

SEPTEMBER 18, 2002

TESTIMONY OF THE
COMMITTEE OF 100 ON THE FEDERAL CITY
BEFORE THE
COMMITTEE ON PUBLIC WORKS AND THE ENVIRONMENT
ON BILL 14-652, THE “STREET FURNITURE ACT OF 2002”

The bill: It would authorize DDOT to enter into a contract for an advertising franchise to construct “street furniture” on public space, and to place advertising on 90% of it, for a fee. “Street furniture” is defined as “automatic public toilets, information kiosks, newspaper vending boxes, news stands, public benches, bicycle racks,” as well as bus shelters (after October 4, 2003) *and an unlimited number of “other products”*.

Problems with the bill:

- I. In essence the bill is another attempt by the outdoor advertising industry to carve out a huge exception to the District’s longstanding law on outdoor advertising, which bans billboards and bans signs and advertising structures in public space as well as commercial signs in residential areas.

It comes on the heels of the Special Signs fiasco, and like the final Council action on Special Signs, would permit a type of highly intrusive outdoor advertising signs previously prohibited, but unlike that legislation, would be devoid of any of the protections of the sort that have long been built into existing DC law (e.g. for parks, schools and other public buildings, residential areas, and historic districts and historic landmarks--including the landmarked L’Enfant Plan itself, which consists exclusively of public space). The existing sign law dating from 1931 is specifically made inapplicable to street furniture advertising.¹ With this bill’s permissive language, public toilets with billboards could be erected on a residential street, or on the small squares and triangles along our spoke-like streets, or in front of a school, museum, or historic landmark or even in the landmark itself (e.g. the L’Enfant Plan)². Unlike Special Signs, there would be no limit on the number of street furniture signs overall or by area of the city. For these purposes the DDOT could make available any public space in the city; in return, the city gets the use of the furniture (an uncertain benefit) and an unspecified “franchise fee”. No standards, no plans, no mapped

¹ The 1931 sign law in its present form bans signs in public space and residential areas, and bans billboards but permits those on a “grandfathered” list to remain—subject to fairly strong protections for residential areas, historic districts and landmarks, public buildings, parks, and federal highway corridors. (Most or all of the grandfathered billboards have now disappeared through attrition, although a number of illegal billboards of all sizes remain, undisturbed by any enforcement effort by the DC government.) The Special Sign law largely gutted these protections for the 32 signs it permits, but retained a few severely watered-down restrictions. The proposed street furniture law lacks such protections altogether.

² A special note of interest: the L’Enfant Plan, listed on the National Register, includes not only the reservations and the streets curb to curb, but all the public space between the curb and the buildings. It is bad enough to see huge “Special Signs” looming over this historic public space in the central city, as is happening now, but to allow advertising *in* this public space should be unthinkable.

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target areas for certain street furniture, no definition of “public space” for purposes of this bill, and, significantly, no limitations on size of structures erected or consequently of the signs they carry. *Madame Chairman, we are deeply concerned about the growing tendency to use budgetary problems as an excuse to trade off invaluable public assets to private business interests. Responsible government does not sell off the livability of neighborhoods to make a profit for the automobile racing industry and to augment city coffers. This tendency must be resisted in general, and in particular with this ill-conceived street furniture proposal.*

2. But the defects of this proposal go beyond its assault on the billboard prohibition.
 - (a) It is a huge delegation of unreviewable authority to DDOT, at every stage of the enterprise from the negotiation of the franchise contract to the approval of the types of “furniture” to be erected, the structures on which advertising is to be placed, the acceptability of the advertising content (an authority probably rendered vacuous by the First Amendment), the duration of the franchise (not to exceed twenty years), the fee to be paid to the District, and enforcement of the franchise terms (whatever that amounts to in the absence of stated police powers or spelled-out enforcement process). The franchise contract is exempted from DC procurement law and from the jurisdiction of the Contract Appeals Board. There is no built-in opportunity for ANC’s, citizens groups or individuals to be heard on any aspect of the process, including the placement of structures that may directly impact their property or neighborhood. With protection of the public interest thus placed solely in the hands of bureaucrats in DDOT, the bill creates a built-in conflict of interest by providing that all revenues to the District go into the Highway Trust Fund rather than the general fund. In exercising its unreviewable authority, DDOT would proceed without benefit of any coherent citywide and local plans developed by OP or anyone else on utilization of our public space (which is already often a cluttered mess)—a matter on which DDOT would have to increase its in-house competence substantially.

It would presumably skirt every defined process we have for reviewing important matters, including historic preservation. It makes no mention of basic authorities and processes under other law, including the National Capital Planning Commission and its important role in dealing with location and design review, as reflected, for example in the NCPC’s recently issued “The National Capital Urban Design and Security Plan”. (The Committee of 100 has followed this planning process closely, urging moderation and good design in the midst of extreme possibilities.) One goal stated in the initial report is to extend this initial planning process for hard-edge streetscape solutions to other parts of the city, and to make streetscape planning part of a rational whole.

This bill points to the inadequacy of our planning structure for undertaking projects that at present result in ad hoc decisions on planning issues. The Committee of 100’s Planning Sub-Committee is working on possible proposals to afford a better defined process for undertaking planning and for providing defined and improved public participation and ratification through the possibility of establishing a planning commission, a device used in

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most American cities. We think the time is crucial to think and propose action in this direction.

(b) The effect of the bill is to delegate authority to make decisions importantly affecting the public interest to the private franchisee: to determine the design of the structures, and to propose (for DDOT acceptance or rejection) sites, advertising content and types and sizes of structures and signs. (Note that the types already enumerated included not just passive facilities like information kiosks or bike racks, but going commercial enterprises—e.g. news stands; and if news stands, why not concession stands, souvenir stands, or the newly automated mini-convenience stores?).

(c) The bill would set up a new system for the use of public space, independent of, uncoordinated with, and almost certainly in conflict with other provisions governing public space and its uses (from street vendors to sidewalk cafes), the likely result of which will be simply to add to the random clutter and to adversely affect even the most minimal distancing standards employed in these other regulations.

Conclusions:

1. The bill in its present form should be withdrawn.
 2. If any legislation for the installation of “street furniture” is considered in the future, it should be fully consistent with existing sign law (now including, regrettably, the Special Signs law and regulations), other provisions of law, including historic preservation, adopted small area plans, N.C. P.C. and federal agency considerations, and the much neglected federal and local elements of the Comprehensive Plan.
 3. We already have billboard advertising on bus shelters and in the form of Special Signs. *No additional advertising is acceptable.* The idea of paying for facilities by public space advertising revenues should be discarded. Legislation on street furniture might employ a new bus shelter franchise as a source of revenue for high priority public facilities such as information kiosks and toilets in appropriate locations, *sans* advertising.
 4. No legislative action on any street furniture proposal should be considered before public space plans have been developed by OP working with DOT, with full opportunity for public input. And any such legislation should provide for participation by ANCs, citizens organizations and affected individuals in decisions on placement of specific facilities in specific locations.
 5. Every effort should be made to develop in-house competence for the two relevant agencies to undertake a combined public and private space planning approach, area by area, and a strategic siting of any very special facilities that may be needed to accord with the city’s role in assisting visitors. *What is needed is something like the “Special District” planning in New York City which integrates public space and private property planning considerations into a unified small area plan for enactment, including zoning for the private space.*
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6. Any bill should define the term, "public space" for purposes of the legislation, spell-out clearly and conclusively a defined process for decision-making, criteria and standards for street furniture, enforcement mechanisms, and provisions for interfacing between and among District and Federal agencies.

Thank you for your attention.

ANN HUGHES HARGROVE
