



OPPONENTS ANNOTATED REBUTTAL

Highlighted with footnotes

Submitted by Neighborhood Coalition of Greater Phoenix

B. Paul Barnes & Neal Haddad

**William E. Lally**  
Attorney at Law  
602.452.2716  
wel@tblaw.com

September 2, 2021

Maricopa County  
Planning Commission and Board of Supervisors  
301 W Jefferson Street  
Phoenix, Arizona 85003

**Re: Proposed Digital Billboard Text Amendment - Maricopa County (the “MCTA”)**

Dear Commissioners and Board Members:

As you know, I have represented Becker Boards regarding a Text Amendment to the County Zoning Code regulating billboards (the “MCTA”). Specifically, this application was submitted in March 2018 and has undergone seven (7) different stakeholder meetings and public hearings, as well as many smaller working group meetings to seek input from all interested parties<sup>1</sup>. The application has undergone dozens of changes over the last three (3) plus years to address concerns.

In that last few months, there has been a flurry of new interest in the case, much of which is from the core parts of Phoenix, in response to a blast email sent to thousands who live in the City<sup>2</sup>. We’ve been working diligently since then to identify the new concerns and

---

<sup>1</sup> More than 100 changes have been made to the current TA submittal from the previous one. It would’ve been helpful if the applicant submitted a list of the changes so that a quick and comprehensive comparison could be made.

<sup>2</sup>In the staff report, it states:

" It should be noted that much of the opposition received are from within zip codes that do not contain unincorporated County jurisdiction, such as central Phoenix and Scottsdale, as well as other areas outside of the County (Tucson, Payson, etc.). It is understood the general public has voice in this process regardless of residency."

Everyone who lives in the county has the right to vote in the county and therefore the ability to comment. It does affect us all because we drive on county roads.

Additionally, people in Phoenix and other areas are today dealing with billboards that were issued via County permits in the early ‘60s—such as at and near 44<sup>th</sup> St. and Indian School. On 9.9.21, residents are battling one such board on 42<sup>nd</sup> Pl. and Indian School. These decisions have generational impact because billboards lock in permanent easements.



try to modify the application to address any new concerns. This letter summarizes the concerns and issues that have been voiced lately, along with brief responses.

The concerns expressed recently generally fall within the following categories:

- 1) Proliferation of digital billboards;
- 2) Inappropriate locations for digital billboards;
- 3) Dark Skies/light emissions;
- 4) Driver Safety/distraction; and
- 5) Process for digital billboard conversion.

### **Proliferation of Digital Billboards:**

The MCTA does not allow for the addition of new billboards anywhere in Maricopa County where the current code does not allow them. In fact, the MCTA is more restrictive than the current one in the following ways: (i) it will prohibit all billboards (digital & static) within 660' of any scenic corridor<sup>3</sup>, including north of the Carefree Hwy on I-17, and (ii) the ordinance change would disallow the current practice of allowing two arterial street billboards near each other on intersecting arterial streets. Furthermore, our proposed ordinance will prohibit digital billboards on arterial streets<sup>4</sup> – the only possibility of digital billboards would be on freeways.

Although at first blush the MCTA sounds like a massive change, it really isn't<sup>5</sup>. It's important to keep in mind that this ordinance change has nothing to do with billboards within incorporated cities or towns which have their own rules governing digital billboards<sup>6</sup>. Coincidentally, many of such cities have already upgraded their billboard ordinances to allow them – such as Phoenix<sup>7</sup>, Tempe, Guadalupe, Tolleson, Goodyear, Buckeye, and Chandler (allowed on some arterial street locations). Rather, it only applies to county islands and other properties in the County which have not been annexed into a city or town<sup>8</sup>. This vastly limits

---

<sup>3</sup> Billboard vendors boast that signs can be seen from more than 1,000 ft. away, and in some cases legible from 750 ft. away, exceeding the 660' separation from scenic corridors.

<sup>4</sup> Prohibiting billboards on arterials is a sound position. However, the applicant must clearly recognize that billboards are a distraction if they are suggesting banning the digital signs from arterials.

<sup>5</sup> This is an outlandish position. Digital is FAR more of an intense use. They are allowing signs to be more than 2x the current sf. (from 300 sf. to 672 sf.).

<sup>6</sup> Misleading statement. When a billboard is placed in unincorporated land (say, 3 miles from incorporated land), the next step is to be grandfathered in through incorporation. It's a back door to getting in cities without having to comply with higher municipal standards.

<sup>7</sup> One of the updates Phoenix made in 2011 was to require two 'takedown' boards (1200 sf.) in exchange for every digital face constructed because digital has such a higher intensity of use. This text amendment does not ask for takedown boards at all.

<sup>8</sup> County islands are being targeted because the applicant knows how it works: these areas will soon be annexed, and the sign will be grandfathered in.



its applicability. It does not change the spacing in between billboards<sup>9</sup>, nor does it change the zoning required to have a billboard. No new billboard locations will be approved with the passage of the MCTA.

### **Inappropriate Locations for Digital Billboards:**

As a practical matter, the MCTA will only allow digital conversions of existing County freeway externally illuminated static billboards in unincorporated cities or towns. Any future freeways would need to amend the ordinance to allow digital billboards<sup>10</sup>. We estimate that there are only 40-50 of such throughout the entire county<sup>11</sup>, none of which are north of Northern Parkway/Northern alignments, nor are they between the north/south alignment of the Ed Pastor Loop 202, nor the north/south alignment of I-10 (*i.e.*, none are in the central Phoenix area) other than a handful of existing illuminated freeway locations on I-10 and the Ed Pastor Loop 202.

Some of the recent correspondence mentioned the desire for Phoenix to not look like Las Vegas. It will not. The famous Las Vegas strip is on an arterial street. As mentioned above, the MCTA would not only ban arterial street digital conversions, but it would also ban all new billboards (digital or static) within 660' of scenic corridors<sup>12</sup>, including the area north of the Carefree Highway on I-17. Digital billboard conversions within the City of Phoenix are under the jurisdiction of the City of Phoenix, and are not subject to this case.

Lastly, unlike Cities here in the Valley today, the MCTA will NOT allow any conversions of a billboard to digital that is not along a freeway.

### **Dark Skies/Light Emissions**

In addition to the inapplicability of the ordinance to anything north of the Carefree Highway, all of the protections for the observatories and rural areas that the State put in place

---

<sup>9</sup> We question this. As we understand it, the current ordinance requires 1000 ft. linear separation; the proposed, 500 ft. radial separation. Depending on how that is measured, it seems as though an area that previously had 3 billboards could have five billboards. And we also wonder: if no new billboards will be allowed, then why does the spacing requirement have to be changed?

<sup>10</sup> Is there a map in the staff report indicating what roadways are eligible?

<sup>11</sup> Where does this estimate come from? Have Commissioners or Supervisors asked for an inventory of billboards currently within the county? Is it in the staff report? How do we know the impact of the TA without knowing how many billboards it will affect?

<sup>12</sup> See previous comments: a ban on arterial streets is good; sign companies post on their web sites that digital LEDs will travel more than 1000 ft.



when it approved its digital ordinance would remain fully intact as explicitly stated in the proposed ordinance. Unlike the current ordinance which allows the externally illuminated static billboards to remain on all night, the digital billboard ordinance will require that any digital billboard be turned off by 11:00 pm each night and remain off until sunrise<sup>13</sup>. In addition to a reduction in the amount of time the lights can stay on for existing static billboards, the proposed digital ordinance will reduce the amount of light spillage with the use of new light technology which requires louvered shields to be placed over the digital screen<sup>14</sup>.

For the first time anywhere in Arizona, the MCTA would require that each digital billboard incorporate this new louver technology. The louvers dramatically reduce the amount of light spillage. Please look at this link to get a better idea of how great this new digital technology is in this regard: <https://vimeo.com/414877885>

### **Driver Safety/Distraction**

The federal government studied this issue exhaustively and issued a formal opinion before adopting language to allow digital billboards on its freeways<sup>15</sup>. The Arizona State legislature also debated this many years ago, ultimately passing state legislation allowing digital billboards. The proposed ordinance will prohibit any live animation and each ad will have to hold in place for at least 8 seconds, pursuant to State Law and consistent with all other cities in the valley that allow billboards. As such, and as determined by the federal government and countless jurisdictions throughout the Country, the driver safety/distraction “issue” is a non-issue<sup>16</sup>. Furthermore, every jurisdiction in the valley that allows billboards along Freeways allows digital billboards except Maricopa County.

### **Process for Digital Billboard Conversion**

Some concerns stated that if the MCTA were to pass, there would be little to no community or public input with the conversion of a billboard to digital. In fact, many of the County’s freeway county island billboards are legal nonconforming billboards and, as such,

---

<sup>13</sup> This is already state law and not a result of the MCTA proposed by the applicant.

<sup>14</sup> According to a fact sheet produced by the Arizona Astronomy Consortium, “A digital billboard may create less sky glow directly above it than an upward light but will increase sky glow overall and at distances far from the billboard, since its light streams outward, crossing city and county boundaries.”

<sup>15</sup> The FHWA study that the applicant submitted for the record was not peer-reviewed and was (is) the subject of ridicule for its lack of scientific rigor and limited sample size.

<sup>16</sup> The applicant is completely wrong on this issue. There are more than 100 studies both nationally and internationally (chief among them the UAB study, the Israeli study, the Swedish study and the EU study) that provide peer-reviewed data to support a strong correlation between driver distraction and digital billboards.



would need to go through the County’s normal Special Use Permit process which includes public notice and public hearings just like any normal case, allowing for all impacted property owners to have an opportunity to be heard<sup>17</sup>.

**Summary**

In summation, the MCTA will fix the spacing requirements in the current code to prevent some new billboard locations<sup>18</sup>, prevent billboards on future freeways, enhance prohibition along scenic corridors, maintain the current spacing standards and mandate the latest louvered technology when converting any current billboard to digital, thereby reducing the light spillage.

It is safe to say that the MCTA as a whole is the most restrictive and regulated billboard ordinance in the state of Arizona, which is why your staff, after working on this application for over 3 years, have recommended approval<sup>19</sup>.

Thank you for your attention to this matter. I am available to answer any questions at [wel@tblaw.com](mailto:wel@tblaw.com) or my personal cell at 480-620-9272.

Sincerely,

William E. Lally

---

<sup>17</sup> When the process consists of submitting to staff for review and then forwarding to the Board of Supervisors for an up or down vote, that is limiting the process. This is, by nature, a quasi-judicial process and should be subject to the same standards.

The applicant sounds as though it is deciding who can comment and who can’t by saying ‘impacted property owners.’ We remind the applicant: everyone who lives in the county and votes in the county has a right to be heard, but to be listened to.

Do Supervisors want to be challenged by concerned citizens for every billboard conversion that comes before them?

<sup>18</sup> It remains unclear what ‘fix’ means: is it ‘to repair’ or is it ‘to affix’?

<sup>19</sup> It is **not** safe to say that it is the most restrictive in the state. The proposal does not call for 2-for-1 takedown boards for each digital sign face conversion as is the case in Phoenix. It does not regulate the illumination (nit value) at the 120 nit level, as the state has done in Bullhead City. And it does not provide for a comprehensive process for residents to voice concerns like Phoenix and other jurisdictions.