



The City of Seattle

## Pioneer Square Preservation Board

Mailing Address: PO Box 94649 Seattle WA 98124-4649  
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### MINUTES OF MEETING

PSB 210/09

DATE: July 17, 2009  
PLACE: City Hall, Room L280  
TIME: 9:00 a.m.

### Board Members Present:

Doug Ito  
Catherine Person  
Ryan Hester  
Ann Brown  
Adam Hasson  
Erin Doherty  
Miriam Hinden  
Jeremie Lipton

### Staff:

Genna Nashem  
Melinda Bloom

### Absent

Lorne McConachie

Chair Doug Ito called the meeting to order at 9:03 a.m.

### **07150909.1 APPROVAL OF MINUTES:** Draft minutes from July 1, 2009

*Mr. Hasson arrived at 9:04 a.m.*

MM/SC/ED/AB

6:0:2 Minutes approved as amended. Mr. Hasson and Mr. Hester abstained.

### **07150909.2 APPLICATIONS FOR CERTIFICATES OF APPROVAL**

071509.21

#### LIMN

Polson Building  
629 Western Ave

**Applicant no show.**

071509.22

#### Wall Sign

F and O building  
1020 First Ave S

Installation of new sign copy on legal non-conforming off premise 14' x 48' sign

Administered by The Historic Preservation Program  
The Seattle Department of Neighborhoods

"Printed on Recycled Paper"

ARC Report: ARC reviewed the proposed sign copy change to be installed in August and found it to be compatible with the District. ARC recommends approval.

Staff Report: This is the legal non-conforming off- premise sign

Mr. James said the sign will go up August 17 for one month.

Ms. Hinden noted the colors appeared to be compatible with the historic district.

Action: I move to approve a Certificate of Approval for the copy change on wall sign as presented per

Code Citations: SMC 23.66.160 Signs

MM/SC/RH/MH

8:0:0 Motion carried.

071509.23

**Seattle Best Sausages**

Vending Cart in Occidental Park

Placement of a vending cart in Occidental Park.

ARC Report: ARC reviewed the proposed cart and found it to be compatible. Clarification was made that the cart will be located in the Park and not on the sidewalk as shown on the drawing. The applicant confirmed that he would provide trash cans. Staff noted that the cart is up in Occidental Park and that the site was not tidy, the applicant said that he would make sure it was kept tidy. ARC recommended approval.

Staff Report: Applicant has contracted with Parks to have the vending cart in the park.

Tommy Hendrick went over his plans for the business and said they intend to serve hot dogs from 6:00 p.m. until 11:00 p.m. Thursday, Friday, and Saturday.

Mr. Ito noted the sign would be as proposed on the cart and with an umbrella attached to the cart.

Public Comment: There was no public comment.

Ms. Person noted the presentation could be tightened up and that it looked like a temporary festival set up rather than a permanent cart.

Discussion ensued about set up of the cart and Ms. Nashem cited District Rules which say carts should be self-contained.

Public Comment: There was no public comment.

Board Discussion:

Board members further discussed the set up and cluttered look of the cart and their desire for it to be more self-contained, neat and tidy. Board members asked that applicant to move everything possible onto the cart and condiments table be right next to the cart.

Mr. Hester said the signage was good and the business is a great addition to the park.

Ms. Person asked that a vinyl table cloth be used so that storage beneath the table would be covered.

Mr. Hendricks agreed that he would do that and that he has another table that would work better.

Action: I move to approve a Certificate of Approval for placement of the vending cart in Occidental Park per

Code Citations:  
District Rules XII. Vending Carts

With the caveat that the applicant will buy a vinyl table cloth that fits perfectly and will store everything underneath or on the cart and will not spread out.

MM/SC/CP/AB 7:1:0 Motion carried. Mr. Hasson opposed.

071509.24

**Seattle Best Sausages**  
Vending Cart in Occidental Park

Placement of a vending cart on the sidewalk at 109 Occidental Ave.

Staff Report: Applicant has provided letters from neighboring businesses and building owners as required by the rules

ARC Report: ARC reviewed the proposed cart and the letters provided. ARC found the cart to meet the rules and recommended approval.

Tommy Hendrick said the hours of operation will be 11:30 p.m. until 3:00 a.m. Thursday, Friday and Saturday.

Ms. Brown noted that suggestions for the cart from the earlier application would apply to this application as well.

Mr. Hendrick said he will use the same cart. He will finish at the first location at 11:00 p.m. and then move the cart to this location.

Ms. Person reiterated her opinion that the professionalism of the cart was not up to par and was not compatible with the District.

Mr. Ito suggested adding conditions to the cart similar to the last approved application.

Ms. Person clarified that the round table would go away leaving one side table only.

Action: I move to approve a Certificate of Approval for a vending cart at 109 Occidental Ave per

Code Citations:  
District Rules XII. Vending Carts

With the caveat that the set up allowing one cart, one table with table cloth, all additional items concealed except customer condiments.

MM/SC/RH/JL 7:1:0 Motion carried. Mr. Hasson opposed.

**Palmer Court**  
1000 First Ave S

*Ms. Hinden recused herself.*

Repair and painting of the fire escape and remove the treads and landing and stand pipe

ARC Report: ARC reviewed the drawings, reports and photos provided. Ms. Barnes said that in addition to the initial red tag on the fire escape, they also received a notice that they need to remove the stand pipe. She said that proposal would not affect the structural integrity once repaired. Applicant also clarified that the ladder to the roof also needs to be removed and said that there are internal stairs for egress. The fire escape will be welded and bolted where needed and repainted black. The windows at the fire escape will be stopped at four inches and a sign will be posted that the window is not an exit. ARC thought the proposal meets the district rules and recommend approval.

Staff Report: The District rules identify fire escapes as contributing to the character of the District and that generally they are to be retained however special consideration can be given to safety issues. In the past the Fire Department has expressed concern that fire escapes could be misunderstood as an exit. As a compromise, the Board has allowed the removal of treads, landings and ladders with the remainder remaining to give the impression of the fire escape as an architectural feature but not a means of egress.

Mr. Hester asked if the fire escapes had signs that fire escape is not a means of egress.

Miriam Hinden indicated they did.

Brenda Barnes explained the stand pipe couldn't withstand the hydro test; it is obsolete and isn't connected to the existing system so it can be removed safely. She included the confidence test which is part of the Fire Department requirement; it showed broken welds, rust and missing bolts which they plan to repair. They also proposed to brush down the rust and repaint the fire escape black. She said they will remove the floor grating which will not destroy the integrity of the fire escape. She said the treads are just bolted on so can be removed easily. They requested to remove the ladder to the roof because one of the stairs now goes to the roof and provides that access.

Public Comment: There was no public comment.

Board Discussion:

Mr. Hester agreed with the plan to disable the fire escapes but to keep the frame for aesthetic reasons. He said the building is progressing wonderfully.

Mr. Ito agreed with Mr. Hester and added the color is compatible and fits with the District.

Ms. Doherty preferred that more elements remain but understood the safety issue.

Ms. Brown said the project is developing beautifully and is a nice renovation to Pioneer Square.

Action: I move to approve a Certificate of Approval for repair and painting of the fire escape and to remove the treads and landings, stand pipe and ladder to the roof per

Code Citations:

District Rules X. Fire Escapes

**0715009.3 BOARD BUSINESS**

## Training: Signage

Eleanor Baxendale, City Attorney's Office, went over handouts she provided on "On and Off Premise Signage". She went over the ACME case in the 1990s and said the District Court found the City's regulations were constitutional as did the Ninth Circuit Court. The issue was whether the City could distinguish between on premise and off premise signs. The Ninth Circuit handed down a decision that addressed some of its prior sign regulation cases and provided a formula that most jurisdictions now use. The formula: Cities can regulate signs because all signs, whether on premise or off premise contribute to visual blight and contribute to driver distractions. She said the Court reasoned from that a local government could ban all signs. We don't ban all signs – we do allow on-premises signs. She said the question was "why could on-premises signs be allowed if they also contribute to traffic safety issues and to visual blight?" She said the court announced several reasons but the one that seems most practical is that a city might want to foster communication between a business and the public; if all you have is a street number and you are looking for a store based on the street number, you are probably taking more time with your eye off the road then if you could just see the sign.

Ms. Baxendale said even on premise signs still must be consistent with the aesthetics and preventing driver distraction. The signs are regulated – how many, and in special districts they can be required to be compatible in the community in which they are located. She said the regulations were challenged again in 1999 by a new company who proposed more information than was consistent with our definition of an on premises sign. She said their issue to the US District Court was "the City is interpreting the definition of on premises sign too tightly." She said the Court ruled the City's interpretation constitutional and Ninth Circuit upheld it.

Mr. Ito said there is a billboard in the district it is right over the Burlington Northern tracks and faces south that doesn't come before the Board. He said it is a flipping sign and he doesn't know why it doesn't come before the board.

Ms. Baxendale asked for the address of the sign and she would investigate it and added that signs inside the Metro train tunnel are not regulated because there is no driver distraction or aesthetic issue to be concerned about.

The Board looked at examples of billboards for further discussion:

Living wall scape –

Whether it is art or a sign depends on the intent of the sign, especially if a recognizable product is presented, if the product in the image or the material used are sold in the building etc.

Code says that a sign can be any medium.

Ms. Baxendale noted signs that congratulate someone for a personal event or to wish them happy birthday would be seen as sending a message. "Vote today" would be seen as a non commercial message but it is still trying to communicate something and would be considered a sign.

Ms. Baxendale used another photo and went through the same analysis, assuming the sign is on a building: what does the sign do? What do they do in the building...do they sell this product? If so, then it is a lawful on-premises sign message. She said it is easiest to look at

the definition of an on-premises sign because it is easier to do the analysis by starting with “what is a lawful sign?” Once you have a permit for an on-premises sign, then ask if the content of the message is consistent with the definition of an on-premises sign. You can have commercial messages that are strictly applicable only to the use of the premises on which it is located, including signs or sign devices indicating the business transaction, principle services rendered, goods sold or produced on premises, the name of the building, the name of the person, firm or corporation occupying the premises.

Mr. Ito asked if the name of the sign company could be on the sign.

Ms. Baxendale said that the sign company owns the sign and so it is part of their business – they can identify that they own the sign but use the entire sign to advertise their business of selling advertising space on other signs which takes place at another location.

Mr. Ito said the on premises piece could be anywhere in the building.

Ms. Baxendale agreed and said it has to be somewhere on the lot where the sign is located; it doesn't need to be the biggest user of the building and the product that it shows doesn't need to be the most important product that the company sells. She said even a 10 x 10 space in a building is acceptable as is online purchases but the product has to be sold or produced there. She recalled a proposed advertisement at a stadium for the bread maker for the buns in which the hot dogs were placed. It was determined that people were not coming to buy bread maker nor a bun specifically. In response to a question she said that Miller Beer could advertise their office being in a building but could not advertise the beer if it was not produced or sold in the building. What Miller did was to put up a sign that was a picture of Mt. Rainier and then the words “Miller Beer” which was acceptable because that is the name of their company and they occupy the space.

Ms. Nashem provided an example of a bank whose sign showed a checkbook and referenced their checking accounts and mortgages but in that particular office they didn't conduct that business so they couldn't show the checking and mortgages on their sign.

Ms. Baxendale said the bank did have an office with a person working there. She said they could advertise the name of the bank but they could not advertise services that are not rendered on the premises.

Mr. Ito asked if a sign company could rent an office space in the building and say they are in the business to provide signs and then have an on-premise sign on the outside of the building and put anything they want to on it.

Ms. Baxendale said they can only put their name and she gave the example of the telephone company wanting to do that. They had a telephone booth near and Dex thought they could put advertising up for anyone who advertises in their telephone book. They could not because not only were their advertisers who wanted to advertise not there, the Dex office wasn't there either – they were neither a product nor a service that was being offered on the site.

Mr. Lipton asked for clarification on the hot dog bun example.

Ms. Baxendale said it is because one doesn't go in to get a hot dog bun specifically. It would be different if someone wanted to advertise Hebrew National if it was a Hebrew National hot dog stand. She said a grocery store could advertise Morton Salt or hot dog buns because that is what you would be going in to buy.

Ms. Baxendale said to first look at the definition which will get you through most things. She said any information that doesn't fit within the scope of the definition is out. She said that when Miller was occupying its small space, it could have the "Miller" because that is the name of the business that is there but it could not show the "beer".

Ms. Doherty asked if a "broom closet" scenario with a store that sells anything under the sun if someone wants to advertise it, is really a store without a street presence.

Ms. Baxendale said it is difficult to know what to do about online businesses where theoretically there is an office and people can buy the stuff online. She said if Drugstore.com was occupying the broom closet and wanted to advertise toothpaste, they could if they could dial the number that is on the sign, and it goes to that office and you can order the toothpaste. She said it is difficult because when the definition was written, no one was buying and selling that way.

Mr. Ito asked at what point does the grandfathering become past tense.

Ms. Baxendale said it will always be there; the only thing they can do to lose that is to not use the sign for a 12 month period.

Ms. Doherty asked about repeatedly violating rules of the district with regard to signage.

Ms. Baxendale said the question really hadn't been raised like that before. She said if they maintain a sign that was not on premises for the statutory period that is in the code then you could say no but it would have to be an adjudicated or a very obvious violation where they couldn't say they didn't know.

Ms. Doherty asked about a sign that had not been approved by the Board.

Ms. Baxendale said part of problem is that you can maintain a non-conforming use as long as it hasn't been down for 12 months so the question is "how long has the message been up without coming before the board and how long has it been out of compliance?" In response to the changing of products sold, she said one way to come to terms is to think of it as Nordstrom or a grocery store that may sell a product for three months on a promotion and then take it out and do another one. She said there is no requirement that an address be included. If a warehouse had an advertisement for peas, we wouldn't require them to say "Peas in this building" it would just have to say "Peas". The assumption behind the definition is that no business owner would waste their sign space on something that wasn't adequately communicative to the public about what they are selling there. The definition doesn't adequately address rogue uses.

Ms. Person noted the law has a problem in this area because the billboard should be required to state where the product is sold in order for it to communicate with the public.

Ms. Baxendale said the sign code would have to be changed and the definition would have to be changed to require a sign user to clearly delineate where the product is being sold and that would have to be applied to every business. She provided the example of multiple users in an office building downtown and said they are allowed to have individual advertisements for the different stores and currently there is no requirement to say "on the 3<sup>rd</sup> floor." In response to a question about being in an historic district she explained one would have to come up with a rationale that is connected with historic district purposes for adding an extra element to the sign code definition. She said that if changes occur a sign owner might state that they are grandfathered to the old definition, not the new one.

Ms. Doherty asked if the sign is fabric in a frame or applied to the wall and then additional painted or applied signage in the same area would be considered a single sign or multiple.

Ms. Baxendale said she would have to read the code to make sure what the definitions are because it depends on how it is painted – if it functions as one sign within the allowed area then it is possible it would be allowed. You would have to look at the design and text to determine if the sign is one or two.

Ms. Baxendale provided a photo of an on premises sign on a Magazine shop that also sold pork sandwiches. She said Pork Producers were not on the premises and the web address did not connect to the store or a pork sandwich but to Pork Producers. She said the sign had to be removed because it was not what business was going on in the building.

She noted in regard to another sign on a warehouse that an out of area phone number for an office where you would buy something was not allowed but if the number was on a warehouse and you could call the out of area number and rent the space in the warehouse, that would be allowed because it is a number you can reach to purchase something on the premises. She went over another photo of cows with a sign “eat more tofu” and said if it were on a building – if Nordstrom put this up. It could be that Nordstrom is promoting not eating meat or not using animal products and wants to say “eat more tofu”. She said it is a non-commercial message expressing the Nordstrom Company’s beliefs. We would question a symbol on the sign – which may be a producer’s symbol – and would not allow that. the definition of “on premises sign” it says a sign “used solely by the business establishment on the lot where the sign is located,” we have to allow people to make non commercial statements, but we don’t allow a business to sell its ad space to someone else to use for their business. If the tofu producers had paid to a business to put up the sign that would not be allowed. For example you can say “We support Girl Scouts” but you can’t say “Buy Cookies”.

Ms. Brown asked about the photos of players at the stadium.

Ms. Baxendale explained it is because they are the product. She said another example is the signs that say “Go Mariners” in drug stores and banks. Although the Mariners are not playing there and the Mariners are a commercial enterprise, they are not selling tickets. She said “Go Mariners” signs are not commercial, they are saying that they support their team.

Mr. Ito asked how Safeco gets a sign when they are not selling insurance.

Ms. Baxendale explained that Qwest was litigated and they have the right to put up the name of their building. There was an argument that the lettering looked like an advertisement for Qwest; it is their business what kind of script or font they want to use - as long as it is the name of the building, it is the proper size and material.

She said the current regulations put the responsibility for making the final determination on the Board but that doesn’t mean you can ask for DPD’s opinion or the Law Department’s opinion in helping to analyze it. She noted that Ms. Nashem had asked for official language allowing the Board to delegate the responsibility to DPD for making that judgment. She said the legislation has been written but was unsure where it is at the moment.

Ms. Person asked for clarification how deferring to DPD or Law would work since the Board is under the gun to make decisions to help things go forward.

Ms. Baxendale noted a couple options. When Ms. Nashem knows things are coming she can ask DPD for input before it comes to the Board. She said that also if issues come up

while you are talking with the person it can be sent over for more information and noted that is already being done when we ask people to change colors etc.

Ms. Nashem said she often does that already and information in the Staff Report reflects that.

Mr. Ito noted it would be helpful if the code language would always be attached so the Board has it as a touchstone.

*Mr. Hasson and Mr. Lipton left at 10:50 a.m.*

**0715009.4**      **REPORT OF THE CHAIR:** Doug Ito, Chair

**0715009.6**      **STAFF REPORT:** Genna Nashem

10:51 a.m.      Meeting adjourned.

Genna Nashem  
Pioneer Square Preservation Board Coordinator  
206.684.0227