

## SCENIC MISSOURI

An Affiliate of Scenic  
America, Inc.

5650 A South Sinclair,  
Columbia, MO 65203-  
8611 (573) 446-3129  
(573) 443-3748 Fax

# Scenic Missouri's Model Billboard Ordinance for Cities, Counties and Small Communities

## Table of Contents

Section 1.	Acknowledgements	2
Section 2.	Introduction	3
Section 3.	Statement of Purpose	5
Section 4.	Definitions	6
Section 5.	Billboard Regulations: Permitted	11
Section 6.	Billboard Regulations: Prohibited	13
Section 7.	Billboard Regulations: Exempted	14
Section 8.	Areas of Special Control	14
Section 9.	General Design and Construction Standards	15
Section 10.	Non-Conforming Billboards	16
Section 11.	Permits, Administration, and Enforcement	18
Addendum	Severability	24
	Protection of First Amendment Rights	25
	A Discussion of the New Authority of Cities and Counties to Regulate Billboards Within Their Jurisdiction	26
	References	32

# SCENIC MISSOURI

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Scenic Missouri wishes to thank:

**The Missouri Municipal League** and the **St. Louis County Municipal League**. Both encouraged the development of this Model Ordinance to provide guidance and direction to their member constituencies desiring to protect scenic resources and distinctive community character.

**All of those who contributed** to the listed references and the references upon which they drew whose handiwork has been incorporated in this model.

**Members of the Missouri Municipal League** legal panel who reviewed and provided comments concerning the initial draft of this Model Ordinance.

Finally, Scenic Missouri thanks **David Froman**, partner in the firm Froman & Wagner, LLP, who served as the supervising editor of the Model Ordinance. Municipal and county officials wishing to discuss the Model Ordinance with Mr. Froman are encouraged to contact him at (573) 886-8965 or (877) 877-3003.

Scenic Missouri is a not-for-profit organization dedicated to preserving and enhancing the scenic beauty of Missouri. To this end, Scenic Missouri works with local governments to encourage the adoption of community standards that protect community character, such as, sign and billboard regulations, tree preservation and landscaping policies and programs and high quality streetscape design. Scenic Missouri is an affiliate of Scenic

# INTRODUCTION

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## Recent History

In 1998, the Missouri Legislature strengthened and broadened a statute it had passed the year before to give new authority to cities to regulate billboards within their jurisdictions. These statutory changes were made after the Missouri Court of Appeals had struck down a municipal ordinance that had conflicted with specifications of the Missouri Billboard Act, sections 226.500-226.600, Revised Statutes of Missouri (RSMo.). The new statute is very short. It provides as follows:

## The New Statute

1. Any city or county shall have the authority to adopt regulations with respect to outdoor advertising that are more restrictive than the height, size, lighting and spacing provisions of Sections 226.500 to 226.600, RSMo.
2. No city or county shall have the authority to impose a fee of more than five hundred dollars for the initial inspection of an outdoor advertising structure, nor may the city or county impose a business tax on an outdoor advertising structure of more than two per cent of the gross annual revenue produced by the outdoor advertising structure within that city or county.  
Section 71.288, RSMo. (as amended by S.B.No. 883).

The new statute strengthens and clarifies the authority of cities and counties to regulate outdoor advertising within their jurisdictions. It also avoids the effect of unfavorable judicial precedent in recent "preemption" challenges to city billboard ordinances. Its authority is independent of, and permits cities and counties, in effect, to supercede the specifications contained in, the Missouri Billboards Act.

## Local Authority

This statute gives cities and counties of the State of Missouri the authority to regulate outdoor advertising, that is, off-premises signs or billboards, within their jurisdictions. Such ordinances may regulate old and new billboards and even prohibit new billboards from being erected in the community in all locations beyond 660 feet from interstate and primary highways.

## New Limits

The statute gives extensive authority to limit new billboards and regulate existing billboards adjacent to interstate and primary highways through the regulation of spacing, height, size, and lighting. Such ordinances may require billboard owners to make modifications within a certain period of time, or the billboard can be removed altogether at the owner's expense.

This model billboard ordinance is designed for use by cities, counties, and small communities, whether or not they already regulate other signs by ordinance.

## Using This Model

This ordinance can stand alone, or it can be integrated with an existing on-premises sign ordinance. For ease of integration, this ordinance is written in a format similar to Scenic America's Guide to On-Premises Sign Ordinances for Rural and Small Communities, 1998.

# MODEL BILLBOARD ORDINANCE

## SECTION 1. STATEMENT OF PURPOSE

This first section of the billboard ordinance should clearly state the public purposes for which the ordinance has been enacted and how it will achieve those purposes. The statement of purpose clearly relates the purpose of the ordinance to important public policies, such as community appearance, traffic safety, preservation of the scenic environment, and economic development. If relevant, the statement of purpose may also include a clause that relates the ordinance to local zoning and/or state enabling legislation.

- a) To preserve and promote the public health, safety, and welfare of the citizens of Our Town;
- b) To maintain and enhance the visual environment, and to preserve the right of citizens to enjoy Our Town's scenic beauty;
- c) To improve pedestrian and traffic safety;
- d) To minimize the possible adverse effect of billboards on nearby public and private property.

For municipalities/counties with established zoning ordinances, use this introductory sentence:

*This off-premises billboard Ordinance is adopted under the Zoning Authority of Our Town in furtherance of the more general purposes set forth in the Zoning Ordinance.*

*This ordinance is adopted and hereafter amended pursuant to 71.288, Revised Statutes of Missouri*

## SECTION 2. DEFINITIONS

### **a. ABANDONED BILLBOARD.**

A billboard which has carried no message for more than 180 days or which no longer identifies a bona fide business, lessor, service, owner, product, or activity, date or time of past event, and/or for which no legal owner can be found. The definition shall also include any billboard structure which no longer supports the billboard for which it was designed.

### **b. ADMINISTRATOR.**

The designated government official whose responsibility it is to administer the provisions of this ordinance. These activities may include, but are not limited to, reviewing applications for billboard permits, corresponding and/or meeting with applicants, issuing and denying billboard permits, inspecting billboards, and interpreting and enforcing the provisions of this ordinance.

### **c. ARCHITECTURAL, SCENIC, OR HISTORIC AREA.**

An area of special control that contains unique visual or historic characteristics or whose natural beauty requires special regulations to ensure that all billboards displayed within the area are compatible with the area.

### **d. BILLBOARD.**

A billboard is an off-premises object, device, display, sign, or structure, or part thereof, displayed outdoors or visible from a public way, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location, or to express a point of view, by any means, including words, letters, figures, design, symbols, advertising flags, fixtures, colors, illuminations or projected images. Each substantially different face of a billboard structure shall con-

The definitions section is essential to explain terms that have special meaning in the ordinance. It is not uncommon to define between 30 and 50 different terms. Many communities find it useful to include illustrations in an appendix.

stitute a separate billboard. Billboards do not include on-premises commercial or political signage nor small commercial or non-commercial signs temporarily placed in residential lawns by residents, owners, contractors, realtors, or by or on behalf of political candidates or issues.

**e. BILLBOARD AREA.**

The facing of a billboard, including copy, insignia, background, structural supports, and border and trim. The measurement shall be determined by the smallest rectangle inclusive of all letters and images. The structural supports shall be excluded if they do not constitute a major part of the billboard or if the structure is not used to identify or attract attention to the business or product.

**f. BILLBOARD PLAZA.**

An area of special control which Our Town Council designates as appropriate for the display of billboards.

**g. CHANGEABLE COPY.**

Copy that changes at intervals of more than once every six seconds.

**h. COMMERCIAL BILLBOARD.**

A billboard which identifies goods or services that are not sold on the premises where the billboard is located.

**i. DIRECTIONAL SIGN.**

A sign erected and maintained by local officials within the public right-of-way, to indicate to the traveling public the route and distance to public accommodations, facilities, commercial services and points of scenic, historical, cultural, recreational, educational or religious interest. Such signs shall conform to all applicable state regulations regarding the placement of billboards in public rights-of-way.

**j. EXPRESSWAY OR FREEWAY.**

A highway to which access is restricted except by ramps or interchanges.

**k. FLASHING ILLUMINATION.**

A light source which, in whole or in part, physically changes in light intensity or gives the appearance of such change at intervals of less than six seconds.

**l. HEIGHT.**

The vertical distance measured from grade at the edge of the adjacent right-of-way to the highest point of the billboard.

**m. ILLEGAL BILLBOARD.**

A billboard that was constructed in violation of regulations that existed at the time it was built.

**n. INDIRECT ILLUMINATION.**

A light source not seen directly.

**o. INTERNAL ILLUMINATION.**

A light source that is concealed or contained within the billboard and becomes visible in darkness through a translucent surface.

**p. MOVEMENT.**

Physical movement or revolution up or down, around, or sideways that completes a cycle of change at intervals of less than six seconds.

**q. NON-CONFORMING BILLBOARD.**

A billboard which was lawfully erected and maintained at the effective date ( ) of this Ordinance, or any amendment thereto, that does not conform to the regulations of the district in which it is located.



**r. POLITICAL BILLBOARD.**

A billboard that advertises a candidate or an issue which is to be voted on in a local, state, or federal election.s.

**s. PREMISES.**

The contiguous land in the same ownership or control which is not divided by a street.

**t. SCENIC ROADSIDE.**

Scenic roadsides include those land areas within the municipal limits which lie within the viewshed of either side of the outermost edge of any of the roads, which are of uncommon visual importance or scenic attractiveness.

**u. SPACING.**

Spacing of billboards shall be the minimum distance between outdoor advertising billboard structures measured along the nearest edge of the pavement between points directly opposite the billboards along each side of the highway and shall apply to outdoor advertising billboard structures located on both sides of the highway involved.

**v. STRUCTURE.**

Anything built that requires a permanent location.

**w. VIEWSHED.**

An area visible from the road that provides vistas over water or across expanses of land, such as farmland, woodlands, coastal wetlands, mountaintops or ridgelines.

**THE ADDENDUM** (page 26) discusses in detail what this new law permits. Together with the existing billboard laws in Missouri, the new law enables cities and counties to:

**Prohibit** the erection of new billboards in all of the jurisdiction beyond 660 feet of interstate and primary highways.

**Limit** height, size, lighting, and spacing of new billboards throughout jurisdiction.

**Impose** reasonable regulations regarding height, size, illumination, and spacing of existing billboards.

**Remove** billboards without cash compensation if owners refuse to comply with the regulations after a reasonable time.

**Charge** permit fees, and remove billboards without cash payment for failure to obtain a permit.

**Municipalities may desire to impose different regulations in different zones or areas of their jurisdiction. If so, the following provisions can be modified or expanded accordingly.**

**The next three sections describe the types of billboards and their attributes which are either permitted, prohibited, or exempted by this Ordinance.**

(All numeric values are Scenic Missouri recommendations, based on our research and comparison with adopted billboard ordinances. However, this publication is intended to provide guidelines only. Each locality should determine its own numeric values in light of local conditions.)

## SECTION 3. BILLBOARD REGULATIONS: Permitted

### 1) New billboards:

a) No new billboards shall be erected within the political boundaries of Our Town, except in Billboard Plazas in designated areas of Special Control pursuant to Section 6.

b) Such new billboards as may be permitted by this Ordinance shall conform to the height, size, lighting, and spacing requirement prescribed by this Ordinance, as modified by the designation of any area of Special Control in which the billboard is located

### 2) Height: All billboards shall be no greater than 25 feet in height.

3) Size: All billboards shall be no greater than 150 square feet in area. Except for exempted billboards in Section 5, only one billboard shall be permitted on each billboard structure.

4) Lighting: In addition to the lighting restrictions of 226.540(1), RSMo. (Supp. 1997), which shall apply to all billboards in Our Town, no billboard shall be so illuminated that it:

Interferes with the safety of aircraft flight in the vicinity of the billboard.

Interferes with the use and enjoyment of property of any adjacent land owners.

Allows the illumination source to be directly visible from any right-of-way or adjoining property.

5) Spacing (All measurements shall be made parallel to the roadway between perpendiculars extended from the billboard locations in question.):

a) Interstate highways and freeways on the federal-aid primary system:

i) No billboard shall be erected within two thousand feet of an existing billboard on either side of the highway.

ii) No billboard shall be erected within two thousand feet of an interchange, intersection at grade, or safety rest area.

**b) Non freeway federal-aid primary highways:**

i) [for Counties:] Outside incorporated municipalities, no billboard shall be erected within one thousand five hundred feet of an existing billboard on either side of the highway.

ii) [for Cities and Towns:] Within the limits of Our Town, no billboard shall be erected within one thousand feet of an existing billboard on either side of the highway.

**c) Designated Scenic Roadsides :** No billboards shall be permitted in areas designated as Scenic Roadsides.

i) [for Counties:] Unzoned commercial and industrial areas:

(1) The spacing regulations pertinent to the adjacent roadway shall apply to each unzoned commercial and industrial area.

(2) Each business owner located in an unzoned commercial and industrial area must present records of the underlying business to the Administrator upon initial permit application and each renewal for each billboard located upon the premises of the business in the area in question.

ii) Minimum Setbacks: All billboards and billboard structures must be located at least 20 feet from any property line and placed so as not to pose a visibility or other hazard to vehicular traffic in the vicinity of the sign.

iii) Areas of Special Control: Areas of Special Control established under Section 6 may have regulations more or less restrictive than those of this section, consistent with the character of the area of Special Control.

#### SECTION 4. BILLBOARD REGULATIONS: Prohibited

The following are expressly prohibited unless specifically stated otherwise in this Ordinance:

a) **Off-Premise Billboards**, except in Billboard Plazas of designated areas of Special Control

b) **Animated and Moving Billboards**: Off-premise billboards employing movement including, but not limited to, changeable copy signs, pennants, flags, banners, streamers, propellers, discs, and searchlights.

c) **Flashing Billboards**: Off-premise billboards that include lights which flash, blink, or turn on and off intermittently, not including time and temperature signs.

d) **Glar ing Billboards**: Off-premise billboards employing direct, indirect, internal, flashing, or other illumination with light sources or reflectivity of such brightness that constitute a hazard to ground or air traffic or a nuisance, as determined by the Administrator.

e) **Inflatable Billboards and Objects**: Including, but not limited to, balloons.

f) **Roof Billboards**: Off-premise billboards which are erected or painted on a roof or which extend in height above the roofline of the building on which sign is erected.

g) **Simulated Traffic Signs and Obstructions**: Any sign which may be confused with or obstruct the view of any authorized traffic sign or signal, obstruct the sight distance triangle at any street or highway intersection, or extend into the public right-of-way.

## SECTION 5. BILLBOARD REGULATIONS: Exempted Signs

The following signs do not require permits or fee payments under Section 9 but must meet the other requirements of the Ordinance:

- a. Traffic control signs.
- b. Traffic flow informational signs.
- c. Directional signs.
- d. Temporary signs.
- e. Safety control signs.

## SECTION 6. AREAS OF SPECIAL CONTROL

1) The City Council [County Board of Supervisors], by Ordinance and following notice and hearing, may designate any of the following areas of Special Control:

- a) Architectural, historic, or scenic areas or scenic roadsides.
- b) Billboard plazas.

2) The Administrator shall maintain and shall continually revise a zoning map of Our Town on which the Administrator shall indicate the boundaries of all designated Areas of Special Control.

3) Our Town Council shall adopt special regulations for billboards in Areas of Special Control which shall be consistent with the character of the Area of Special Control.

This section permits the governing body to set aside designated areas for architectural, historical, or scenic preservation and for billboard plazas.

Many ordinances include sections to deal with safety or character issues related to the signage design, materials, and construction methods. Material specifications take on special significance in communities that are trying to achieve a particular character. For example, some ordinances prohibit the use of certain materials, or require the use of certain materials, like wood or steel sign base. Design and construction standards can also establish specifications for billboard height, landscaping, setbacks, illumination, etc.

## SECTION 7. GENERAL DESIGN AND CONSTRUCTION STANDARDS

All billboards shall be designated, constructed, and maintained in accordance with the following standards:

All billboards shall comply with applicable provisions of the Uniform Building Code and the electrical code of Our Town at all times.

All billboards regulated by this ordinance shall be constructed of permanent materials and shall be permanently attached to the ground, by direct attachment to a rigid wall, frame, or structure.

All billboards shall be maintained in good structural condition, in compliance with all building and electrical codes, and in conformance with this code, at all times.

## Background

## Concerning Section 8: Non-Conforming Billboards

This section outlines how the community, usually through a designated code enforcement officer (the "Administrator"), will handle old billboards that do not conform to the new law.

Often, the ordinance will set a specific date by which the billboards must be removed, a process known as amortization. In such a case, the ordinance allows businesses to keep a nonconforming billboard up for the amortization period (usually between one and five years), after which date the owner must remove it.

Amortization is permitted where it arises from the failure of the billboard owner to bring the billboard into conformance with the height, size, and lighting requirements of the Ordinance. These are factors that can be changed by the billboard's owner; thus, they do not result in a "taking" of the billboard. Spacing requirements, on the other hand, could be argued to result in a taking if billboards are too close together. To avoid the "taking" issue with respect to spacing of existing

billboards, the Administrator may permit the owner of a billboard with non-conforming spacing voluntarily to relocate it to a Billboard Plaza or other area where its spacing, height, size, and lighting will comply with the Ordinance. Non-payment of permit fees provides another ground for removal of an existing non-conforming billboard.

Many communities find that an amortization period provides a reasonable opportunity for the owner to benefit from the investment made on the billboard. A discussion of amortization appears in the **Addendum** (page 26). Since laws governing amortization vary by state, consult with your municipal attorney when drafting this section.



**Non-conforming billboards may be also handled through other incentives and/or regulations to eliminate old billboards including:**

**1)** A bonus in the size of new billboards as an incentive to remove nonconforming billboards by a specified date;

An offer by the local government to accomplish the physical removal of the billboard without charge to the merchant; and

**2)** A prohibition on the installation of any new billboards on a zone lot while a nonconforming billboard remains in use.

**Regulatory requirements for the removal of old billboards include:**

A requirement that the nonconforming billboard be removed if there is a change in the ownership of the premises where the billboard is located;

A requirement that it be removed if a building permit is issued for any construction, billboard-related or not, on the premises;

A prohibition on any modifications to the billboard or its message, allowing only routine maintenance;

A requirement that a master billboard permit allowing new billboards include a removal date for any nonconforming billboards.

## SECTION 8. NON-CONFORMING BILLBOARDS

**1. Continuance:** Each non-conforming billboard and billboard structure shall be allowed to be displayed for three (3) years from the adoption of this Ordinance, to provide a reasonable opportunity for the owner to benefit from the investment made in the billboard.

**2. Removal:** Non-conforming billboards and billboard structures shall be removed at the owner's or lessor's expense under the following circumstances:

- a) Not later than three (3) years from the date of the adoption of this Ordinance, if not brought into compliance with this Ordinance.
- b) The billboard is abandoned.
- c) The billboard becomes damaged or dilapidated to 50 % or more of its physical structure or economic value.

### Background

#### Concerning Section 9: Permits, Administration, and Enforcement

Off-premises billboards require a permit, issued by the local government for a fee. The purpose of permit fees is to provide sufficient revenue for enforcement of the billboard ordinance. Permits are subject to application requirements, conditions of approval, and review procedures, which are detailed in this section. The charges for permits may be listed here, or may be instead referred to as those adopted by the resolution of the governing body, e.g., the county supervisors or city council. This makes it easier periodically to update fees.

An effective enforcement mechanism is essential to a billboard ordinance. It is important to have clear, consistent billboard regulations that the community can effectively enforce.

The billboard ordinance should clearly state which department and staff will be responsible for implementation and enforcement of the regulations. Permit fees should cover the cost of enforcement in order to ensure that sufficient staff is available to implement the billboard regulation.

**Five important steps that a community can take to make the enforcement and administration of billboard regulation most effective:**

**a. Keep regulations simple.** This makes it easier to administer the ordinance and to encourage compliance by billboard owners.

**b. Establish records.** A master record of specific billboards that are permitted in various land uses, organized by location, as well as a schedule for removal of non-conforming billboards, will facilitate keeping track of records.

**c. Assign adequate staff for enforcement.** Weak enforcement will compromise even the most carefully drafted, well-thought out billboard ordinance.

**d. Build a review procedure into the billboard regulation process to gather support for billboard regulations.** A public hearing gives proponents and opponents an opportunity to state their opinions on the regulations.

**e. Encourage citizens to notify the municipality of billboard code violations.**

## SECTION 9. PERMITS, ADMINISTRATION AND ENFORCEMENT

**a. Enforcement Officer:** All administration and enforcement of this Ordinance shall be primarily implemented by the designated Code Enforcement Officer (the "Administrator") in the Our Town Department of Planning and Economic Development. The Administrator shall have the responsibility and full authority to administer and enforce all provisions of this Ordinance, other than those provisions specifically reserved for the authority of Our Town Council or the Board of Zoning Appeals. However, other staff in the Department will also be prepared to enforce this Ordinance. Anyone who wishes to report a billboard that may be in violation of this Ordinance should do so to the Administrator.

**b. Permit Procedures:** All billboards, except as otherwise provided in Section 5 of this Ordinance, shall require a billboard permit prior to being constructed, reconstructed, moved, altered, placed, or repaired. Billboard permits shall be issued by the Administrator.

**c. Permit Application:** All applications for billboard permits for the erection or relocation of a billboard shall be submitted to the Administrator and shall contain or have attached at a minimum the following information in either written or graphic form:

- (1) Application date.
- (2) Name, address, and telephone number of the billboard owner and, if different, the owner of the land on which the billboard will be erected.
- (3) Address of the property where the billboard or billboard structure will be erected.
- (4) Signature(s) of the billboard owner and, if different, the owner of the land on which the billboard will be displayed.

(5) Location of the billboard on the property in relation to public rights of way, lot lines, buildings, sidewalks, streets, zoning districts, other existing billboards, and intersections.

(6) General description of structural design and construction materials of billboard.

(7) Drawing(s) of the proposed billboard which shall contain specifications indicating height, perimeter, and area dimensions, means of support methods of illumination if any, and any other significant aspect of the proposed billboard.

(8) A boundary and sign survey showing the property and the proposed sign.

(9) Certification(s) from licensed professional engineers that the soil surface is capable of sustaining the proposed load and that the electrical and structural strength of the proposed/actual sign is satisfactory.

(10) Any other information requested by the Administrator in order to carry out the purpose and intent of these regulations.

**d. Permit Fees:** Each application for a billboard permit shall be accompanied by the applicable fees, which shall be established by the governing body of the Municipality from time to time.

**e. Permit Application Completeness:** Within five (5) working days of receiving an application for a billboard permit, the Administrator shall review it for completeness. If the Administrator finds that it is complete, the application shall then be processed. If the Administrator finds that it is incomplete, s/he shall, within such five (5) day period, send to the applicant a notice of the specific ways in which the application is deficient, with appropriate references to the applicable sections of this Ordinance.

**f. Permit Issuance/Denial Action:** All billboard permits shall be dated and numbered in the order of their issuance. Within ten (10) working days of the submission of a complete application for a billboard permit, the Administrator shall either:

(1) Issue the billboard permit, if the billboard that is the subject of the application conforms in every respect with the requirements of this Ordinance; or

(2) Deny the billboard permit if the billboard that is subject of the application fails in any way to conform with the requirements of this Ordinance. In case of a rejection, the Administrator shall specify in the rejection the section or sections of the Ordinance or applicable plan with which the billboard is inconsistent.

**g. Inspection Upon Completion:** Any person installing, structurally altering, or relocating a billboard for which a permit has been issued shall notify the Administrator upon completion of the work. The Administrator shall then conduct an inspection within seven (7) working days. If the construction is complete and in full compliance with this Ordinance and with the building and electrical codes, the Administrator shall affix to the billboard a permanent symbol identifying the billboard and the applicable permit by number or other reference. If the construction is substantially complete but not in full compliance with this Ordinance and applicable codes, the Administrator shall give the owner or applicant notice of the deficiencies and shall allow an additional thirty (30) days from the date of inspection for the deficiencies to be corrected. If the deficiencies are not corrected by such date, the permit shall lapse. If the construction is then complete, the Administrator shall affix to the billboard the permanent symbol described above.

**h. Lapses of Billboard Permit:** A billboard permit shall lapse if the billboard is an abandoned billboard, or if the permittee's business license lapses, is revoked, or is not renewed. A billboard permit shall lapse if the use of the billboard is discontinued for a period of one hundred eighty (180) days or more. A billboard that was constructed or maintained in conformance with a permit under this Ordinance, but for which the permit has lapsed, shall be in violation of the Ordinance.

**i. Assignment of the Billboard Permit:** A current and valid billboard permit shall be freely assignable to a successor, as owner of the property where the billboard is located or of the leasehold of the billboard, subject to filing such application as the Administrator may require and paying any applicable fee. The assignment shall be accomplished by filing and shall not require approval.

**j. Violations:** The Administrator, upon finding that any provision of this Ordinance or any condition of a permit issued under this Ordinance is being violated, is authorized to institute legal proceedings to enjoin violations of this Ordinance.

**k. Complaints and Revocations:** The Administrator shall investigate any complaints of violations of this Ordinance and may revoke a permit if there is any violation of the provisions of this Ordinance or there was misrepresentation of any material facts in either the application or plans.

**l. Appeal Procedure:** Any person applying for a billboard permit who is denied a permit or disagrees with any ruling by the Administrator may appeal to the City Council. The City Council may review or overturn the ruling, but may not issue a billboard permit. The findings of the City Council are then remitted back to the Administrator.

**n. Business Tax:** All new and existing billboards subject to this Ordinance shall be taxed at a rate to be established by the governing body of the Municipality, not to exceed two per cent of the gross annual revenue produced by the billboard.

**o. Expiration of Billboard Permits:** If an approved billboard is not erected within a period of 12 months from the date the permit was originally issued, the permit shall expire and become null and void.

**p. Fines:** A person who violates the provisions of this Ordinance or the conditions of a permit shall be guilty of a civil violation. Each day of the violation constitutes a separate offense subject to a \$100.00 fine. Such persons shall also be liable for court costs and reasonable attorney fees incurred by the local jurisdiction.

**q. Illegal Billboards:** The Administrator may remove or order the removal at the expense of the billboard owner or lessor of any illegal billboard and any billboard, other than a non-conforming billboard governed by Section 8, not in compliance with the provisions of this Ordinance.

**r. Immediate Peril:** If the Administrator shall find any billboard which poses an immediate peril to persons or property, the billboard shall be removed. If the Administrator cannot locate the billboard owner or lessor for immediate removal of the billboard, he shall remove or order the removal of the billboard at the expense of the billboard owner or lessor.



## **SECTION 10. SEVERABILITY**

This section preserves all other provisions of the Ordinance if one or more sections is found to be invalid or unconstitutional.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

## **SECTION 11. PROTECTION OF FIRST AMENDMENT RIGHTS**

This section ensures that there is no discrimination by content in the application of the Ordinance.

Any billboard, display, or device allowed under this Ordinance may contain, in lieu of any other copy, any otherwise lawful, noncommercial message, including any political message, that does not direct attention to a business operated for profit or to a commodity or service for sale, and that complies with all other requirements of this Ordinance.

## ADDENDUM to Scenic Missouri's Model Billboard Ordinance

A Discussion of the  
New Authority of Cities  
and Counties to  
Regulate Billboards  
Within Their Jurisdictions

### Introduction

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The Eighty-Ninth General Assembly enacted, and the Governor signed into law, legislation known as Senate Bill No. 883, which modified the laws of Missouri by repealing various provisions relating to transportation and enacting new provisions in lieu thereof. One of the provisions enacted modified a 1997 law that gave cities independent authority to regulate outdoor advertising. The new law dropped the requirement that the city have an "engineer or other similar city official on the planning commission" in order to utilize the law. Moreover, it expanded the scope of the authority to include counties, as well. The statute reads as follows:

**71.288.1. Any city or county shall have the authority to adopt regulations with respect to outdoor advertising that are more restrictive than the height, size, lighting and spacing provisions of Sections 226.500 to 226.600, RSMo.**

**2. No city or county shall have the authority to impose a fee of more than five hundred dollars for the initial inspection of an outdoor advertising structure, nor may the city or county impose a business tax on an outdoor advertising structure of more than two per cent of the gross annual revenue produced by the outdoor advertising structure within that city or county.**

Section 71.288, RSMo. (Supp. 1998).

The following discussion addresses the interaction of this provision with the Missouri Billboards Act, 226.500-226.600, RSMo., recent case law developments restricting the ability of municipalities to regulate billboards within their jurisdictions, and the effect this new statutory authority may have upon the use of amortization as a regulatory tool.

## New Statute v. Missouri Billboards Act

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The new statute is found in the section of the Revised Statutes of Missouri dealing with cities, towns and villages. It provides a regulatory authority that is more specific than the general zoning authorities for cities, counties and townships found, respectively, in Sections 64.090.1, 64.850, 65.695, and 89.020, RSMo.

(Supp.1997). The regulation of outdoor advertising structures would appear to fall under the authority of these general regulatory powers of counties, cities, and townships. However, the principle of statutory construction, that the specific overrules the general, has been an impediment to full utilization of these general authorities to regulate billboards in the face of the specific provisions of the Missouri Billboards Act.

The distinguishing feature of the new statute is that it refers directly to the entire Billboards Act and provides a direct and unequivocal mandate to cities and counties to exercise authority to adopt regulations that are more restrictive than the "height, size, lighting and spacing provisions of [the Act]." The key provision of the Billboards Act implicated by this reference is found in section 226.540. This provision spe-

cifically regulates the lighting, size, and spacing of billboards. In addition, it defines such concepts as "unzoned commercial and industrial land," which definition has a direct bearing on the spacing of billboards. The new statute makes subsection (7) of this section redundant in part. Subsection (7) allows more restrictive zoning of billboards under the Billboards Act: When such zoning regulations are "consistent with the intent of [the Billboards Act] and with customary use," the provisions of this section of the Billboards Act which specify size, lighting and spacing do not apply. The new law, however, gives cities and counties independent authority to depart from the provisions of § 266.540 ó in essence, to preempt those less-restrictive provisions ó without the stated requirement of consistency with the "intent" of the Billboards Act or with state or judicially-declared "customary use." Thus, the new law, and the ordinances passed under it, will not be affected by this subsection or by any other conflicting provision of the Missouri Billboards Act. The reference to Sections 266.500 through 266.600 in the new statute, in fact, demonstrates that no provision of the Missouri Bill-

boards Act can be raised to defeat the more restrictive conditions set by ordinances enacted under the new statute.

In the last few years, these challenges have met with a degree of success not realized in the previous cases. In *National Advertising Company v. Missouri State Highway and Transportation Commission*, 862 S.W.2d 953 (Mo. App., E.D. 1993), the court found within the Missouri Billboards Act's statement of purpose an emphasis on the function of outdoor advertising as a "legitimate commercial use of private property adjacent to interstate and primary highway systems" as opposed to the other purposes of the Act to "to regulate and to control

same to promote highway safety, promote convenience and enjoyment of highway travel, and to preserve the natural scenic beauty of highways and adjacent areas." Additionally, the court determined that "customary use" means "use consistent with the Act's regulations." *Id.* at 956. *State ex rel. Drury Displays, Inc. v. City of Columbia*, 907 S.W.2d 252 (Mo. App., W.D. 1995), followed the test established in *National Advertising* to invalidate a city ordinance which prohibited erection of new off-premises billboards. The court found the ordinance was "not consistent with the intent of the Act." *Id.* at 256.

## **New Statute's Effect Upon Recent Billboard Cases**

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The most recent tactic of the billboard industry has been to challenge local billboard ordinances on the ground that they are preempted by the Missouri Billboards Act.

The Court of Appeals, Eastern District, stepped beyond these cases in finding with respect to a city's attempt to regulate billboards along the interstate highway that the authority under the Missouri Billboards Act, heretofore believed to enable municipalities to enact more restrictive regulations (§ 266.527.4, RSMo.), did not apply to the billboards in question, but only to billboards "beyond 660 feet of the highway." In *Outcom, Inc. v. The City of Lake St. Louis*, 960

S.W.2d 1 (Mo. App., E.D. 1996), the court held that only § 226.540 of the Act could be used to regulate billboards within 660 feet of designated highways. *Id.* at 3. Moreover, it found that the specific regulations as to lighting, size and spacing of billboards declared in this section of the Act define "customary use," thereby effectively preventing any municipality from adopting regulations more restrictive than those specified within 660 feet of interstate highways

and primary roads. *Id.* at 4. This holding deprived cities and counties from enacting ordinances more restrictive than the parameters specified in § 226.540 of the Missouri Billboard Act. In January 1998 the Court of Appeals Eastern District reaffirmed these cases in the context of a request to modify an existing billboard. The Court referred to the predecessor of the new statute as evidence that cities did not have the authority under the Billboard Act to set more restrictive conditions on billboards. The Court observed, "If a municipality chooses to regulate billboards more restrictively than the Act, it may not charge a billboard owner inspection fees or business taxes above the statutory limit." *State ex rel. Whiteco v. Bowles*, 965 S.W.2d 203, 208 (Mo. App., E.D. 1998). On the positive side, the Court found that the Billboard Act did not prevent the city from requiring a building permit prior to alteration of the billboard, which it could deny for reasons of safety. *Id.* at 209. The Court based this holding in part on its earlier approval of the city's tax of five thousand dollars per year on every billboard located within its city limits. *Id.*

The new statute overcomes the law of these cases because it establishes an independent basis for regulating outdoor advertising displays. This new statute does not depend upon the provision of law (§ 226.527.4, RSMo..) that the Outcom court held did not apply to within 660 feet of the designated highways. Rather, by

the parameters it regulates, the new statute is specifically keyed to § 266.540, which the court unequivocally held to regulate billboards within 660 feet of the designated highways. Thus, the new authority granted to cities and counties overcomes the "customary use" straight jacket imposed by the Outcom decision. Likewise, the new statute stands independently of the purpose limitation adopted by the National Advertising and Drury courts through their interpretation of the preamble to the Billboards Act. The new statute has its own authority and its own separate purpose. Coming later in time, but dealing with the same subject matter, it cannot be bound by the purpose statement of a separate and earlier statute. The fact that the entire Missouri Billboards Act is referred to by section number as within the scope of the authority of the new law shows the Legislature's intent that this statute supercede any conflicting portions of that law. Passing on the earlier version of this statute, the Court of Appeals, Eastern District, held that the authority granted by the Legislature "was to re-vest in municipalities the authority to regulate any future construction of billboards," in essence finding that the new statute supercedes the Outcom opinion with regard to a city's ability to regulate new billboards within its jurisdiction more stringently than the requirements of the Billboard Act. *State ex rel. Drury Displays, Inc. v. City of Shrewsbury*, Case No. 73837 (Mo. App., E.D. Oct. 6, 1998).

## Effect of New Statute on Amortization of Billboards

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It is well established that cities may prohibit, regulate, and amortize billboards beyond 660 feet from designated highways. The question is to what extent may municipalities regulate or amortize billboards with 660 feet of designated highways? Case law has established that cities can require changes in the size, spacing and lighting of billboards to take effect within a specified period of time. If the billboards are not modified to conform to such regulations, municipalities are then justified in removing the billboards without compensation. This does not contravene the federal statute regarding removal of billboards without compensation, 23 U.S.C. § 131(g). The new law will allow cities to adopt regulations specifying the size, lighting, spacing and height of billboards adjacent to interstate highways and primary roads and will enable them to "amortize" such billboards if the modifications are not made within a

specified period of time. This does not constitute a taking of property under the law, because the owner may maintain the property simply by making a modification to it. As the referenced memorandum points out, it is only when "the owner is not given a reasonable opportunity to cure" that the federal prohibition on removal without monetary compensation would be violated. Amortization schemes of as short as one year have been approved by various courts. The provisions of the Billboard Act applying to amortization, §§ 226.527.4 and 226.570.2 RSMo. should not prevent amortization of non-conforming billboards whose owners decline to modify them to meet the standards of the Ordinance. The Ordinance does not require removal; it only provides it as an alternative remedy when there is a failure to comply with the modifications required by the Ordinance.

## Summary

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From the foregoing discussion a number of conclusions can be made concerning the new statute:

1. By its reference to the subject matter of § 226.540 RSMo., it is clear the new statute applies to outdoor advertising displays within 660 feet of the right-of-way of interstate highways and primary roads.
2. The authority of the new statute is not limited by previous contrary judicial precedent, because it constitutes a separate, specific authority for cities and counties to regulate outdoor advertising, independent of the Missouri Billboards Act.
3. Cities and counties passing ordinances under the new statute are not bound by judicially-declared "customary use" restrictions referenced to the Missouri Billboards Act. To the contrary, the new statute will permit cities and counties to make their own "customary use" determinations specific to their jurisdictions.
4. Cities and counties may regulate the lighting, size, height, and spacing of billboards both within and outside 660 feet of interstate highways and primary roads and may after a reasonable period of time require removal of those that fail to conform to regulations, including those that fail to pay the permit fee.

**SCENIC MISSOURI**

**An Affiliate of Scenic America, Inc.  
5650 A South Sinclair,  
Columbia, MO 65203-8611  
(573) 446-3129 (573) 443-3748 Fax**

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## SCENIC MISSOURI

An Affiliate of Scenic  
America, Inc.  
5650 A South Sinclair,  
Columbia, MO 65203-8611  
(573) 446-3129  
(573) 443-3748 Fax