

# OREGON SIGN REGULATION

2012



2012 AASHTO Subcommittee on Right of Way and Utilities Conference

Marriott Waterfront Hotel – Portland, Oregon  
April 29 to May 3, 2012



*Where Tradition and Transformation Converge*

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- Prior to 2006: typical sign program
- On-premise / Off-premise distinction
- Off-premise signs needed state permits

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# Differences between Oregon and other states

- Cap-and-Replace permit system
  - 1,571 standing permits and 791 “relocation credits”
- Regulate all state highways, not just those required by the HBA
  - 8,000 regulated miles of highway

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- Oregon successfully fought off Free Speech and other attacks on sign regulation for over 30 years
- Won every case, until we lost



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- **2006 Oregon Supreme Court Ruling**
  - Oregon Supreme Court ruled our system violated the Oregon Constitution
  - Requiring a permit for Off-Premise signs, while exempting On-Premise signs, is a content based regulation
  - Ended permit requirement
- Outdoor Media Dimensions (OMD) v. ODOT 340 Or. 275 / 132  
P.2d 5 (2006)*

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# The 'window' period: July 2006 to May 2007

- State permit not required
- Underlying regulations still in effect (size, spacing, zoning, etc)
- Local permit still required
- Building boom during this period

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# Legislation

- Simply changed how we define “outdoor advertising sign”
  - For compensation? OAS, needs permit
  - Not at a business, or at an activity open to the public? OAS, needs permit
- Roughly same result as on/off premise

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# Outdoor Advertising Sign?

## Two Questions

1. Is the sign posted for compensation? If so, needs a permit.
  - Receiving advertising revenue
  - Paying a land lease
2. Is the sign not at the location of some business or activity open to the public?
  - Any business/activity, not just the one advertised

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# “Outdoor Advertising Sign”

- If the sign is posted for compensation, or it is NOT at a business or an activity open to the public, that is an Outdoor Advertising Sign
  - Needs state permit
  - Subject to zoning, spacing, size and lighting restrictions

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# What is (and isn't) compensation

- Exchange of tangible value: money, property, barter, etc.
- NOT mere goodwill
- NOT payment to construct, install or maintain a sign for someone else

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# New System: Why?

- Economic theory of the law  
(generally people are motivated by money)
- Enforcement considerations  
(not everyone is honest)
- Captures almost all billboards
- Concentration in commercial / industrial areas

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# What's left of the old system?

- Same regulations for zoning, spacing, size, & lighting
- Cap-and-Replace permit system
- Prohibited sign types
- No signs in Right of Way

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# What changed?

- No more on-premise/off-premise
- No more specialized permits:
  - Directional sign permits
  - BID sign permits (unique to Oregon)

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# How Oregon worked with FHWA

- Communicated early, at a high level
- Sought their input and guidance
- Respected HBA within the limitations of the Oregon Constitution

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# How FHWA worked with Oregon

- Communicated early, at a high level
- Receptive to our ideas
- Respected our unique circumstances and allowed flexibility to solve problem
- Enforcement will be key

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# Will This Happen to You?

- What does your state's constitution say?
- What are trends in your appellate courts' Free Speech cases?
- Are you in the 9<sup>th</sup> Circuit?

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# What if This Happens to You?

- Talk to FHWA before it does
  - You know if you have a problem
- Have a plan, or several
- Coordinate with cities & counties

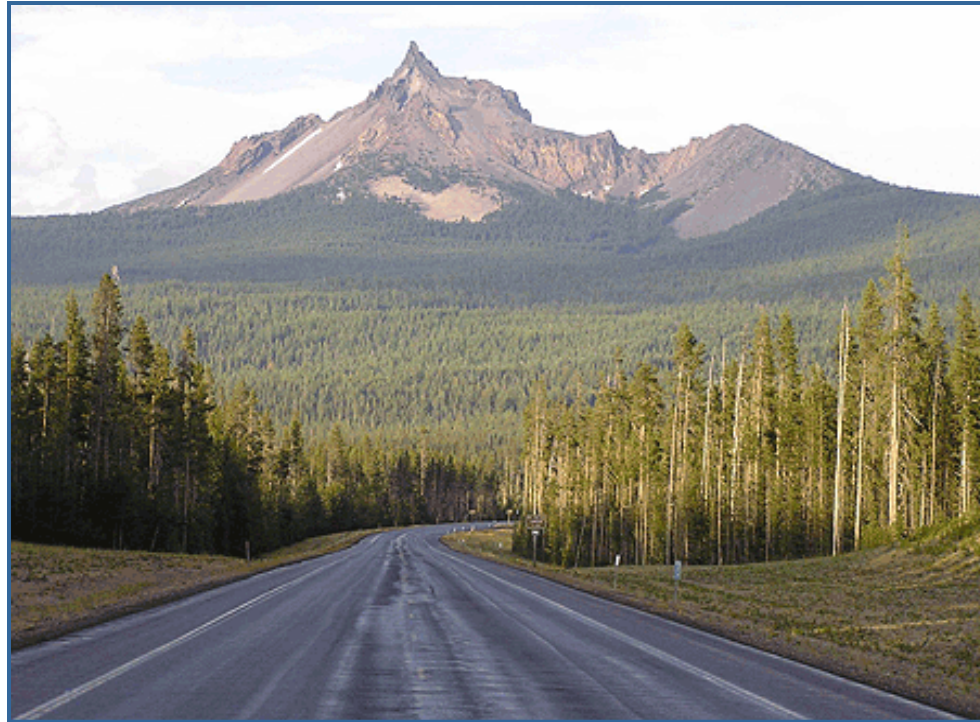
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# Outdoor Advertising Sign Program



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