and industrial zoning districts. Thus, the City adopts the Amendment.



CHAPTER 10.10 SIGNS

10.10.005 Short Title

This chapter may be referred to as the Newport Sign Code.

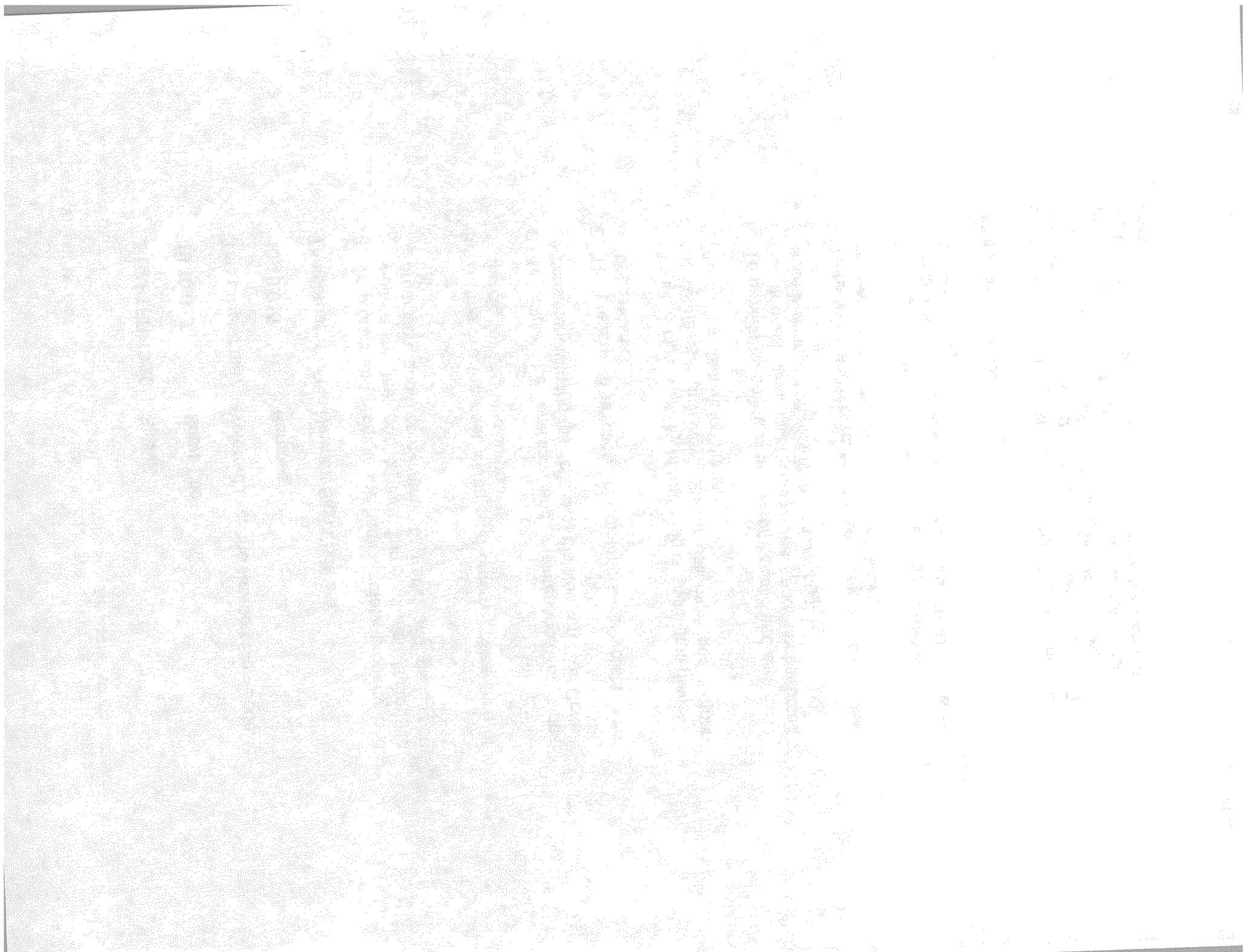
10.10.010 Purpose

The purposes of the Newport Sign Code are:

- A. To protect and promote the health, safety, property, and welfare of the public, including but not limited to promotion and improvement of traffic and pedestrian safety.
- B. To improve the neat, clean, and orderly appearance of the city for aesthetic purposes.
- C. To allow the erection and maintenance of signs consistent with the restrictions of the Newport Sign Code.
- D. To prevent distraction of motorists, bicyclists and pedestrians.
- E. To allow clear visibility of traffic signs and signal devices, pedestrians, driveways, intersections, and other necessary clear vision areas.
- F. To provide for safety to the general public and especially for firemen who must have clear and unobstructed access near and on roof areas of buildings.
- G. To preserve and protect the unique scenic beauty and the recreational and tourist character of Newport.
- H. To regulate the construction, erection, maintenance, electrification, illumination, type, size, number, and location of signs.

10.10.015 Scope

All signs shall comply with this chapter. Provided however, that any signs in the Agate Beach area annexed in 1998 shall comply also comply with Chapter 10.15, and in the event of an inconsistency between the two chapters, Chapter 10.15 shall prevail as to any property within the Agate Beach area.



10.10.020 Prohibited Signs

No sign may be erected, maintained, or displayed except as expressly authorized by this chapter.

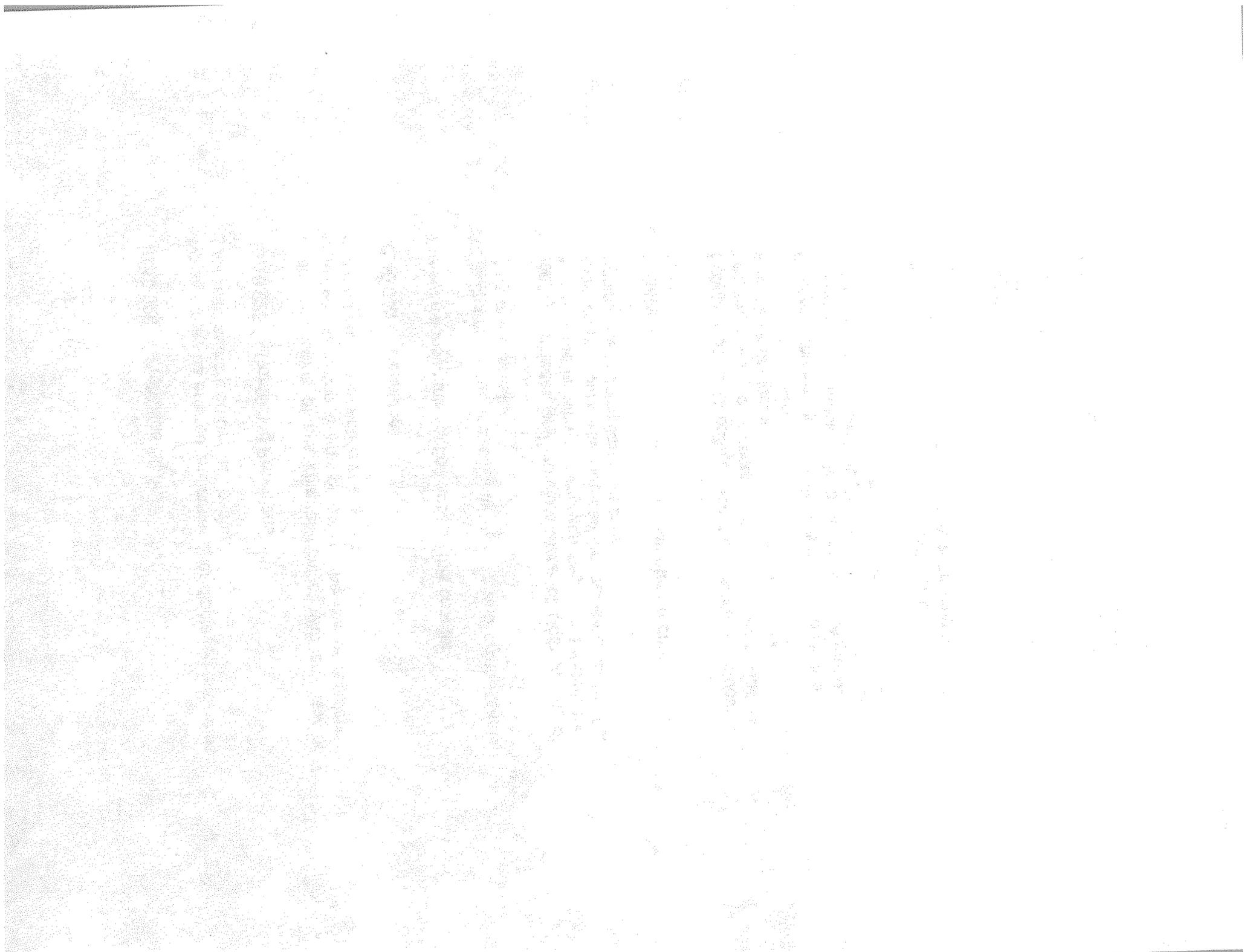
10.10.025 Conflicting Provisions

If any provisions of this chapter conflict with any law or regulation requiring a sign or notice, the law or regulation requiring the sign or notice shall prevail.

10.10.030 Definitions

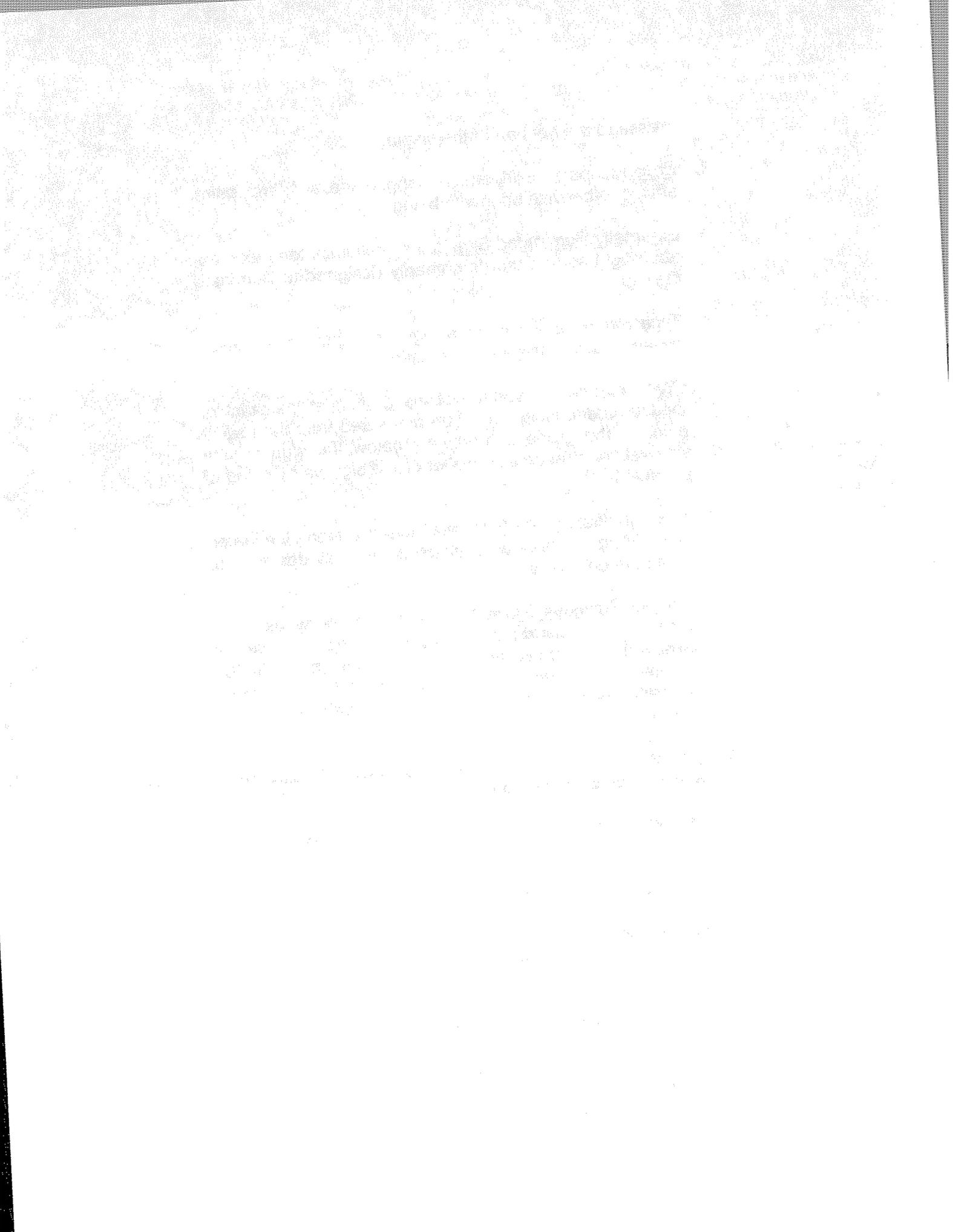
The definitions in this section apply in this chapter.

- A. **Adjacent** means immediately next to and on the same side of the street.
- B. **Awning** includes any structure made of cloth, metal, or similar material with a frame attached to a building that may project outwards but can be adjusted to be flat against the building when not in use.
- C. **Building** shall include all structures other than sign structures.
- D. **Bulletin Boards**. A bulletin board is a surface for posting posters, cards, or notices, usually of paper, and not illuminated or electrical.
- E. **Business** means the premises where a duly licensed business is conducted. Multiple businesses conducted within the same premises shall be subject to the same limits as would a single business on the same premises.
- F. **Canopy** includes any structure made of cloth, metal, or similar material projecting out from a building that is fixed and not retractable.
- G. **Clearance** is the distance between the highest point of the street, sidewalk, or other grade below the sign to the lowest point of the sign. (See Exhibit A.)
- H. **Display Area** means the area of a regular geometric figure that encloses all parts of the display surface of the sign. Structural supports that do not include a display or

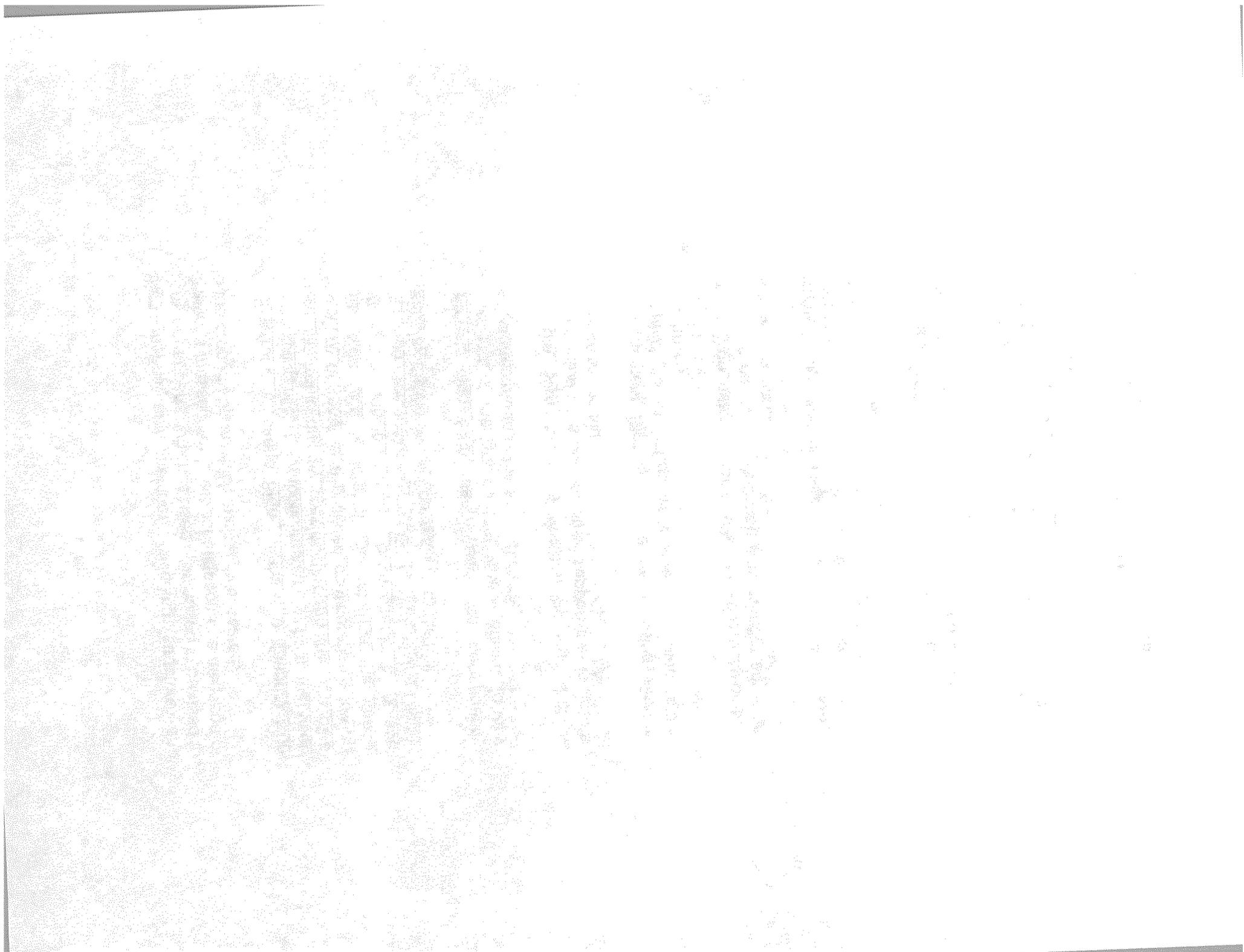


message are not part of the display area.

- I. **Erect** means to build, attach, hang, place, suspend, paint, affix, or otherwise bring into being.
- J. **Externally Illuminated Sign** is a sign illuminated by an exterior light source that is primarily designed to illuminate the sign.
- K. **Face** means any part of a sign arranged as a display surface substantially in a single plane.
- L. **Grade** means the surface of the ground at the point of measurement. Height shall be measured from the lowest point of the grade immediately below the sign or any sidewalk or street within 5 feet of the sign and the top of the sign.
- M. **Internally Illuminated Sign** shall mean a sign illuminated by an interior light source, which is primarily designed to illuminate only the sign.
- N. **Multiple Business Property** means a property used for business or commercial purposes under a single ownership or control and containing less than 40,000 square feet of land area and on which three or more separate businesses or commercial enterprises are located.
- O. **Painted** includes the application of colors directly on a wall surface by any means.
- P. **Person** means individuals, corporations, firms, partnerships, associations, and joint stock companies.
- Q. **Premise** means a lot, parcel, or tract of land.
- R. **Reader Board** is a sign designed so that the sign face may be physically or mechanically changed, but does not include electronic message signs.
- S. **Shopping Center** means any property used for business or commercial purposes under a single ownership or control having at least 40,000 square feet of land area and on which are located business or commercial improvements containing at least 20,000 square feet of floor space.



- T. **Sign** means any medium, including structure and component parts, which is used or intended to be used to display a message or to attract attention to a message or to the property upon which such sign is located.
1. **Electronic Message Sign** means a permanent sign consisting of text, symbolic imagery, or both, that uses an electronic display created through the use of a pattern of lights in a pixilated configuration allowing the sign face to intermittently change the image without having to physically or mechanically replace the sign face, including an LED (Light Emitting Diode) sign, as distinguished from a static image sign.
 2. **Freestanding Sign** means any sign permanently attached to the ground that is not affixed to any structure other than the sign structure.
 - a. **Pole Sign** means a freestanding sign that is mounted on a pole or other support that is not as wide as the sign.
 - b. **Monument Sign** means a freestanding sign in which the sign structure is at least as wide as the sign.
 3. **Mural Sign** means a sign that is painted directly on the wall of a building or retaining wall, without any sign structure or additional surface.
 4. **Portable Sign** means a sign that is not attached to the ground or any structure and is movable from place to place. "Portable sign" does not include any sign carried or held by an individual.
 5. **Projecting Sign** means a sign attached to the wall or roof of a building with a sign face that is not parallel to the wall or roof.
 6. **Roof Sign** means a sign attached to a roof of a building, or a sign attached to a wall of a building but extending above the top edge of the wall where the sign is located.
 7. **Temporary Sign** means any sign, regardless of construction materials, that is not permanently



mounted and is intended to be displayed on an irregular basis for a limited period of time

8. **Wall Sign** means any sign attached to a wall of a building that does not extend above the wall of the building and is parallel to and within one foot of the wall.

9. **Window Sign** shall mean any sign placed inside or upon a window facing the outside and which is visible from the exterior.

U. **Sign Business** means the business of constructing, erecting, operating, maintaining, leasing, or selling signs.

V. **Sign Structure** means the supports, upright braces, and framework of the sign.

10.10.035 Application, Permits, and Compliance

A. Except as exempted by this chapter, no person shall erect, replace, reconstruct, move, or remove any permanent sign without a sign permit, or place a temporary or portable sign without a sign permit. All signs shall comply with this chapter and any other applicable law. Any sign permit may be withdrawn for violation of this chapter or any other applicable law.

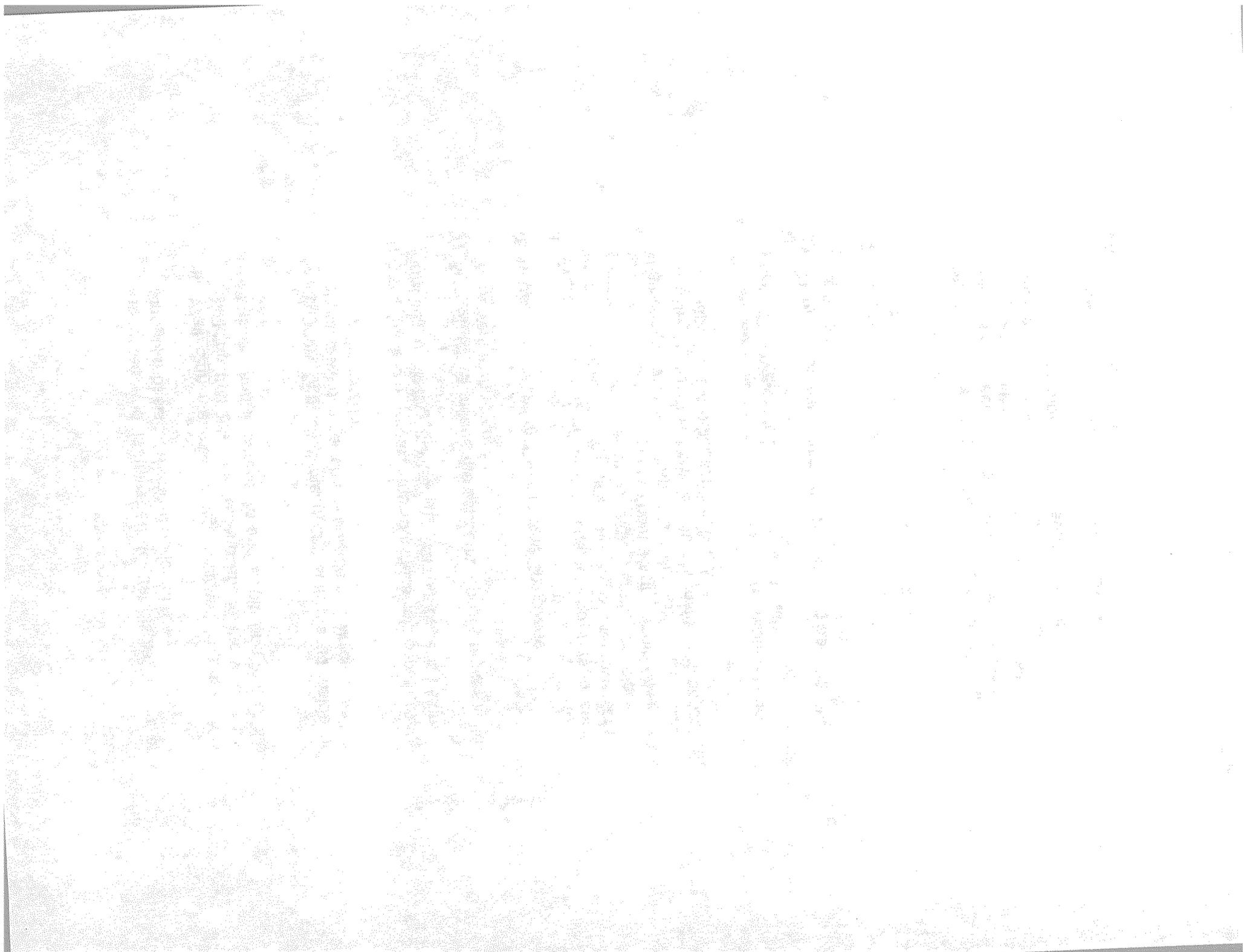
B. Written applications on city forms are required. The applicant shall provide the following information:

1. Name, address, and telephone number of the applicant.

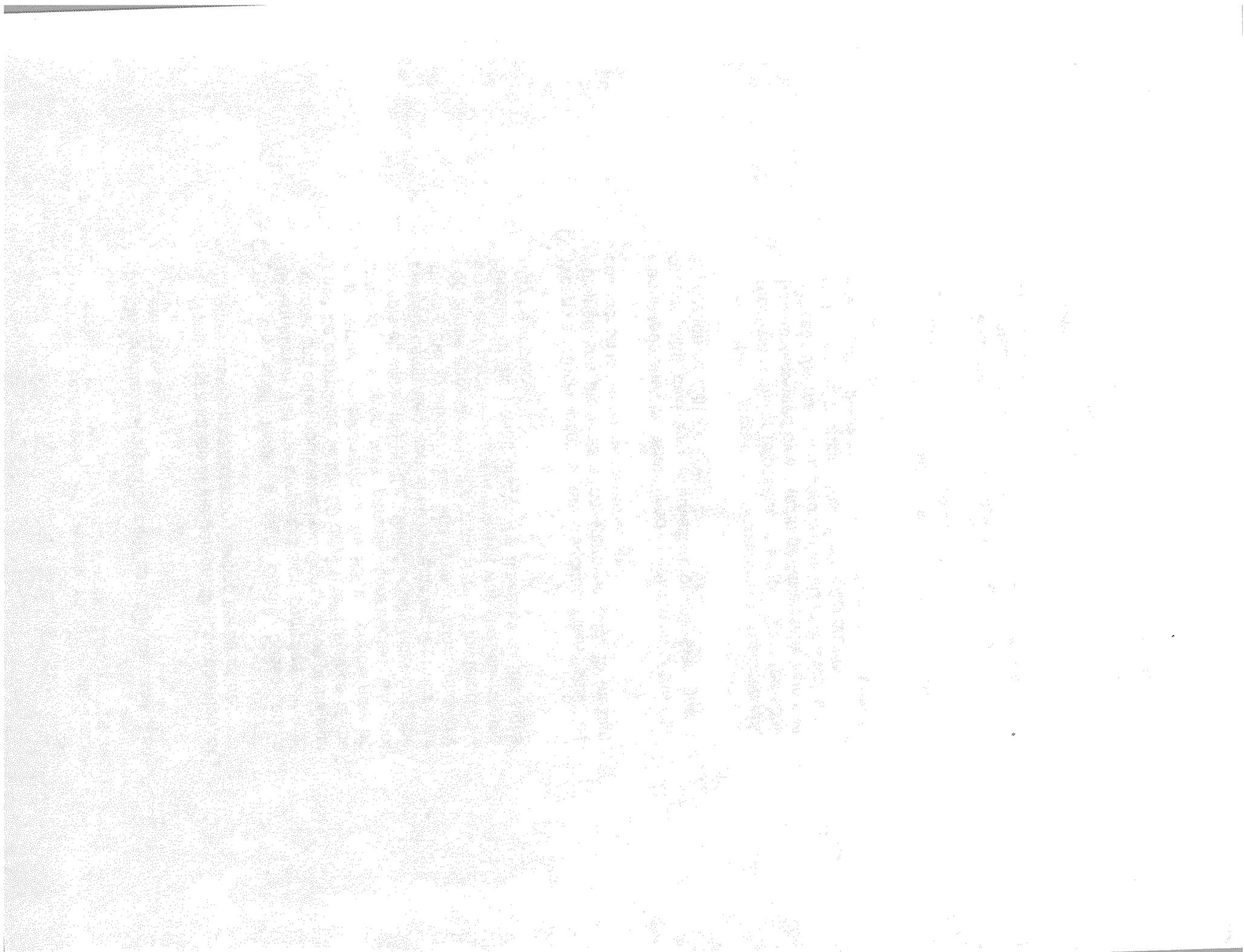
2. Proposed sign location, identifying the property and any building to which the sign will be attached.

3. A sketch, plan, or design showing the method of attachment, structure, design, and such other information necessary to allow a determination of compliance. Nothing in this section requires the applicant to provide any information regarding the content of any message displayed on the sign.

4. Grade, height, dimensions, construction materials, and specifications.



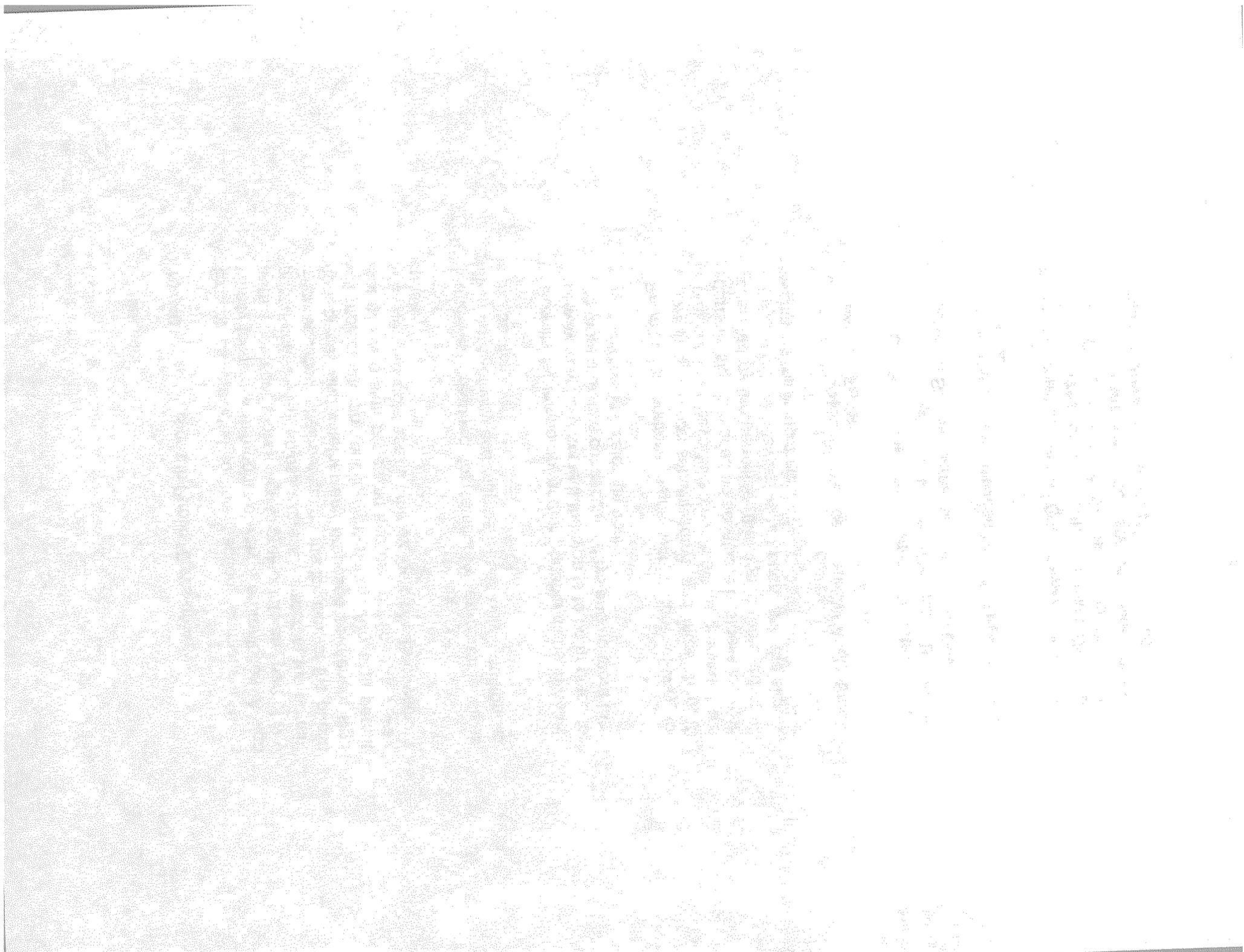
5. Underwriter Laboratories certification in the case of an electrical sign.
 6. Name and address of the person, firm, corporation, or other business association erecting the structure.
- C. The city shall issue a sign permit based on a determination that the proposed sign complies with this chapter and other applicable law. Construction of the sign must be completed within 90 days after issuance of the sign permit. An extension of the 90-day period may be granted. If a sign was partially constructed and not completed within the 90-day period or any extension, the partially completed work shall be removed. Permits shall specify the location, size, and type of sign, and any conditions applicable to the sign. Permits for temporary signs and portable signs in rights of way shall specify the duration of the permit and/or the times when the signs may be in place.
- D. When electrical permits are required, they shall be obtained and the installation approved prior to making connection to the electrical power source.
- E. Permit fees shall be established by resolution of the City council, and paid with submission of the sign permit application, as follows:
1. For the erection, placement, replacement, reconstruction, or relocation of a sign. Such fee shall be supplemented by a surcharge for a mural sign that exceeds the maximum permissible size for a wall sign in the same location. Non-profit organizations are exempt from the requirement to pay the supplemental fee for a mural sign.
 2. For the repair, demolition, or removal of an existing sign and/or its supporting structure.
 3. For temporary signs placed in the right of way. Non-profit organizations are exempt from the requirement to pay this fee.
 4. For portable signs placed in the right of way. Such fee shall include a monthly charge for use of the public right-of-way. Non-profit organizations are exempt from the requirement to pay either fee required by this



section.

10.10.040 Signs in Public Rights-of-Way

- A. Except as provided in this section, permanent signs wholly located within rights-of-way are prohibited. A sign permit does not allow a sign to project into any part of any public right-of-way unless expressly stated in the permit. Each applicant shall determine the location of the public right-of-way and whether any proposed permanent sign will project into any public right-of-way. Any sign permit that allows a sign projecting into any public right-of-way shall be revocable at any time by the city with or without cause.
- B. Permits are required for temporary or portable signs within rights-of-way and may be issued only if authorized in this section.
 - 1. Permits for temporary and/or portable signs in rights-of-way may be granted if the sign is to be in place for no more than five consecutive days and no more than 10 total days in a calendar year.
 - 2. Permits for portable signs within rights-of-way for more than five consecutive days and more than 10 total calendar days in a year may be granted if the portable sign is placed adjacent to a business location operated by the permittee, the sign is removed at all times when the business is not open, and the sign is within the following areas:
 - a. On SW Coast Highway between SW Angle Street and SW Fall Street.
 - b. On SW Bay Boulevard between SW Naterlin Drive and SW Bay Boulevard. On Bay Boulevard between SW Bay Street and SE Moore Drive.
 - c. On Hurbert Street between SW 7th Street and SW 9th Street.
 - d. In the area bounded by Olive Street on the south, NW 6th Street on the north, SW High Street and NW Coast Street on the east and the Pacific Ocean on the west, including both sides of each named street. For purposes of this section, "Olive



Street" means both Olive Street and the area that Olive Street would occupy if it continued straight to the Pacific Ocean west of SW Coast Street.

- e. On SE Marine Science Drive/SE OSU Drive between SE Pacific Way and Yaquina Bay.
- f. In that portion of the South Beach area of Newport, east of Highway 101, west of Kings Slough, south of the intersection of Highway 101 and 40th Street and north of the intersection of Highway 101 and 50th Street.

(Chapter 10.10.040(B)(2)(f.) was added by the adoption of Ordinance No. 2001, adopted on March 16, 2010; effective April 15, 2010.)

- 3. Permits may be granted under Subsections B.1 and B.2 of this section only if:
 - a. The sign is not within any vehicle travel lane;
 - b. The sign does not restrict clear vision areas at intersections and driveway access points; and
 - c. The sign does not prohibit pedestrian movement on a sidewalk.

C. The following signs are exempt from the prohibitions and requirements of this section:

- 1. Sign placed by the city or other governmental entity with responsibility for the right-of-way.
- 2. Permanent signs placed in a location where allowed by a license or easement from the city to an adjacent property owner to occupy the right-of-way. Signs allowed by this exemption must comply with all other requirements of this chapter, and the display area of the signs will be included in the calculation of the maximum display area of the adjacent property.
- 3. Signs not exceeding one square foot on a pole in the right-of-way placed on the pole by its owner.

D. Signs placed in ODOT right-of-way may also require approval from ODOT.

E. No permit may be issued for a sign in the right-of-way

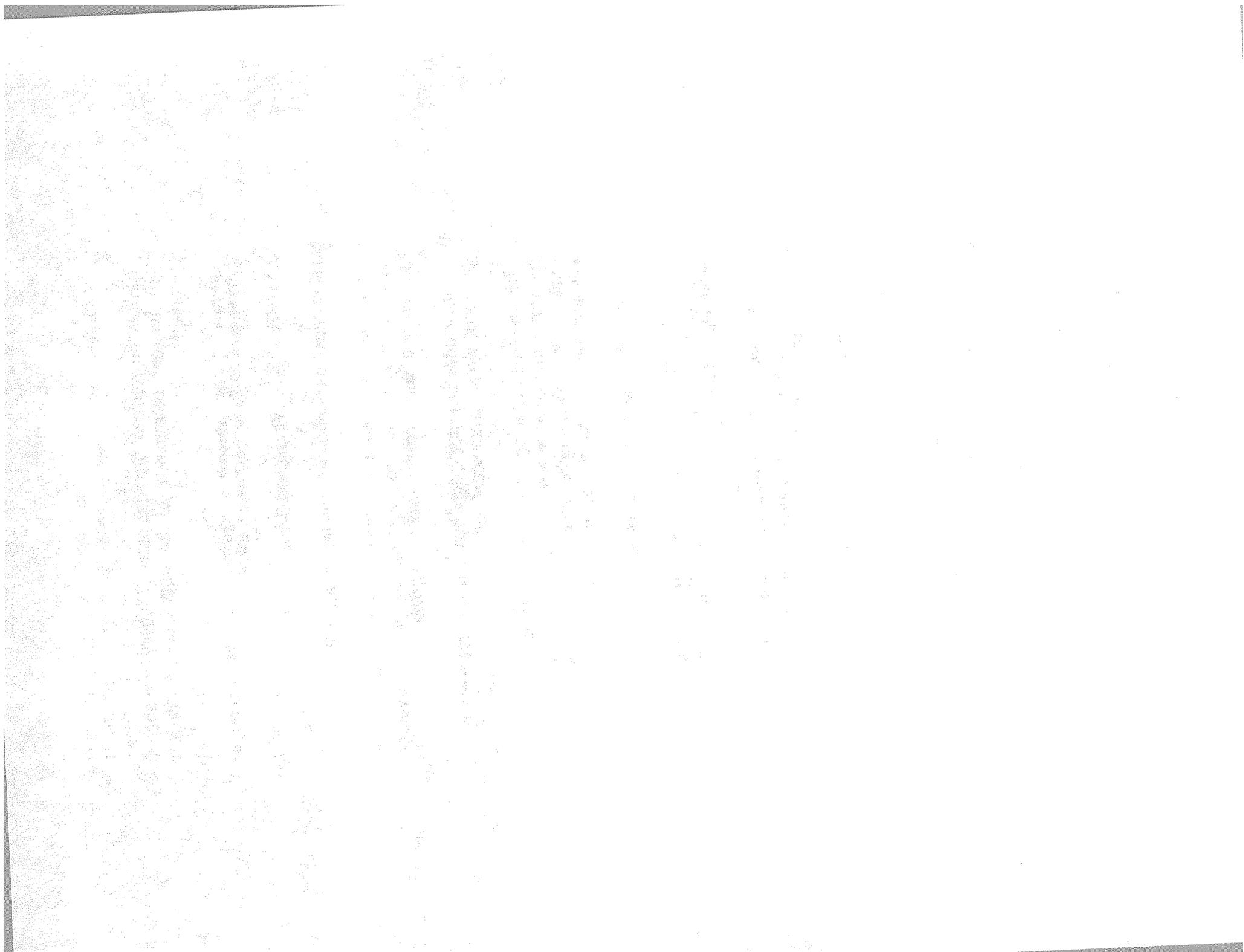
unless the applicant provides proof of liability insurance in an amount determined to be sufficient by the city manager.

(Section 10.10.045 amended by Ordinance No. 1986, adopted on September 8, 2009; effective October 8, 2009.)

10.10.045 Prohibited Signs

No sign shall be constructed, erected, or maintained:

- A. That uses lights unless effectively screened, shielded, or utilized so as not to direct light directly into the eyes of motorists traveling on any street or highway.
- B. That includes any single light bulb that creates more light than a 60 watt incandescent bulb.
- C. That uses neon tubing on the exterior surface of a sign for sign illumination where the capacity of such tubing exceeds 300 milliamperes rating for white tubing or 100 milliamperes rating for any other color of tubing.
- D. That uses flashing or intermittent light.
- E. That uses any type of rotating beacon light, zip light, or strobe light, or any light not directed to or part of the illumination of the sign.
- F. That uses wind-activated devices or devices which flutter in the wind, such as propellers, but excluding flags, banners, and pennants.
- G. That is flashing, blinking, fluctuating, or animated, that has parts that are flashing, blinking, fluctuating, or animated; or that includes similar effects.
- H. That uses a guy wire for support of a sign, except where there exists no other means of support for a sign otherwise conforming to the requirements of this chapter.
- I. That has any visible moving parts, visible revolving parts, visible mechanical movement of any description, or any other apparent visible movement achieved by electrical, electronic, or kinetic means, including intermittent electrical pulsations or movement or action by wind currents.



- J. That is erected at the intersection of any street that substantially obstructs free and clear vision of motorists, pedestrians and cyclists, or at any location where it may interfere with, obstruct, or be confused with any authorized traffic sign.
- K. While electronic message signs are subject to these prohibitions, this section shall not be construed to prohibit such signs where expressly permitted elsewhere in this chapter.

10.10.050 Height and Dimensional Requirements

- A. The maximum height of all signs other than mural signs shall be no greater than 30 feet above grade.
- B. The maximum horizontal or vertical dimension of the display surface of any sign other than mural signs shall not exceed:
 - 1. Thirty feet for freestanding and roof signs on properties adjacent to Highways 101 or 20 that are located at least 125 feet from the center line of the highway and at least 76 feet from the center line of any other street.
 - 2. Fifty feet or the width of the wall for wall sign horizontal dimension.
 - 3. Except as otherwise provided by the chapter, the maximum horizontal or vertical dimension of any display surface shall not exceed 20 feet.

10.10.055 Projection and Clearance

- A. Signs shall not project more than 3 feet over any public right-of-way, and in no case shall be within 2 feet of a traveled roadway.
- B. The minimum clearance of any sign over driveways, parking lots, or public right-of-ways is 16 feet, excepting that the minimum clearance of any sign over a sidewalk is 8 feet, unless the sidewalk is used as a driveway.

10.10.060 Number and Area of Signs

- A. Each right-of-way frontage of a business shall be limited to only one projecting or freestanding sign unless the

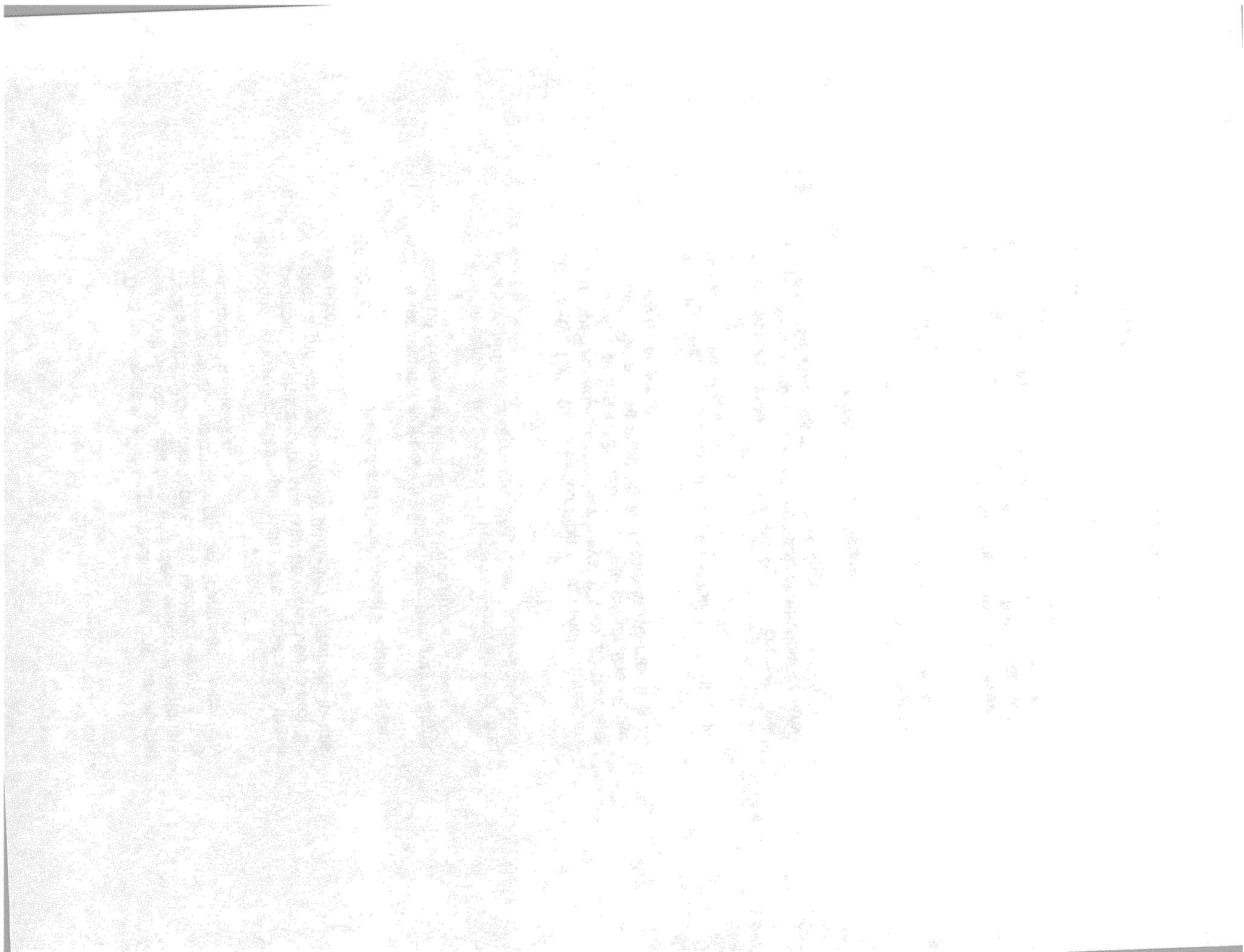


EXHIBIT B, ORDINANCE NO. 2037, AMENDING CHAPTER 10.10 OF THE NEWPORT MUNICIPAL CODE (ORDINANCE NO. 1943, AS AMENDED) RELATING TO ELECTRONIC MESSAGE SIGNS.

frontage exceeds 200 lineal feet, in which case one additional freestanding or projected sign is permitted. , Where a property contains an electronic message sign, only one freestanding sign is permitted. Other signs are not limited in number unless specifically limited or restricted elsewhere in this chapter.

- B. Each street frontage of a business shall be limited to no more than 200 square feet of display area for all non-exempt signs other than mural signs. Freestanding and projecting signs having two sides facing in opposite directions shall be counted as having only one face, which shall be the larger of the two faces if not of equal size. Only the larger face of back-to-back signs within two feet of each other and signs on opposite parallel ends of awnings shall be counted towards total maximum size.
 - 1. The maximum total area of wall signs is two square feet of sign area for each lineal foot of street frontage.
 - 2. The maximum total area for freestanding and projecting signs is one square foot of display area for each lineal foot of street frontage.
- C. Notwithstanding any limitation on total sign area, each separate business is allowed at least 50 square feet of display area.
- D. The maximum display area allowed shall be adjusted based on distance from the nearest property line, using the graph below:

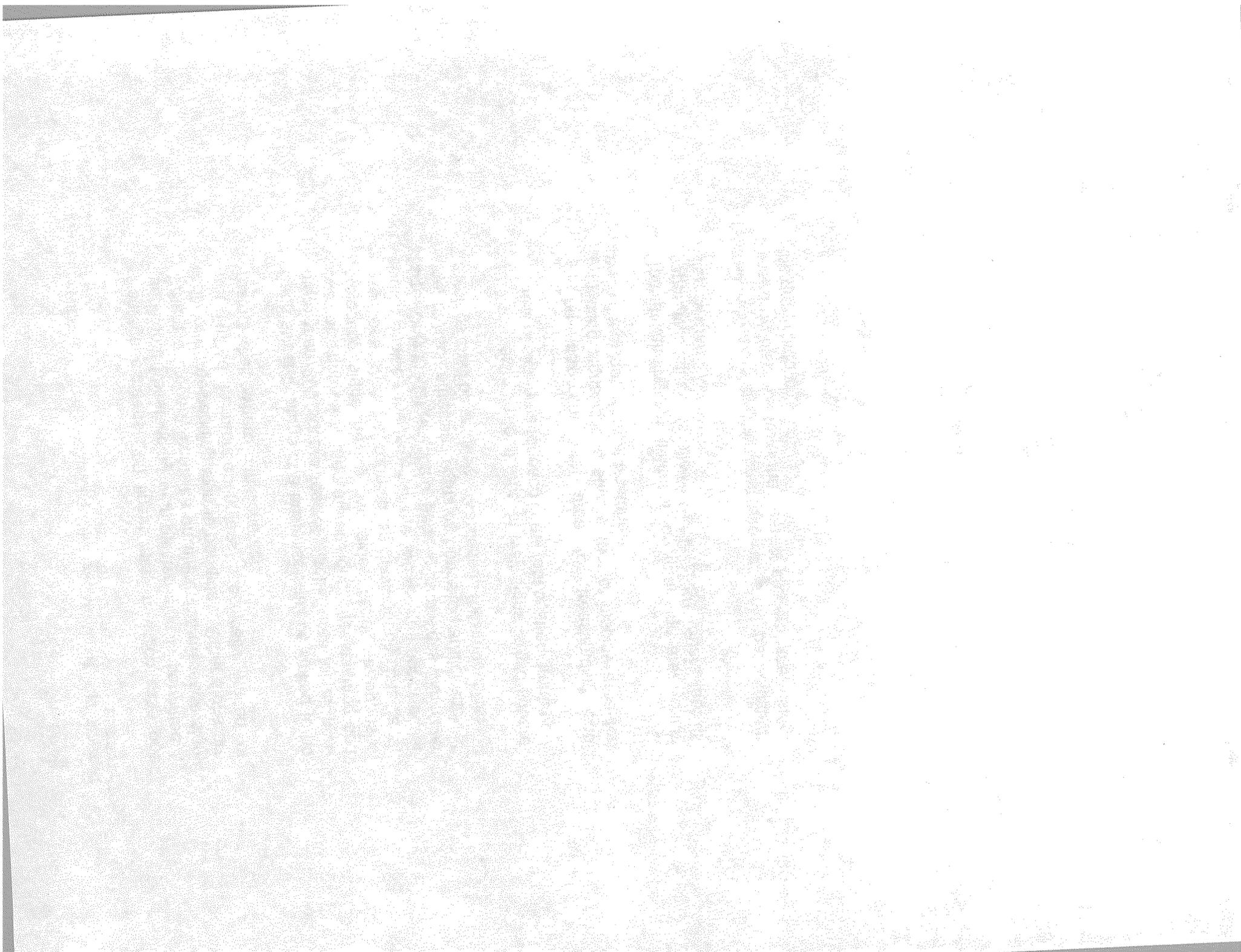
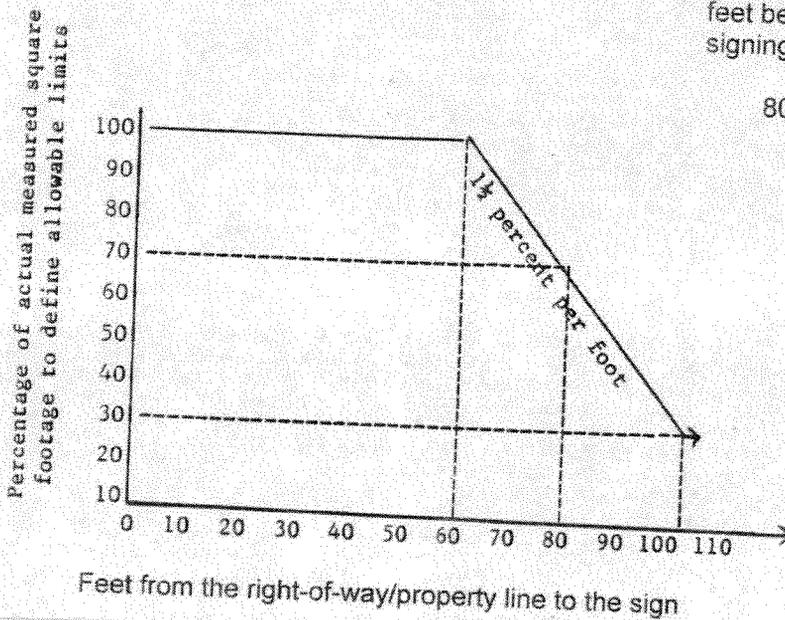


EXHIBIT B, ORDINANCE NO. 2037, AMENDING CHAPTER 10.10 OF THE NEWPORT MUNICIPAL CODE (ORDINANCE NO. 1943, AS AMENDED) RELATING TO ELECTRONIC MESSAGE SIGNS.



E.g., 60 foot setback of a measured 100 square foot sign results in 100 square feet being charged to the allowable signing area.

80 foot setback of a measured 100 square foot sign results in 70 square feet being charged to the allowable signing area.

105 foot setback of a measured 100 square foot sign results in 32.5 square feet being charged to the allowable signing area.

e.g., 60-foot setback of a measured 100 square foot sign results in 100 square feet being charged to the allowable sign area.

80 foot setback of a measured 100 square foot sign results in 70 square feet being charged to the allowable sign area.

105 foot setback of a measured 100 square foot sign results in 32.5 square feet being charged to the allowable sign area.

10.10.065 Exempt Signs

The following signs are exempt from regulation under this chapter:

- A. Signs erected or maintained by or on behalf of a federal, state, or local governmental body. This exemption shall not apply to signs that are otherwise prohibited under Section 10.10.045 except when the sign is placed in a public right-of-way by the entity responsible for managing the public right right-of-way as allowed under Section 10.10.040 (C)(1).
- B. Signs not visible from a public right-of-way or from property other than the property where the sign is

located. For purposes of this section, "property where the sign is located" includes all property under common ownership," and "visible" means that the sign face is visible.

10.10.070 Partially Exempt Signs

- A. The following signs are exempt from the permit requirement and, except as expressly provided to the contrary, do not count towards maximum display area:
1. One sign not exceeding two square feet on each property with a separate street address, placed flat against the building.
 2. In a residential zone on a property where a home occupation is legally conducted, a non-illuminated sign not exceeding two square feet in area, placed flat against the building.
 3. Signs placed on post boxes.
 4. Non-illuminated signs on private property oriented towards internal driveways and parking areas, not to exceed 3 square feet in area.
 5. Signs that are an integral part a building, including those cut into any masonry surface, as well as signs integrated into the structure of a building constructed of bronze or other non-combustible materials.
 6. Signs placed within a public right of way place by the public entity with responsibility for administering the right of way.
 7. Flags.
- B. Each religious institution is allowed to have, in addition to signage otherwise allowed, additional signage not to exceed 48 square feet in area, including each face of any multiple faced sign. No single sign face may exceed 24 square feet, except reader boards, which may not exceed 32 square feet and bulletin boards, which may not exceed 16 square feet. The sign(s) allowed by this subsection are exempt from the maximum total display area standard.

- C. Each community center and educational institution is allowed one reader board not exceeding 32 square feet in area in addition to other allowed signs. The sign allowed by this subsection is exempt from the maximum total display area standard.
- D. Temporary signs complying with all of the following are permitted in all zones without a permit, in addition to any other permitted signs:
 - 1. The signs must be entirely on private property and outside of any vision clearance areas.
 - 2. The signs do not exceed 20 square feet of display area or any horizontal or vertical dimension of 8 feet.
 - 3. The signs are not erected more than 90 days prior to the date of an election and they are removed within 30 days after the election.
 - 4. They are erected or maintained with the consent of the person or entity lawfully in possession of the premises and any structure to which they are attached.
- E. One temporary portable sign per business placed on private property is permitted. Temporary portable signs shall be made of permanent, durable materials and shall be maintained in a good condition. Temporary signs (portable and attached) in the aggregate may not exceed 24 square feet for all display area surfaces on a single property. Temporary signs shall not be included in the calculation of total maximum display area. All portable signs shall be weighted, anchored, or constructed so that they will not move or collapse in the event of wind, or otherwise create a hazard.

(Chapter 10.10.070(E.) was added by the adoption of Ordinance No. 2001 on March 16, 2010; effective April 15, 2010.)

10.10.075 Roof Signs

One roof sign per business property is permitted.

10.10.080 Signs at Subdivision Entrances

One permanent sign per subdivision entrance not to exceed 16 square feet in area is permitted. Signs at subdivision entrances may be illuminated but which shall not obstruct any required vision clearance area.

10.10.085 Vehicle Signs

Any sign attached to or imprinted upon a validly licensed motor vehicle operating legally upon the streets and highways of the State of Oregon is exempt from this chapter while the vehicle is traveling upon any street or highway, or while such vehicle is parked to carry out an activity incidental to interstate commerce, but is otherwise not exempt unless:

- A. The sign is painted or otherwise imprinted upon, or solidly affixed to, the surface of the vehicle, with no projection at any point in excess of 6 inches from the surface of the vehicle.
- B. The vehicle, with the sign attached, complies with all applicable requirements of the Motor Vehicle Code required for the lawful operation thereof.

10.10.090 R-1, R-2, and R-3 Residential Districts

In all R-1, R-2, and R-3 residential districts, the following signs are allowed:

- A. One non-illuminated sign not exceeding 2 square feet.
- B. One non-illuminated temporary sign not exceeding 8 square feet in area.
- C. One non-internally illuminated sign not exceeding 20 square feet in area placed flat against the building for each apartment complex.

10.10.095 R-4 Residential District

In an R-4 residential district, the following signs are allowed:

- A. For residential uses, signs allowed in the R-1, R-2 and R-3 districts.
- B. For hotels, motels, recreational vehicle parks, and movie theaters, no more than two illuminated signs that do not exceed 100 square feet in total area. The signs may be internally or externally illuminated, but may not include electronic message signs.
- C. For all other uses, a maximum of 20 square feet of sign area per street frontage. The maximum area shall be a

combination of wall and freestanding signs. Freestanding signs shall be set back a minimum of 10 feet from all property lines and shall not exceed 8 feet in height. No sign may be internally illuminated.

10.10.100 Commercial, Industrial, and Marine Districts

In commercial, industrial, and marine zoning districts, the following signs are allowed:

- A. The total area for wall signs shall not exceed two square feet of display area for each lineal foot of street frontage of the street.
- B. The total area for projecting and freestanding signs shall not exceed one square foot of display area for each lineal foot of street frontage. One projecting or freestanding sign is allowed for each 100 feet of street frontage, unless the property contains an electronic message sign, in which case only one freestanding sign is permitted.
- C. Each frontage of a business shall be limited to not more than 2 signs, only one of which may be other than a wall sign unless there is more than 100 lineal feet of street frontage.
- D. Window signs shall not exceed 16 square feet in area. Window signs are not included in the calculation of total display area.
- E. Except within marine zoning districts or the Historic Nye Beach Design Review District, electronic message signs on properties with no more than one freestanding sign of up to 20 feet in height, provided the electronic message sign:
 1. Is less than or equal to thirty-five percent (35%) of the total allowable sign area per sign face.
 2. Displays text, symbolic imagery, or a combination thereof for a period of time in excess of (5) minutes before a change occurs. This provision does not apply to the display of time, date and temperature information.

3. Changes the entire display text, symbolic imagery, or combination thereof within two (2) seconds.
4. Is not illuminated during hours the business is closed.
5. Does not contain or display animated, moving video, flashing, or scrolling messages.
6. Contains a default mechanism that freezes the sign in one position if a malfunction occurs.
7. Automatically adjusts the intensity of its display according to natural ambient light conditions.

F. Mural signs.

10.10.105 Signs in Shopping Centers

For shopping centers and multiple business properties, the number and size of signs are governed by this section, notwithstanding the provisions of the underlying zone.

- A. The maximum number of freestanding signs on shopping center properties is two and the maximum number of freestanding signs on multiple business properties is one.
- B. The maximum number of wall signs for shopping centers and multiple business properties is one per street frontage.
- C. For both shopping centers and multiple business properties, the maximum total area display area of all freestanding and wall signs and is one square foot for each lineal foot of street frontage, with a maximum of 200 square feet per sign. Only one side of a double-faced freestanding sign shall be including in the calculation of display area, provided that the sign faces are 180 degrees opposed and separated by two feet or less.
- D. In addition to the signs allowed by subsections A through C, each individual business may erect wall signs on the premises controlled by the individual business of up to two square feet of display area for each lineal foot of frontage. For the purposes of this subsection, the term frontage means the distance, measured in a straight line, along any one wall of the business premises facing and providing public access to the separate premises of the

business. Where a business has entrances allowing public access on more than one frontage, wall signs may be erected for each frontage, but the display area maximum shall be calculated separately for each frontage.

- E. The permit, size, area, and number restrictions do not apply to any signs in shopping centers and multiple business properties that are not visible from the public right of way or adjacent property.

10.10.110 Construction and Safety Requirements

All signs shall be well constructed in accordance with all applicable codes and requirements of law and shall be maintained in a safe, neat, and clean condition. Signs that are not in good repair or condition through deterioration or other reasons are prohibited and shall be either repaired or removed. If not repaired or removed by the owner, signs that are not in good repair or condition may be abated as authorized by this code.

10.10.115 Dangerous and Abandoned Signs

- A. Any sign or structure that is a nuisance or a dangerous structure may be abated as provided by city ordinances governing nuisances and dangerous structures. If the city manager or building official determines that any sign or sign structure constitutes an immediate threat, danger, or hazard to life, health, or property, the city manager or building official take any action necessary to immediately abate the risk, pursuant to the police power of the City of Newport and without prior notice.
- B. Any sign that has been abandoned or reasonably appears to be abandoned constitutes a hazard and may be abated as provided in Subsection A.

10.10.120 Removal of Signs in Rights-of-Way

Any unauthorized sign in a public right-of-way may be removed immediately without notice by the city and removed to a place of storage. A notice of removal shall be sent to any owner of the sign known to the city, notifying the owner that the sign will be destroyed unless the owner claims the sign within 20 days of the notice. If the owner is unknown to the city, no notice is required and the sign may be destroyed if

unclaimed after 20 days from the date of removal. No sign removed from the right-of-way shall be returned to the owner unless the owner pays a removal fee to the city in an amount set by Council resolution. If the city reasonably estimates the value of the sign materials to be less than \$10.00, the city may immediately dispose of any sign left in the right-of-way without notice.

10.10.125 Remedies

A sign erected or maintained in violation of this chapter is a nuisance and a civil infraction. The city may pursue any one or more of the legal, equitable administrative and self-help remedies legally available to it. All remedies of the city, both as a governmental body and otherwise are cumulative.

10.10.130 Nonconforming Signs

- A. The purpose of this section is to discourage nonconforming signs and to work toward eliminating or removing nonconforming signs or bringing them into conformity with this chapter. Nonconforming signs shall not be enlarged, expanded or extended, nor used as grounds for adding other structures or signs otherwise prohibited.
- B. A nonconforming sign may not be altered as to size, message, or construction, except that common and ordinary maintenance to maintain the sign in a good and safe condition is allowed, including incidental structural repair or replacement.
- C. If a nonconforming sign is damaged or destroyed by any cause including normal deterioration to the extent that the cost of repair shall exceed 50% of the replacement value of the sign, the sign may not be repaired or restored, and may be replaced only by a sign conforming to the provisions of this chapter.

10.10.135 Content and Interpretation

This chapter and Chapter 10.15 do not regulate the content of signs and shall be interpreted as not regulating content. These chapters shall be interpreted if at all possible to be consistent with constitutional protection of expression, and any provision that unconstitutionally restricts expression shall not be enforced, and the remainder of the provisions shall

continue to be applicable and shall be applied constitutionally.

10.10.140 Variance Requirements

Any person may seek a variance to the numerical provisions of this chapter or of Chapter 10.15 by filing a written application. The procedure and process applicable to zoning variances (including but not limited to the notification process, public hearing process, conditions of approval, time limitations, and revocation of permits as applicable for the type of variance requested) shall be followed. The fee for a variance shall be the same as for a zoning variance. The criteria for the sign variance shall be as specified below. In addition to the requirements for submitting a zoning variance, a sign inventory including the location, type, and size of each sign on the property shall be submitted with the variance application.

- A. All sign variance applications that propose to increase the number or size of signs or propose a variance from any other numerical standard shall be determined by the Planning Commission using the zoning Type I Variance procedure, based on a determination that the proposed variance is the minimum necessary to alleviate special hardships or practical difficulties faced by the applicant and that are beyond the control of the applicant.
- B. All sign variance applications based on a change in a sign or signs that decreases but does not eliminate an existing nonconformity shall be determined by the community development (planning) director using a Type II Variance procedure, based on a determination that the proposed variance will result in a reduction of the nonconformity without increasing any aspect of nonconformity.

10.10.145 Violations

A violation of this chapter or of Chapter 10.15 is a civil infraction, with a civil penalty not to exceed \$500. The penalty for a second or subsequent violation within two years may be up to \$1,000. A violation occurs on the date of the occurrence of the act constituting the violation. Each violation is a separate infraction, and each day in which a violation occurs or continues is a separate infraction.

