The Committee of 100
on the Federal City

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SUBJECT: Part I: Narrative Comments on Second Proposed Rulemaking – Title 13: Sign Regulations

I. OVERVIEW

The Committee of 100 on the Federal City is astonished to find that the draft sign regulations contained in a Second Notice of Proposed Rulemaking propose **radical and unacceptable changes in existing sign policy in favor of increasing the spread of highly intrusive outdoor advertising billboard technologies throughout the District.** These proposals from the District's Department of Transportation (DDOT) Office of Planning (OP) and Department of Consumer and

Regulatory Affairs (DCRA) constitute major, wholly unwarranted and inexplicable concessions to the sign industry at the expense of historic protections from billboard blight that DC residents and millions of Americans and foreign visitors have enjoyed since the 1930s. Further, those who have drafted these regulations go far beyond simply consolidating and simplifying existing regulations – a worthy undertaking and one the public can support – and instead have taken the liberty of altering long-held policies that have helped to protect our common visual environment.

The proposed changes will blight reviving commercial and mixed-use districts and impose unacceptable hardships on residents and office tenants, invading homes and offices and radically changing the nature of the public realm. In 1965, Congress enacted Lady Bird Johnson's Highway Beautification Act. Mrs. Johnson focused many of her efforts on Washington, DC as a showcase for other cities. It is ironic that 50 years later, DC officials propose to enact what constitutes the *Gigantic Digital Billboard Pollution Protection Act.*

The proposed regulations adopt the language crafted by the electronic billboard industry to distance itself from what has become a dirty word in communities –" billboards"; circumvent existing billboard regulations and intimidate local governments that lack expertise in billboard law into granting their unsubstantiated rights to digital signs. DC must not fall into this trap. From the 1930's until 2001, the District had one of the best billboard laws in the country – the Congressionally enacted ban on new billboards. Then, in 2001, the enormous wall-mounted billboards dubbed "Special Signs" managed to gain authorization as a result of a Council snafu. Since 2001, the billboard industry has worked constantly to erode the intention of that longstanding ban.

Now is the time to ***ban construction of all new digital and other billboards in DC*** as thousands of local governments have done in the U.S.

Beyond the concerns outlined in our comments, and the major policy problems discussed below, in our view, the draft also poses numerous lesser substantive problems, and for this and various other technical reasons, it is not yet a fully finished piece of regulatory drafting. *While we commend the effort to pull together in one place the existing sign regulations, we do not believe it appropriate for agency staff to introduce broad policy changes that will transform DC into the national poster child for digital billboard pollution.* Moreover, since these regulations will doubtless guide District citizens, businesses and government officials for decades into the future, there is every reason to take the time needed to get them right the first time, down to the last detail. We are sending our detailed section-by-section-comments titled Part II: Section-by-Section Comments on Proposed Sign Regulations.
Part II includes suggestions for changes in the text (in redline and italics. Our approach has been to work through the proposed regulations comparing new provisions to the existing regulations, and critiquing the proposal from the point of view of both effective user-friendly drafting and substantive content.

Sign Control Language Matters.

Honesty requires applying the term "billboard" to all of the major forms of outdoor advertising signs that the current proposal would authorize:

- Variable message billboards, including Spectacular or Jumbotron full motion video billboards that can reach 1200 square feet in size
- Rooftop billboards
- Freestanding billboards
- Special Sign billboards

"Billboard" should be defined in the glossary as *a sign that advertises goods or services not available at*

the site of the sign. (On-premise signs are correctly defined in the glossary.) Billboards may be either large or small. DC should use a common definition of billboard and not try to distinguish signs on the basis of whether they are permanent or non-permanent. By any common sense definition, the Gallery Place/Verizon billboards are permanent installations.

This is not a matter of semantics but a fundamental matter of public policy. When, in the 1930's, Congress moved to protect the city from visual pollution by prohibiting new billboards, it was taking aim at what was then the most massively intrusive widespread form of outdoor advertising: large manually changeable outdoor signs usually posted on permanent and freestanding standards. From the point of view of their impact on the community, the new sign technologies proposed for the capital city today are in every respect the functional equivalent of these 1930's billboards – *except for their enormous differences in scale and intensity.* For example: old-fashioned billboards were and still are limited by DC law to 300 square feet; the proposed digital signs could range up to 1200 square feet, and "Special Signs" are limited only by the size of the building on which they are mounted and have ranged up to 6,000 square feet or more in the District. Old billboards were illuminated, if at all, by a few lamps shining onto the sign surface; digital billboards are self-illuminating video screens or projected moving images and would be allowed an overwhelming 5000 nits in luminance. Copy on an old billboard was manually changed perhaps every few months; the proposed digital billboards bombard the neighborhood with a new message as frequently as every five to ten seconds.

The Highway Beautification Act (HBA) is Relevant for Safety AND Beauty.

Compliance with the HBA is absolutely necessary, but it is not sufficient for sound city policy governing billboards. The HBA sets a minimum standard of compliance to ensure highway safety, but it does not address personal health and productivity issues raised by long exposure to high intensity electronic flashing lights, or important public considerations about the quality of the public realm and the impact on the pedestrian experience or on historic structures. DDOT's fear of losing federal highway funding if it is not in compliance with the HBA is well founded. However, a concern for continued funding and safety alone are not sufficient considerations in decisions governing an important land use in DC.

Sign Control is a Land Use Regulation.

Billboards are a land use, governed by local authorities. The billboard industry has no constitutional rights to construct new signs. The Supreme Court ruling in Metromedia, Inc. v. City of San Diego, 453. U.S. 490 (1981) permitted the city to regulate billboards as a land use issue but stated that they could not regulate content of signs by allowing some exceptions and not allowing others. Further Court rulings upheld this principal on a variety of interests including the necessity for cities to include in the language its public interest in aesthetics and safety. Instead of adopting best sign practices upheld by the courts from cities that understand the importance of maintaining community character, DC city officials are resorting to worst sign practices typical of cities that have lost much of their character.

Moreover, in most cities, signs are treated as a zoning matter within a context of compatibility with other land uses, effect on residents, and public processes to ensure that affected communities are included in commenting on changes that will affect their quality of life. In DC, sign control has been inappropriately largely relegated to a matter of permitting by DCRA and DDOT and is not subject to public scrutiny. Permission to erect signs is granted as a matter of right.

This is true even though, appropriately, DCMR Title 12 (Construction) contains a number of provisions relating to signs (in addition to the general sign regulations contained in that Title 1 that are to be replaced by the new Title 13), and that the same is true of Title 10C (Historic Preservation). Title 11 (Zoning) also already contains some provisions dealing with signs, but sign control remains substantially

divorced from the main body of land use regulation that falls under the authority of the Zoning Commission. We therefore recommend that the Council consider correcting that by transferring administration of additional sign regulations to the Zoning Commission while retaining DDOT's role to comply with the Highway Beautification Act and other safety and public space considerations.

In Dense Mixed-Use DC Neighborhoods, Public Space and Private Space Are Virtually One and The Same.

The draft makes a careful distinction about what can go up in public space and buildings versus what can be placed on private space and buildings. However, this is a distinction without a difference in terms of the overall impact on the city and the experience of pedestrians, residents, office workers, and the throngs of Americans and foreign visitors who come here to see our nation's capital city. Look at the Verizon Center/Gallery Place where the facades of beautiful and historic buildings such as the American Museum of Art and the Monaco Hotel are assaulted with reflected images from the flashing digital billboards.

When Cities Permit New Billboards, Regulation is Exceedingly Difficult and Litigious.

Before changing DC's sign ordinance, decision-makers need to commission an independent study of the history of enforcement and compliance with all agreements at both Gallery Place and the Verizon Center. An outside law firm, perhaps on contract to the Attorney General, should conduct this study rather than the agencies that were party to permitting digital billboards in these locations. We know from recent experience that enforcement of restrictions on off-premise advertising and light intensity has been virtually non-existent at these locations. In fact, DCRA appears to have been handicapped in enforcing the law that would pit regulators against Monumental Sports and Entertainment and its threat of lawsuits. The proposed study is important because emasculated regulation is typical of the experience of US cities that permit digital billboards. It is important that Council and the public understand the legal issues we are faced with in the present before extending them into the future.

DC Should Ban Construction of All New Billboards.

The only way DC can control the proliferation of blight by digital billboards and huge wall signs over time is to ban construction of new digital and sign billboards. Four states – Vermont, Alaska, Hawaii and Maine, all regarded as some of the most beautiful destinations in America -- banned the construction of billboards early on, and today remain free of this blight. Further, thousands of communities around the country have banned the construction of new billboards, including digital billboards: 386 communities in the state of Texas including Houston, Amarillo, Austin, El Paso, Ft. Worth, Galveston and San Antonio; approximately 287 cities and counties in the state of FL (representing more than one-half of Florida local governments) including Jacksonville, St. Petersburg, Tampa Bay; Los Angeles, San Francisco, San Diego, and San Jose, CA; Denver and Greeley, CO; and hundreds of other communities that understand that beauty, not electronic billboard blight, is good for business.

The proposed sign regulations reflect ignorance of best practices regarding both digital billboards and on-premise digital signs. In UNESCO's August 8, 2014 report titled "Report of the Special Rapporteur in the Field of Cultural Rights," the authors identify omnipresent outdoor advertising and marketing practices as a worldwide cultural threat to human cultural identity and expression, particularly growing commercialization of the public realm.

Absent from DDOT's proposed regulations is any reflection of this perspective or best practices regarding billboard regulations, aesthetic law and the vast experience of other US and national communities. To understand how the courts have ruled in billboard control cases as well as how other cities and counties have banned the construction of new billboards, we recommend that all agencies that

have drafted these regulations check out links and obtain publications on billboard and sign regulation from Scenic America www.scenic.org and the American Planning Association https://www.planning.org/publications/. Further, we recommend that you consult with legal experts who are currently litigating billboard control on behalf of cities nationwide to understand what DC can expect in long-term legal challenges if our city permits electronic billboards to proliferate as proposed in these regulations.

Visual Impacts of All Proposed Sign Regulations Should Be Routinely Illustrated Through Visual Simulation

Visual simulation (2-D photomontage and 3-D full motion video) should be routinely required for all digital or special sign billboard permits. As city officials charged with protecting the public trust, DDOT, OP and DCRA have an obligation to the public to make it as easy as possible for us to understand what you propose. As part of your proposal, it is incumbent upon you to accurately depict the visual effects of these sign regulations in typical locations through objective visual simulations showing their full impacts – including both direct and bounced light -- on all affected built and natural elements including the Potomac River, historic buildings and streetscapes, as well as on people including pedestrians, office tenants and residents.

Visual simulation technology has been in use a long time, and its application to these sign regulations will demystify the regulatory language. Visual simulation is neither expensive nor unfamiliar to OP, DDOT or the federal agencies. A series of 2-D photo montages showing the impact of proposed regulations on rooftops, buildings and streetscapes in various communities throughout the city -- coupled with 3-D, animated simulations of the proposed "designated entertainment districts"-- would show that the DC Government intends to be transparent in the regulatory process and that you care that citizens and lawmakers alike understand your proposals.

Effects on Businesses, Residents and Property Values at Gallery Place/Verizon Center Should be Documented.

An impartial, objective study of the effects of digital billboards on the well-being and property values of residents, office tenants and businesses at Gallery Place/Verizon Center is imperative before any proposal to extend this blight can go forward. To ensure objectivity, transparency and credibility, we urge that Council conduct the study rather than any of the agencies involved in drafting the regulations. It is vital that the methodology for this study is sound and that the public is engaged in posing questions that the study should address.

II. MAJOR POLICY PROBLEMS

In three areas – the authorization of digital Variable Message Signs (VMS's) throughout the District (dealt with in Ch. 7), the authorization of digital and other rooftop signs (Ch. 7 and Ch. 9), and the proposed Designated Entertainment Areas (Ch. 9), including the relaxation of restrictions on Special Signs (Ch.10), the proposed regulations embody sweeping harmful departures from existing policy.

1. Authorization of digital Variable Message Signs (VMS) throughout the District (§714) should be deleted.

As a result of changes in definitions in Ch. 99 since the previous draft, a variable message sign (VMS) -- properly called "variable message billboard" - is now defined as any sign with changing images or messages, including digital and full motion video signs. The proposed §714 is largely new and is designed to accommodate new digital technology, while stopping short of the full tech blowout allowed

or proposed for "Designated Entertainment Areas." It is a major escalation in the intrusiveness of commercial outdoor advertising allowed in the District. In the previous draft it was limited to Commercial and Industrial zones, but now has been extended to Mixed Use and Waterfront zones as well – essentially, anywhere present and proposed zoning allows matter-of-right commercial uses. In fact, **Mixed Use is becoming Mixed Abuse**.

This provision excludes full motion video VMS's, but provides the first step in turning even neighborhood commercial districts all over the city into mini-versions of the advertising free-for-all zones that are proposed under Chapter 9, "Designated Entertainment Districts" – albeit with slower, smaller, and less brilliantly lit digital moving-image signs than in the proposed DEA's, where full motion video is allowed. This would take place without review by interested residents, property owners, ANCs or others, and from the point of view of the sign industry constitutes the camel's nose under the tent and a windfall profit. This provision, §714, should be deleted in its entirety.

2. Rooftop signs should not be permitted.

Chapters 7 & 9 would authorize signs on roofs including digital signs for off-premise advertising. These provisions should be eliminated. They would permit a highly visible and intrusive element into the city that is not present and should not be permitted. Whether these are electronic or not, the presence of these structures is not in keeping with other regulations governing aesthetics in the city.

3. "Designated Entertainment Areas" will fast track the spread of hi-tech billboards throughout the District, relax the controls on "Special Signs" and should be deleted.

Chapter 9, Designated Entertainment Areas (DEA's), would regularize the establishment of defined areas of high-illumination full motion video and other variable message displays presently allowed only in the Gallery Place and Verizon Center areas. Also allowed would be the supersized billboards now regulated as "Special Signs" and now restricted to certain statutorily designated areas (principally downtown). Further, it would for the first time, authorize the deployment in the District of yet another highly intrusive new outdoor advertising technology – projected images – for the time being only in Gallery Place, ballpark and waterfront areas. It would establish Gallery Place and the Verizon Center as DEA's, immediately create two more DEAs -- -- in the Ballpark and Southwest Waterfront area, and empower the Mayor to create additional DEAs throughout the District.

This chapter should be deleted in its entirety. If the chapter does go forward to Council, it needs to be completely changed for the following reasons.

a. The underlying rationale for "DEA's" is spurious.

The draft defines "Designated Entertainment Area" as "any location recognized by the Mayor as a destination venue that provides events, performances or activities designed to entertain others." §9900.1 But there is nothing about the mere fact that an area or facility is one where events, performance or entertainment activities occur – whether a sports stadium, Arena Stage or the Kennedy Center -- that makes it somehow an appropriate place to install a collection of supersized high-intensity billboards. Quite the contrary is likely to be the case. **This spurious logic must be critically re-examined and rejected.**

b. "DEA" has an almost infinitely elastic definition.

The definition just quoted is substantially broader, and thus weaker, than the previous definition – itself unacceptably vague and elastic -- which required that the area have "a concentrated number of venues for" such events, performances, or activities. Thus, under the new definition, a single movie theater, or just

one restaurant or bar with an Entertainment Endorsement on its ABC license, could qualify a cluster of lots downtown or in neighborhood business strips across the city to be turned into a DEA by Mayoral fiat.

If the DEA concept is to be retained at all – and we strongly recommend against it as being an inevitable source of major visual pollution extending well beyond its geographic boundaries and incompatible with other aspects of land use regulation in the city -- a much more restrictive definition is required. It must make clear the designation is not appropriate for neighborhood commercial strips, historic districts or mixed-use areas with residential units. This would clearly restrict the designation of facilities representing major investment on the order of the Verizon Center, but situated as to avoid the major adverse effects that the Gallery Place/Verizon Center signs have had on other values in the surrounding area.

c. The Mayor has been given power as the sole decision-maker.

The draft allows the Mayor to create additional DEA's throughout the District by fiat. The current draft has added a requirement that before doing so the Mayor consult with OP, DCRA, DDOT, and the appropriate ANCs and federal agencies. It hardly needs saying that any responsible Mayor would so consult, voluntarily, before even entertaining the idea of creating another one of these highly intrusive hi-tech outdoor advertising havens. But a requirement that he or she do so is merely window-dressing if, in the end, the decision is left solely to the Mayor.

Thus two changes are required:

(1) §900.2(e) constituting the Mayor sole decision maker should be modified to require, in order to establish any new DEA, including those proposed for the ballpark and waterfront areas, affirmative action by the Council on a detailed proposal (including 2-D photo montage or other visual simulations) identifying precisely what types of signs are to be displayed, the special terms and conditions applicable specifically to the area in question, specific information about each sign proposed based on submitted permit applications, and accurate and objective visual simulations showing the effects on all built and natural elements in the surrounding environment. If a mayor wishes to create a new DEA, he or she should be required to send such a proposal to the Council as a proposed rulemaking for consideration by the Council.

(2) Accordingly, §§900.2 (c) and (d), instantly creating the proposed ballpark and southwest waterfront DEAs, should be struck, and detailed proposals of the sort just described required for these two areas. Any electronic signs such as scoreboards should only face inside the ballpark and not out into the community or onto the waterfront.

Proponents of a streamlined process for approving the spread of full motion video outdoor advertising and supersized wall signs to other areas in the District have invoked considerations of convenience and efficiency. Such considerations do not justify depriving all concerned of full advance notice and opportunity to be heard, or excluding the Council from the role that it has thus far played in setting District policy on the new and increasingly intrusive forms of outdoor advertising that the industry wishes to introduce.

d. DEA's lack restrictions on location, installation or density.

Although there are a few restrictions on where roof signs in a DEA can be located,[1] there are no restrictions as to the areas within which the DEA's themselves may be located -- as to proximity to residential areas, historic sites, parks, monuments, federal buildings or anything else. Since Special Signs billboards, full motion video billboards and other variable message billboards are allowed in DEAs, this designation appears to offer a device for evading the many restrictions that the regulations

impose on where these types of signs may be located, allowing them to be installed, under the cover of a DEA, wherever they are deemed commercially feasible.

The list of location restrictions on these types of signs under the proposed regulations and/or existing law is long: Special Signs billboards must avoid proximity to residential districts, schools, churches, parks, monuments, Georgetown properties, historic districts, federal aid highways and other locations; [2] full motion video billboards other than those in Gallery Place and the Verizon Center are prohibited in all zone districts [3] and in Shipstead Luce Act and Old Georgetown Act areas, [4] on historic landmarks or buildings in historic districts; [5] other variable message signs cannot locate in a historic district, or within 200 feet of a Residential or Special Purpose district, and are subject to other restrictions [6]. Note that also §905.6 and 905.7 envisage the possibility of locating DEAs in areas subject to Commission of Fine Arts jurisdiction, even though, absent a DEA designation, all of the sign types specially allowed in DEA's are prohibited in Commission areas except for VMS's on college campuses, as is also the case for historic districts and landmarks.

By contrast, the proposed regulations contain no restrictions on where DEA's may be located. Thus they appear to make it possible to use the DEA designation as a tool for circumventing these important location restrictions on variable message signs, including full motion video signs, and installing them in areas and at specific locations where otherwise not even variable message signs *without* full motion video would be allowed. [7] Similarly, Special Signs billboards would apparently be allowed, through DEA designation, in areas and at specific locations where otherwise they would be prohibited. See §906.12. [8] If it is not the drafters' intention that Chapter 9 will override these locational restrictions, then the proposed regulations must explicitly say so -- which they do not now do -- by providing that DEA's cannot be designated in any area or specific location where full motion video signs, digital or other variable message signs, or Special Signs cannot be located. Either way, many district neighborhoods would be vulnerable targets for DEAs.

Leaving aside the question of these essential location restrictions, the draft would give the sign promoter a largely free hand as to how and where to install a full motion video sign: There are no restrictions on placement over windows, as there are for Special Signs billboards (albeit not fully enforced), or other limitations on where or how they may be installed at the site – e.g., whether on a building or a freestanding frame. Most importantly, there are no restrictions on the density of concentration of full motion video signs (as there are presently for Special Signs billboards in a provision that DDOT unfortunately proposes to drop) or limitations on the total number of full motion video signs allowed in the District, as there are for Special Signs.

Moreover, full motion video and other variable message signs in DEAs would be allowed to have a level of luminance intensity two and a half times greater, [9] and a size thirty times greater, [10] than that allowed for variable message signs operating without the cover of a DEA. This is coupled with the fact that Special Signs already have no legal size limitation, being limited only by the size of the building on which they are installed, and already have reached as much as 6,000 square feet.

e. Restraints on proliferation of Special Signs are relaxed.

- Expanding the area in which Special Signs may be located to include any DEA (§§906.12 and 1007.2(c)(4)), on top of whatever hi-intensity graphics may be authorized for the area, should be struck. This change would free Special Signs from the carefully drawn geographic limits on their location that have been in place since their first authorization in 2001, giving them access immediately to four large additional areas and potentially to areas throughout the whole city. It must be borne in mind that the 2001 boundaries were drawn so as to include mainly heavily developed downtown areas thought to be less vulnerable to adverse impact by the proximity of the huge signs

than other parts of the District. Now, however, the proposed regulations would enable the proliferation of these signs -- which can cover the entire side of a high-rise building and have been as large as 6,000 square feet in the District – into the many lower-density neighborhood commercial strips that coexist in close proximity to surrounding residential neighborhoods and in which the incompatibility of these monster signs with their setting would be stark. *There is no justification for using the re-codification of the sign regulations as an occasion for acceding to yet another effort to open up more of the District to the giant wall sign billboards.*

- Restore existing restrictions on (a) density of concentration of Special Signs (N101.17.5.5), and (b) incompatibility of signs with parks or District or federal government buildings (N101.17.5.4). Inexplicably, these provisions have been dropped. They must be restored. The only purpose served by these omissions would be to make it easier for sign companies to find new locations for Special Signs while proportionately increasing the likelihood of adverse impact on the surrounding neighborhoods.

f. Another form of highly intrusive outdoor advertising technology is expanded: full-motion projected images. This section should be struck. In §900.3, Chapter 9 would also introduce to the nation's capital for the first time yet another form of supersized high-intensity billboard: full motion projected images. These would take their place alongside 6,000-foot wall signs, giant full motion video screens and all manner of constantly churning digital signs, turning any available surface not already utilized for commercial advertising into a movie screen up to 1,200 square feet in size. For the time being they would be limited to precisely described locations in the Gallery Place, ballpark and waterfront areas, a proposal clearly tailored to accommodate specific proposals for installation of this technology presented to DDOT. What possible reason could there be to subject the District to this sort of further technological overkill, other than that the technology is there, and that some property owner and billboard company would like to try to turn it to profitable use on the city's streetscapes? This Section should be struck.

So what would "DEA's" portend for the future? The upshot is this: Full motion video, especially if in tandem with the monster wall billboard technology utilized by Special Signs, has been for some time the next big thing in DC signage. From the perspective of the billboard purveyors, the nation's capital -- with its historic ban on conventional billboards, and notwithstanding that it allows 32 Special Signs and a couple of areas for high intensity electronic signs -- remains largely a virgin territory ripe for conquest. The industry's endgame is the emergence of an official and popular perception of these and other supersized high impact technologies as the accepted norm, and their replication throughout the city as widespread as that of old fashioned billboards in the 'thirties before the Congressional ban.

The "Designated Entertainment Areas" proposal in Chapter 9 invites and paves the way for that invasion. It would enable the industry, by the simple expedient of persuading a mayor to issue an executive order designating an intended target spot as a DEA, to scatter across downtown and in neighborhood commercial strips throughout the city, special advertising havens where glaring forty-foot video screens bombard the neighborhood with commercials 24/7. Buildings would continue to disappear behind 6,000 square foot ads for liquor or electronics, and smaller moving-image signs would occupy every remaining cranny of available space.

This Brave New World is not an acceptable future for Washington's streetscapes. The whole scheme by which the mayor acts as chief permitting official for spreading these advertising free-for-all zones across the city should be scrapped. As previously stated, any decision on a proposal to spread to other areas the types of sign technology now applicable in Gallery Place and Verizon Center must be made case-by-case through the Council, as decisions on such matters have been thus far, on the basis of detailed advance disclosure of the proposal, with appropriate visual simulations, to the public and opportunity to

be heard on it. The same goes for proposals to introduce new and more intrusive billboard technologies onto the streets of the capital city.

What is most remarkable about the package of changes discussed above remains the fact that DDOT, OP and DCRA could put it forward with an apparently straight face, considering the highly controversial character of proposals to allow the various overwhelmingly intrusive technologies that the outdoor advertising industry has induced previous mayors to put forward during the last decade and a half, beginning with Special Signs in 2000. We are genuinely puzzled as to how DDOT could have thought it appropriate to become the advocate for such far-reaching concessions to the outdoor advertising industry, particularly in view of the widespread strong opposition that defeated the Mayor's proposal to relax restrictions on Special Signs just five years ago. Understandably, the industry wants to build into DC law the notion that the proliferation of these technologies is no big deal, and DDOT's proposals would do that: It would enable a mayor, by simple fiat on his or her own motion, with no scrutiny by the Council or anyone else other than a perfunctory "consultation," and constrained only by a now even more elastic and vacuous definition of "entertainment area," to set in motion radical alteration of the physical and aesthetic character of ~~a~~ an open-ended number of District neighborhoods.

We submit that, as the history of these issues over the last fifteen years makes clear, the proliferation of these technologies in the nation's capital *is* a very big deal. It is widely and strongly opposed and these proposals to allow it need to be scrapped altogether.

III. THE DRAFT STILL NEEDS WORK: PERSISTENT DRAFTING, TECHNICAL AND SUBSTANTIVE PROBLEMS CHARACTERIZE THE PROPOSED REGULATIONS.

Leaving aside the concerns and major policy problems discussed above, in our view this second draft, though improved in some respects, is still far from a fully finished piece of drafting ready to take its permanent place in DCMR. We say this for two reasons:

First, just from the point of view of good drafting -- clarity and intelligibility, overall user-friendliness, freedom from duplicative or legally superfluous or otherwise anomalous provisions, or typographical or grammatical error, we believe significant further work needs to be done. Some problems of this sort have been noted in our comments interspersed in the attached redlined copy of the Notice of Second Proposed Rulemaking. A few examples include:

- §202.1, which is repeatedly referred to throughout the proposed regulations as the place to go to determine what signs are exempted from the requirement to obtain a permit, but which apparently does not exhaustively list those exemptions;
- Ch. 4, on signs within the jurisdiction of HPRB, which discloses confusing redundancies between 10 DCMR, Historic Preservation, and the proposed revised signs regulations (13 DCMR);
- §§700.3 and 707.6, regarding orders of the Zoning Commission or Board of Zoning Adjustment, which point up the need for further reconciliation of the Sign and Zoning Regulations, as well the need to identify in the Sign Regulations all Zoning Regulations relevant to signs, for the convenience of users; and
- §709, which authorizes six-square-foot commercial signs on residential property for up to 180 days at a stretch.

Second, there are a substantial number of provisions included in the draft that raise significant policy or technical questions that should be addressed before making any draft final. Further, beyond provisions already mentioned, there are a number of others in the existing regulations that perhaps inadvertently have not been carried forward in this draft and that raise similar questions, as well as a number of

important provisions in the proposed draft that we believe should be modified or dropped altogether. These have also been noted on the attached redlined copy of the draft. Some examples include:

- §100.7, enumerating general objectives of the sign regulations; it should be modified to take appropriate account of the need to protect the use and enjoyment of nearby properties and to protect the city's visual environment;
- §101.1, which open-endedly exempts any sign permitted by a contract or lease with the DC government from the requirements of the sign regulations;
- §§101.2, 101.3 207.1 and 207.2, grandfathering provisions which would insulate any lawfully erected pre-existing sign against the application to it of any provision in the new Sign Regulations that would affect the conditions under which it could continue to be maintained, including those relating to public health and safety, except as to "future alteration, repair or replacement". Each such sign would apparently continue to be specially covered by whatever regulatory regime was in effect on the date of its permit, however antiquated and inadequate to meet contemporary needs. They should be deleted.
- §§305 and 306, which unduly relax restrictions on signs in areas subject to the Old Georgetown Act.
- §909, on maintenance of signs, and unsafe signs in particular, which needs to be supplemented by adding a provision on removal of unauthorized signs and on signs that are not maintained in good repair, such as those that under the current regulations apply to Gallery Place and Verizon Center signs but have been dropped In the proposed regulations.

We appreciate the opportunity to comment on the proposed consolidated regulations, and very much hope that our comments in this memorandum and on the attached copy of the Notice will be helpful and taken into account in a further revised draft. If you have any additional questions or comments regarding this memorandum please contact Meg Maguire, megmaguireconsultant@msn.com or call 202-546-4536.

[1] See §906.9(h), which creates a 500-foot buffer between a DEA roof sign and a residence or special purpose district, the National Mall, a national memorial, the Capitol or the White House. This distance, approximately the length of a city block, should be increased to 1500 feet.

[2] See §§404.1, 1007.6 and 1007(c).

[3] See §714.2

[4] See §304.1.

[5] See 404.3.

[6] See §714.

[7] See §906.2.

[8] See §906.12.

[9] 5000 nits maximum (§908) vs. 2000 nits maximum (§723.5).

[10] 40 square feet maximum (§714) vs. 1200 square feet maximum (§906.4).