

From: [Tucker, Matthew](#)
To: [Vaughn, Jessica L](#)
Subject: FW: AOA Appeal Notice for 75 Nob Hill
Date: Monday, October 30, 2023 2:44:10 PM
Attachments: [City Letter received Oct 6th, 2023.pdf](#)
[Adams Appeal Notice Executed.pdf](#)

Here is the digital copy of the appeal letter. MT

From: Julie Johnson <jjohnson@adamsoutdoor.com>
Sent: Friday, October 13, 2023 2:22 PM
To: Tucker, Matthew <MTucker@cityofmadison.com>; Bannon, Katherine J <KBannon@cityofmadison.com>; Moskowitz, Jacob <JMoskowitz@cityofmadison.com>; Haas, Michael R <MHaas@cityofmadison.com>
Cc: Richard Zecchino <rzecchino@adamsoutdoor.com>; Devin Renner <drenner@adamsoutdoor.com>
Subject: AOA Appeal Notice for 75 Nob Hill

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Good Afternoon –

Please see attached document as an official appeal from the notice and Case Number: CB2023-271-04923 that we received via mail on October 6, 2023
We have also submitted this via certified letter with the \$300 fee payment.

Please confirm receipt and let us know next steps.

Julie Johnson

General Manager

Adams Outdoor Advertising - WI

102 E Badger Rd

Madison, WI 53713

608-216-9265 (p)

608-963-8698 (c)

www.adamsoutdoor.com



BUILDING INSPECTION OFFICIAL NOTICE

CASE NUMBER: CB2023-271-04923

PROPERTY: 75 NOB HILL RD

INSPECTION DATE: 09/11/2023
12:00 PM

INSPECTOR: JACOB MOSKOWITZ
ASSISTANT ZONING ADMINISTRATOR
(608) 266-4560

MAILED DATE: 09/29/2023

jmoskowitz@cityofmadison.com

7787 WESTBELT LLC
PO BOX 155
OREGON, WI 53575

This notice does not start any legal action. The Building Inspection Division is willing to answer questions pertaining to this Official Notice in order to assist you in correcting the violations. If you have questions or concerns, it is important to contact the inspector as soon as possible. You are responsible for contacting the assigned inspector before the due date to arrange for any reinspections requiring access to the interior of the property.

If the violations are not corrected by the due dates listed below, the Building Inspection Division may issue a citation or refer the case to the City Attorney's Office for prosecution. The Madison General Ordinances allow for a fee of \$75.00 to be charged for any inspections that do not result in full compliance, including inspections that result in an extended due date. To avoid penalties or fees you are encouraged to correct the violations as soon as possible in advance of the due date and then notify the assigned inspector to verify the corrections made. Compliance shall be on a continual basis. Continued or repeated violations may result in the issuance of citations without further warning or written notice.

Any items on this notice that are not corrected by the originally required compliance date may be subject to rent abatement claims. Items that could be subject to abatement in the inspector's opinion have been marked "Y" in the abatable column. Actual abatement and eligibility, if applied for, will be determined by the Hearing Examiner.

All applications for appeal of orders shall be submitted to the Building Inspection Director in writing within fifteen (15) days of the postmark on the Official Notice. Appeal information may be obtained by calling (608)266-4551.

Item No.	Violation Section No.	Abate	Corrections Required	Due Date
1.	31.045(3)(i)	No	Discontinue the display of any Digital Image Sign features on the Advertisting Sign located at 75 Nob Hill Rd. Digital Image Signs, as defined in Sec. 31.03(2), static or animated, are both prohibited. Static Digital Image Signs are defined as: A sign, any portion of which displays static or stationary illuminated digital images, produced by technology such as LED (light emitting diode) or LCD (liquid crystal display) display screens, plasma, high-definition, interactive touch-screen, or other such technology. Animated Digital Image Signs are defined as: A Digital Image Sign as defined above, any portion of which is capable of producing an animated or moving digital or video image.	10/31/2023

CC: LUCAS HEIAR
PO BOX 155
OREGON WI 53575

ADAMS OUTDOOR
ADVERTISING
3801 CAPITAL CITY BLVD
LANSING MI 48906

APPEAL NOTICE

October 12, 2023

City of Madison Building Inspection Division
Attn: Mr. Jacob Moskowitz
Assistant Zoning Administrator
215 Martin Luther King Jr. Blvd. Suite 017
Madison, WI 53701

Re: *Building Inspection Official Notice*
Case Number: *CB2023-271-04923*
Mailed Date: *09/29/23*
Property: *75 Nob Hill Rd.*

Dear Mr. Moskowitz:

I am the Chief Legal Officer for Adams Outdoor Advertising (“Adams”). We are in receipt of the Building Inspection Official Notice (“Notice”) from you with a “mailed date” of September 29, 2023, regarding an alleged violation of Section 31.045(3)(i) of the City of Madison’s Ordinance. According to the Notice, the alleged violation is as follows:

Discontinue the display of any Digital Image Sign features on the Advertising Sign located at 75 Nob Hill Rd.

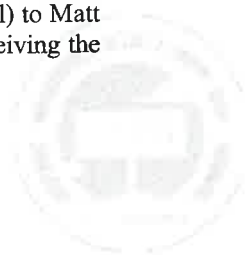
Digital Image Signs, as defined in Sec. 31.03(2), static or animated, are both prohibited.

Static Digital Image Signs are defined as: A sign, any portion of which displays static or stationary illuminated digital images, produced by technology such as LED (light emitting diode) or LCD (liquid crystal display) display screens, plasma, high-definition, interactive touch-screen, or other such technology.

Animated Digital Image Signs are defined as: A Digital Image Sign as defined above, any portion of which is capable of producing an animated or moving digital or video image.

Please accept this letter as notice that Adams is appealing the Notice and alleged violation for the reasons stated herein.¹

¹ The appeal process is not clear to Adams at this time. The Notice says, “[a]ll applications for appeal of orders shall be submitted to the Building Inspection Director in writing within fifteen (15) days of the postmark on the Official Notice. Appeal information may be obtained by calling (608)266-4551.” Adams placed phone calls to obtain appeal information that were not returned. Adams’ Real Estate Manager, Devin Renner, then went to the Zoning Office to speak to someone about the appeal process, and he was told that appeals should be put in writing (via email) to Matt Tucker, Building Inspector Director. Then, in response to an email inquiry sent by Mr. Renner prior to receiving the



As you know, Adams maintains a back-to-back 14' x 48' digital billboard (the "Digital Billboard") on the property commonly known as 75 Nob Hill Rd (the "Property"). Adams operates and maintains the Digital Billboard pursuant to a lease agreement with the Property owner; thus, Adams has a legal and equitable interest in the Property and in responding to and appealing the Notice as the only alleged violation with respect to the Property is the operation of the Digital Billboard by Adams.

As I am sure you also know, prior to its recent annexation into the City of Madison, the Property was completely located within the boundaries of the Town of Madison (the "Town"). At the time the Town issued a permit for the Digital Billboard (in 2006), the Town's ordinance provided, in relevant part:

(a) Off-Premise Billboards. In addition to time and temperature signs which comply with TRANS 201.15(3Xc) through (g), Wis. Adm. Code, Off-Premise Billboards shall be allowed to be changed by electronic process, provided that such message shall remain static and shall not move or appear to move. The message shall not change more than once every six seconds, and such change shall occur in less than one second.

In other words, billboards with electronic/digital messaging that change no more than once every six seconds—like the Digital Billboard at issue—were a lawful permitted use under the Town's ordinance. Adams did seek and obtain a dimensional variance from the Town for the Digital Billboard and also obtain a permit from the Wisconsin Department of Transportation for the installation and operation of the Digital Billboard. All relevant documentation regarding such permits and permissions are enclosed with this letter.

Once the Property was annexed into the City, and because the City bans "digital image signs" under Section 31.045(3)(i) of its ordinance, the Digital Billboard became an existing lawful nonconforming use under the State of Wisconsin's "grandfather" statute with respect to zoning matters such as this. Wis. Stat. §62.23(7)(h) provides:

(h) Nonconforming uses. The continued lawful use of a building, premises, structure, or fixture existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the ordinance. The nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building, premises, structure, or fixture shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

This statutory section provides Adams with vested and lawful nonconforming rights to continue its maintenance and operation of the Digital Billboard in accordance with the

direction to submit the written appeal to Mr. Tucker, Mr. Renner was informed that appeals are to be submitted to the Urban Design Commission within 30 days. Because the process is unclear, Adams is covering its bases by submitting this Appeal Notice to both the Zoning Office and the Urban Design Commission.

restrictions contained therein. Moreover, the City's own ordinance recognizes and protects vested nonconforming rights such as the ones at issue here. Section 28.195 of the City's ordinance, titled "Certificate of Occupancy for Nonconforming Use," provides:

Any person having a legal or equitable ownership interest of record in a property that is nonconforming as to use shall obtain a certificate of occupancy from the office of the Zoning Administrator. Such person shall present documentary evidence that said use was a lawful permitted or conditional use at the time it originated and was made nonconforming by the adoption of this ordinance or any amendment thereto or was made nonconforming by the zoning ordinance in effect at the time this ordinance was adopted. Documentary evidence may include leases, affidavits, lawfully issued permits, certificates of occupancy, and other legal documents, subject to verification of authenticity and accuracy.²

Accordingly, under State law and the City's own ordinance, because Adams' had valid permits and permissions from the Town and the Wisconsin Department of Transportation to install and operate the Digital Billboard when it was built in 2006, Adams has the vested right to continue such use as a law nonconforming use in the City.

We trust the above resolves the issues in the Notice and that the same will be rescinded by the City in a timely manner. If you have any questions or concerns about the above or enclosed, please feel free to contact me directly.

Regards,



Richard J. Zecchino,
Chief Legal Officer and Vice President of Real Estate

CC: Julie Johnson, General Manager
Michael Ruthsatz, Director of Real Estate

² Adams inquired with the Zoning office on how it could obtain a Certificate of Occupancy for Nonconforming use, but nobody was able to provide an answer.

BEFORE THE CITY OF MADISON URBAN DESIGN COMMISSION

In the matter of the appeal of:

Adams Outdoor Advertising

Regarding the property located at:

75 Nob Hill Road

Tax Parcel No. 070936104060

**APPELLANT ADAMS OUTDOOR ADVERTISING'S BRIEF IN SUPPORT OF ITS
RIGHT TO MAINTAIN A DIGITAL IMAGE SIGN AT 75 NOB HILL ROAD AS A
NONCONFORMING USE**

I. INTRODUCTION

The City of Madison Building Inspector provided notice to Adams Outdoor Advertising that one of its digital billboards, which is adjacent to the Beltline Highway, violates the City of Madison's sign ordinance. According to the Building Inspector's interpretation, it is irrelevant that the billboard at issue was built in compliance with all applicable laws and became subject to the City of Madison's sign ordinance only upon the City's annexation of the property on which the sign is located. Despite the Building Inspector's interpretation, Adams Outdoor Advertising is permitted to maintain the billboard at issue even if it violates the City of Madison's sign ordinance because (1) the sign ordinance is a zoning ordinance, (2) nonconforming uses legally established prior to adoption of an applicable zoning ordinance may be maintained, and (3) if the City fails to recognize the legal, nonconforming status of the billboard, the City will have taken Adams Outdoor Advertising's property, which requires the City to pay just compensation to Adams Outdoor Advertising.

II. FACTUAL SUMMARY

Adams Outdoor Advertising (“Adams”) owns and operates a network of advertising billboards throughout the country, including a presence in the Madison, Wisconsin market. One of Adams’ Madison-area billboards is located at 75 Nob Hill Road (the “Property”), in the City of Madison (the “City”). The billboard located on the Property is a 14’ x. 48’, back-to-back digital billboard (the “Billboard”), which it maintains in accordance with a multi-year lease agreement with owner of the Property, 7787 Westbelt, LLC. The Billboard displays static digital images, which change after a certain time, allowing the Billboard to display advertisements for multiple businesses and products. Adams first erected the Billboard in 2006, at which time the Property was in the Town of Madison (the “Town”), and Adams established the Billboard in conformity with the applicable Town ordinance, which stated as follows:

(a) Off-Premise Billboards. In addition to time and temperature signs which comply with TRANS 201.15(3Xc) through (g), Wis Adm. Code, Off-Premise Billboards shall be allowed to be changed by electronic process, provided that such message shall remain static and shall not move or appear to move. The message shall not change more than once every six seconds, and such change shall occur in less than one second.

(Procter Decl. at Ex. 1). Adams established the Billboard in conformance with the above-quoted Town regulation and maintains the Billboard in conformance with this regulation. (*Id.* at Exs. 1, 2, 3). The City attached portions of the Town in 2022, which included the Property. In accordance with the attachment, the City’s land use ordinance applies to the Property as of October 31, 2022 (*Id.* at Ex. 4).

In a letter dated September 29, 2023, the City Building Inspector advised Adams of its position that the Billboard violated Section 31.045(3)(i) of the City’s sign ordinance. In its letter, the City demanded that Adams “[d]iscontinue the display of any Digital Image Sign features on

the Advertising Sign located at 75 Nob Hill Rd.” The City also advised that “Digital Image Signs, as defined in Sec. 31.03(2), static or animated, are prohibited.”

Given that Adams’ Billboard is designed and built to display digital image advertisements, which the City asserts its sign ordinance does not allow, the City’s application of its sign ordinance to a sign lawfully erected in 2006, in an area that was then under the jurisdiction of the Town, will render the Billboard unusable and without value to Adams and its advertising partners. In accordance with the instructions in the City’s letter, Adams filed a timely notice of its intent to appeal the decision of the Building Inspector.

III. APPLICABLE DEFINITIONS

The following definitions found in City Code § 31.03(2) are relevant to Adams’ appeal:

- Advertising Sign. A sign containing a commercial message directing attention to a business, commodity, service, or entertainment, not related to the premises at which the sign is located, or directing attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than on the premises where the sign is located. Signs on City-sponsored bicycle-sharing facilities and the bicycles provided as part of a city-sponsored bicycle-sharing program located in the right-of-way or on other City lands in compliance with Sec. 10.33 are not advertising signs as defined herein and are not regulated by this ordinance.
- Digital Image Sign (Static). A sign, any portion of which displays static or stationary illuminated digital images, produced by technology such as LED (light emitting diode) or LCD (liquid crystal display) display screens, plasma, high-definition, interactive touch-screen, or other such technology.

Based on these definitions, the Billboard constitutes an Advertising Sign and would qualify as a Digital Image Sign (Static) in that it displays static digital images.

IV. ARGUMENT

a. The City’s Sign Ordinance is a Zoning Ordinance.

The City’s sign ordinance divides the City into three groups of zoning districts, and the types of signs that may be located on a property within in the City depends on the zoning district

in which the property is located. City Code § 31.021. The sign ordinance creates a Group 1, which includes most residential districts, the agricultural district, and the campus institutional district, among others. *Id.* at § 31.021(1)(a). Similarly, the sign ordinance creates a Group 2, which includes most mixed-use districts, the tiny house village district, the downtown core district, the urban office residential district, the traditional shopping street district, and the parks and recreation district. *Id.* at § 31.021(1)(b). The sign ordinance also creates a Group 3, which includes commercial and industrial districts. *Id.* at § 31.021(1)(c). The sign ordinance also defines certain zoning districts, such as Historic Districts, the Mixed-Use Center District, and Planned Development Districts as “Districts of Special Control”, in which signs are regulated differently from the general rules applicable to Groups 1, 2, or 3. *Id.* § 31.13. Generally, the sign ordinance regulates the type, height, size, location, and allowed display of signs based on the zoning classification of the property on which a sign is located. *See id.* at §§ 31.06-31.15.

In regulating the types, dimensions, locations, and characteristics of signs based on the zoning classification of the properties on which signs are located, the City’s sign ordinance constitutes a zoning ordinance under Wisconsin law. In *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, ¶¶ 36-42, 338 Wis.2d 488, the Wisconsin Supreme Court identified six characteristics of zoning ordinances, which are used to determine whether an ordinance is a zoning ordinance: (1) Zoning ordinances divide a geographic area into districts; (2) Zoning ordinances permit or prohibit uses within a geographic district; (3) Zoning ordinances address where a use occurs as opposed to how a use occurs; (4) Zoning ordinances classify uses generally and attempt to comprehensively address all uses in an area; (5) Zoning ordinances are not case-by-case regulations (except in the case of conditional uses); and (6) Zoning ordinances allow property owners to maintain legal nonconforming uses. *See also Town of Bradford v. Merriam*, 2012 WI App 87, ¶¶ 20-27, 344 Wis.

2d 122, 820 N.W.2d 155 (unpublished) (Procter Decl. at Ex. 5). An analysis of the *Zwiefelhofer* factors demonstrates the City’s sign ordinance is a zoning ordinance.

On its face, the sign ordinance divides geographic areas within the City into four “groups,” permits or prohibits signs in these groups, and addresses permitted height, size, and display of signs based on geographic location. Accordingly, (1), (2), and (3) of the *Zwiefelhofer* factors demonstrate the sign ordinance is a zoning ordinance. Regarding factor (4), like traditional zoning ordinances, the City’s sign ordinance classifies types of signs generally and then attempts to comprehensively address permitted types of signs by geographic district. Regarding factor (5), the City’s sign ordinance is not a case-by-case analysis, but rather applies generally to all signs in the City, further indicating it is a zoning ordinance. Finally, on factor (6), section 31.05(1)(a) states that “[a]ny existing sign (except an Advertising Sign) that complied with the requirements of this Chapter at the time of erection and becomes noncompliant with the requirements of this Chapter on the effective date of this Ordinance or subsequent amendment may continue to be displayed, and copy may be changed.” Each of the *Zwiefelhofer* factors points to the City’s sign ordinance constituting a zoning ordinance.

Furthermore, the City’s sign ordinance plainly acknowledges it is a zoning regulation. Section 31.021(1) states that

[f]or purposes of Chapter 31, the zoning districts established in Chapter 28 (“Madison Zoning Code”) are divided into the following groups, so that regulations for signs based upon zoning district can be administered consistently with the purpose of this ordinance and the Madison Zoning Code. The City finds that the zoning districts within each group share characteristics that make it appropriate to regulate signs displayed in those districts similarly.

A clearer expression of a zoning ordinance cannot be found. The sign ordinance itself acknowledges it divides the City geographic districts for the purpose of generally regulating the types of signs permitted in each geographic district, which is the definition of a zoning ordinance.

b. The Billboard Constitutes a Legal, Nonconforming Use and May Be Maintained.

City Code Section 31.045(3)(i) states that “Digital Image Signs, as defined in Sec. 31.03(2), whether static or animated, are prohibited.” Accordingly, the City asserts Adams’ Billboard, as a Digital Image Sign, may not be used and that Adams must “[d]iscontinue the display of any Digital Image Sign features on the [Billboard] located at 75 Nob Hill Rd.” The City entirely ignores the fact that Adams legally erected the Billboard in 2006, in compliance with all applicable laws at the time. The City prohibits Adams and its customers from using the Billboard, without any acknowledgement that the Billboard has legal, nonconforming status.

As established above, the City’s sign ordinance is a zoning ordinance. Wis. Stat. § 62.23(7)(h) states that “[t]he continued lawful use of a building, premises, structure, or fixture existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the ordinance.” Similarly, Wisconsin case law has long established that “a nonconforming use existing at the time a zoning ordinance goes into effect cannot be prohibited or restricted by statute or ordinance, where it is a lawful business or use of property and is not a public nuisance or harmful in any way to public health, safety, morals or welfare.” *Des Jardin v. Town of Greenfield*, 262 Wis. 43, 47, 53 N.W.2d 784 (1952); *see also Town of Bradford*, 2012 WI App 97, ¶ 28.

While § 31.05(1)(a) allows existing legal, nonconforming signs to “continue to be displayed,” it specifically excludes “Advertising Signs” from legal, nonconforming status, subjecting Advertising Signs to additional, limiting regulation. As applied to the Billboard, the

City entirely ignores the fact that the Billboard was erected in compliance with the Town's zoning and sign regulations, fell under City zoning upon attachment on October 31, 2022, and has legal, nonconforming status. Because the Billboard is a Digital Image Sign, the City asserts that Adams lacks nonconforming use rights. The City's position is without merit.

“A nonconforming use is an active and actual use of land and buildings which existed prior to the commencement of the zoning ordinance which has continued in the same or related use until the present.” *City of Lake Geneva v. Smuda*, 75 Wis. 2d 532, 537, 249 N.W.2d 783 (1977). If a property owner establishes an active “nonconforming use was in existence at the time the ordinance was passed” then the property owner has the right to continue the use. *Id.* at 537-38.

In the present case, there is no dispute that the Billboard was established as a use at 75 Nob Hill Road prior to the application of the City's sign and zoning ordinances to the Property and that the Billboard was established in conformity with all applicable Town regulations. Accordingly, the Billboard constitutes a legal, nonconforming use, which is statutorily permitted to continue. Nevertheless, the City asserts that because the Billboard is a Digital Image Sign, it does not qualify for legal, nonconforming status. Simply put, there is no support for the City's position. A legal, nonconforming use does not lose its status simply because the use becomes disfavored by the governing authority. The entire point of § 62.23(7)(h) and the legal, nonconforming use doctrine is that legally established uses are permitted to continue even such uses could not be presently established. The City's position regarding Adams' Billboard is contrary to the plain language of § 62.23(7)(h) and would invalidate the legal, nonconforming use doctrine in its entirety.

c. Failure to Recognize the Billboard's Legal, Nonconforming Status Would Constitute a Taking of Property Without Just Compensation.

“Under the Wisconsin Constitution, two types of governmental conduct can constitute a taking: (1) ‘an actual physical occupation’ of private property or (2) a restriction that deprives an

owner ‘of all, or substantially all, of the beneficial use of his property.’” *E-L Enter., Inc. v. Milwaukee Metro. Sewerage Dist.*, 2010 WI 58, ¶ 22, 326 Wis. 2d 82, 785 N.W.2d 409 (quoting *Howell Plaza, Inc. v. State Highway Comm'n*, 66 Wis.2d 720, 726, 226 N.W.2d 185 (1975)). “Similarly, under the U.S. Constitution, governmental conduct gives rise to a takings claim when there is either (1) ‘direct government appropriation or physical invasion of private property’ or (2) government regulation of private property that is ‘so onerous that its effect is tantamount to a direct appropriation.’” *Id.* (quoting *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 537 (2005)). If government regulation becomes tantamount to direct appropriation, a regulatory taking has occurred and it is “per se compensable under the Fifth Amendment if the regulation ‘requires an owner to suffer a permanent physical invasion of her property’ or ‘completely deprives an owner of all economically beneficial us[e] of her property.’” *Id.* (quoting *Lingle*, 544 U.S. at 538).

Under Wisconsin law, “a lessee with a lease for more than one year is a joint owner with the lessor of real property” and “[b]ecause a lessee has a property interest, the lessee is entitled to compensation when that interest is completely taken by a condemning authority.” *Van Asten v. State*, 214 Wis. 2d 135, 140, 571 N.W.2d 420 (Ct. App. 1997) (citing *Maxey v. Redevelopment Auth.*, 94 Wis. 2d 375, 388, 400, 288 N.W.2d 794 (1980)).

Adams secured a multi-year lease agreement with the owner of the Property, to maintain the Billboard at 75 Nob Hill Road. In reliance on the lease and the fact that operation of a digital billboard was permitted in the Town, Adams erected the Billboard. Now, post-attachment of the Property, the City asserts the use of the Billboard is prohibited under the City’s sign ordinance and that Adams cannot use the Billboard for any digital displays. This regulation destroys the value of the Billboard to Adams and its advertising partners and entirely appropriates the lease Adams entered with the owner of the Property to maintain a digital billboard on the Property. According

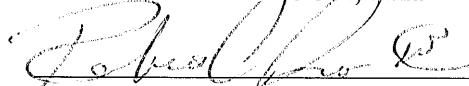
to the City, Adams may not use the Billboard for the purpose for which it was erected, rendering the Billboard and the lease without any economic value to Adams. Therefore, if the Billboard does not constitute a legal, nonconforming use under the sign ordinance, the City has engaged in a regulatory taking of Adams' property interest in the Billboard and underlying leasehold, for which Adams is entitled to compensation.

V. CONCLUSION

Adams established the Billboard in 2006, in compliance with the applicable Town ordinances and has continued to operate the Billboard in compliance with the then-applicable Town ordinances. Following its annexation of the Property, the City now attempts to foreclose Adams' continued use of the Billboard, asserting that Digital Image Signs are prohibited in the City. In so arguing, the City ignores the fact that the Billboard is a legal, nonconforming use, which Adams is permitted to continue under Wisconsin statute and case law. If the City prevails in its position, however, it will have destroyed the value of Adams' lease and its Billboard through regulation, requiring the City to pay Adams just compensation for its taking.

Dated this 18th day of December 2023.

AXLEY BRYNELSON, LLP



Robert C. Procter, SBN 1034777

Christopher T. Nelson, SBN 1113547

Attorneys for Adams Outdoor Advertising

Post Office Box 1767

Madison, WI 53701-1767

Phone: (608) 283-5661

Facsimile: (608) 257-5444

E-mail: rprocter@axley.com

cnelson@axley.com

BEFORE THE CITY OF MADISON URBAN DESIGN COMMITTEE

In the matter of the appeal of:

Adams Outdoor Advertising

Regarding the property located at:

75 Nob Hill Road

Tax Parcel No. 070936104060

DECLARATION OF ROBERT C. PROCTER

I, Robert C. Procter, declare under penalty of perjury that the following is true and correct to the best of my knowledge and recollection:

1. I am an adult resident of the state of Wisconsin. I am a partner at Axley Brynelson, LLP and am licensed to practice law in the state of Wisconsin. I represent Adams Outdoor Advertising (“Adams”) in its appeal of the Building Inspector’s determination that Adams’ billboard located at 75 Nob Hill Road (the “Billboard”) violates the City of Madison’s sign ordinance.

2. I make this declaration on my personal knowledge.

3. Attached as Exhibit 1 to this declaration is a true and correct copy of Town of Madison Ordinance Title 7, Chapter 15, entitled “Off-Premise Billboards.”

4. Attached as Exhibit 2 to this declaration are true and correct copies of Adams Outdoor Advertising’s building permit application, off-site billboard permit application, and off-site billboard permit granted by the Town of Madison for the Billboard.

5. Attached as Exhibit 3 to this declaration is a true and correct copy of the zoning documents from the Town of Madison, for the Billboard. The zoning documents demonstrate the

Town of Madison Board of Supervisors approved a variance for the height and size of the Billboard.

6. Attached as Exhibit 4 is a true and correct copy of the City of Madison provided fact sheet regarding the attachment of Town of Madison properties. The fact sheet states that City zoning applies to Town properties starting on October 31, 2022.


7. Attached as Exhibit 5 to this declaration is a true and correct copy of *Town of Bradford v. Merriam*, 2012 WI App 97, 344 Wis.2d 122, 820 N.W.2d 155, an unpublished decision of the Wisconsin Court of Appeals, which is cited in Adams' brief pursuant to Wisconsin Rules of Appellate Procedure 809.23(3).

Dated this 18th day of December, 2023.

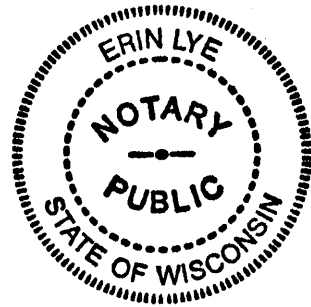


Robert C. Procter, SBN 1034777
Attorneys for Adams Outdoor Advertising
AXLEY BRYNELSON, LLP
Post Office Box 1767
Madison, WI 53701-1767
Phone: (608) 283-5661
Facsimile: (608) 257-5444
E-mail: rprocter@axley.com

Subscribed and sworn to before me
this 18th day of December, 2023.



Notary Public, State of Wisconsin
My commission expires: 2/12/27



Title 7 ► Chapter 15

Off - Premise Billboards

7-15-1	Purpose
7-15-2	Definitions
7-15-3	Permitted Zones
7-15-4	Size of Signs
7-15-5	Height of Off-Premise Billboard
7-15-6	Spacing for Off—Premises Billboards
7-15-7	Setback Requirements
7-15-8	Lighting and Maintenance
7-15-9	Application for Permit
7-15-10	Enforcement

Sec. 7-15-1 Purpose.

This Chapter is intended to establish minimum standards with respect to off-premise outdoor billboards. It is the intent that this Chapter be used to regulate and provide for safe structures that do not interfere or distract with any driver's operation of a motor vehicle on highways located in the Town of Madison, to provide for properly located structures which meet the uniform standards for construction and maintenance, and to provide for properly maintained structures which do not endanger the safety of local residents. In order to promote the safety of public travel on highways as defined in Sec. 340.01(22), Wis. Stats., this Section establishes regulations for continuing use of outdoor advertising of lands abutting highways maintained by the Town of Madison and therefore those highways which the Town of Madison is the maintaining authority as defined in Sec. 60.23(29), Wis. Stats., and 46 OAG 148 (157).

Sec. 7-15-2 Definitions.

The following definitions shall be applicable in this Chapter.

- (a) **Off-Premise Billboards.** In addition to time and temperature signs which comply with TRANS 201.15(3)(c) through (g), Wis. Adm. Code, Off-Premise Billboards shall be allowed to be changed by electronic process, provided that such message shall remain static and shall not move or appear to move. The message shall not change more than once every six seconds, and such change shall occur in less than one second.
- (b) **On-Premises Signs.** All signs which direct attention to a business, commodity, service, items or entertainment sold, offered or conducted on the same premises that the signs are located.
- (c) **Back-to-Back Billboard.** An Off-Premise Billboard consisting of two (2) sign facings oriented in opposite directions with not more than one (1) face per sign facing.

- (d) **Facing or Face.** That portion of an Off-Premise Billboard upon which advertising is affixed or painted and visible in one (1) direction at one (1) time.
- (e) **Freestanding Billboard.** An Off-Premise Billboard erected on a freestanding framework supported and affixed by one (1) or more uprights or braces in or upon the ground.
- (f) **V-Type Billboard.** An Off-Premise Billboard structure which consists of multiple sign facings placed at angles to each other, oriented in different directions, and not exceeding ten (10) feet apart at the nearest point to each other and twenty (20) feet apart at the farthest point to each as measured from face to face.

Sec. 7-15-3 Permitted Zones.

All Off-Premise Billboards must be located in those zoned areas where such use is permitted under applicable zoning laws but in no event shall Off-Premise Billboards be located in anything other than C-1 Commercial, C-2 Commercial and M-1 Industrial zones. This Chapter specifically excludes the construction and/or use of Off-Premise Billboards in the areas commonly known as the University of Wisconsin Arboretum or within a permanently protected green space area.

Sec. 7-15-4 Size of Signs.

- (a) The maximum area of any one face of an Off-Premise Billboard shall not exceed three hundred (300) square feet excluding the base or apron, trim supports or other structural elements.
- (b) Size may be Back-to-Back or V-type Billboards with not more than one (1) face to each facing and such structures should be considered as one (1) Off-Premise Billboard.

Sec. 7-15-5 Height of Off-Premise Billboard.

- (a) An Off-Premise Billboard shall maintain a minimum clearance of ten (10) feet measured from the ground level to the base of the sign.
- (b) An Off-Premise Billboard shall have a maximum height not to exceed thirty-five (35) feet above grade level to the roadway to the top of the sign face, as measured from the centerline of the roadway to which the sign is oriented.

Sec. 7-15-6 Spacing for Off-Premises Billboards.

- (a) No Off-Premise Billboard may be established within three hundred (300) feet of any other Off-Premise Billboard, measured along the same side of the street or highway to which the sign is oriented.
- (b) The minimum distance between Off-Premise Billboards shall be measured along the nearest edge of the pavement between points directly opposite the center of the signs along each side of the highway and shall apply to the structures located on the same side of the same street or highway.

Sec. 7-15-7 Setback Requirements.

- (a) A minimum setback of five (5) feet is required from the front line for any off-premise Billboard, regardless of zone.
- (b) In no case shall any portion of an Off-Premise Billboard overhang into or be placed in the public right-of-way, unless allowed by the Town. An Off-Premise Billboard may overhang into property on which it exists up to the point of the public right-of-way or adjacent public or private property.

Sec. 7-15-8 Lighting and Maintenance.

- (a) Signs which contain or are illuminated by any flashing, intermittent or moving light or lights shall be prohibited.
- (b) Signs must be effectively shielded to prevent beams or rays from being directed toward any portion of the traveled ways, and must not be of such intensity or brilliance to cause glare or impair the vision of the driver of any motor vehicle or otherwise interfere with any driver's operation of a motor vehicle.
- (c) No Off-Premise Billboard shall be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device or signal, or mimics that official traffic sign in any way.
- (d) All Off-Premise Billboards within the jurisdiction of this Chapter shall remain in a state of proper maintenance. Proper maintenance shall be the absence of loose materials including peeling paint, paper or other material, prevention of excessive rust, the prevention of excessive vibration or shaking, and the maintenance of the original structural integrity of the sign, frame and other supports, its mounting, and all components thereof.

Sec. 7-15-9 Application for Permit.

All Off-Premise Billboards must be authorized with a permit. An application for a permit to construct and maintain an Off-Premise Billboard on a highway maintained by the Town and therefore a highway in which the Town is the maintaining authority shall be made in writing to the Town Board on an application form prepared by the Town. The fee shall be One Hundred Dollars (\$100.00). The Town reserves the right to deny any application if the proposed Off-Premise Billboard substantially obstructs an existing On-Premise Signs(s).

Sec. 7-15-10 Enforcement.

- (a) Before the initial application for a permit issued under this Chapter is denied, permittee shall have an opportunity to be heard before the Town Board.
- (b) Any person or persons, firm, company or corporation, or other legal entity, owner, occupant or other user of an Off-Premise Billboard, who violates, disobeys, omits, neglects or refuses to comply with or resists enforcement of any of the provisions of this

Chapter shall be subject to a forfeiture of not less than One Hundred Dollars (\$100.00), nor more than Two Hundred Dollars (\$200.00) and costs. Each day that a violation is permitted to exist shall constitute a separate offense. Compliance herewith may be enforced by injunctive order by a court of competent jurisdiction. It shall not be necessary to prosecute for forfeiture before resorting to injunctive proceedings.

EXHIBIT
2



Town of Madison Application for Building Permit
2120 Fish Hatchery Road, Madison, Wisconsin 53713
For Inspection Call 608-210-7261

Construction Erosion

Owner's Name Adams Outdoor Advertising Inc.
 Address 102 E. Badger Rd, Madison, WI 53713
 Phone Number 608-271-7900
 Contractor's Name Same
 Address Same
 Phone Number Same
 Building Address 75 W. Beltline Hwy Parcel Number _____
 Project New Alteration Addition Repair Raze Move Other
 Occupancy Single Family Two Family Multi-Family Garage Commercial
 Description billboard sign
 Estimated Building Cost \$ _____
 The applicant agrees to comply with all applicable codes, statutes and ordinances and with the conditions of this permit; understands that the issuance of the permit creates no legal liability, express or implied, on the Department or municipality; and certifies that all the above information is accurate
 Applicant's Signature [Signature] Date Signed 11/1/02
 Approval Conditions _____

FEES:	
Plan Review	\$ _____
Inspection	\$ <u>201.60</u>
HVAC	\$ _____
Erosion	\$ _____
Penalty	\$ _____
Total	\$ <u>201.60</u>

PERMIT ISSUED BY:
 Name DAN EKWF
 Date 11-02-06
 Cert. No. 953773

TR# 19 Date 11-1-06 Amount Paid \$201.60 GFS# 24406

Permit No. _____

Date _____

TOWN OF MADISON APPLICATION FOR OFF-PREMISE BILLBOARD PERMIT

Property owner and billboard address:
A-1 TRANSMISSION
75 W. BELTLINE HWY
MADISON, WI 53713

Billboard owner and address:
ADAMS OUTDOOR ADVERTISING
102 E BADGER RD.
MADISON, WI 53713

Billboard installer and address:
ADAMS OUTDOOR
SAME

- Provide a complete copy of the approved Wisconsin Department of Transportation Outdoor Sign Installation Application and Permit.
- Provide a complete copy of any applicable lease or other rental agreement between the billboard owner and property owner(s). Confidential information may be redacted.
- Provide a complete site plan showing the location of the billboard, relevant roads/highways and intersections, distance from any other off-premise billboards within 600 feet, distance of billboard from abutting road/highway and distance from nearest intersection. ON DOT APPLICATION
- Permit fee \$100.00

Type of sign:

- Back-to-Back
- V-Type, If V-Type, the distance _____ feet from the nearest point and the distance _____ feet from the farthest point as measured from face to face.

Size of sign:

14x48'
672

Dimensions Variance granted 8/16/06
Square footage of the sign face(s) excluding the base or apron, trim supports or other structural elements.

Height of Billboard:

38'
55'

Height (ft) measured from ground level to base of the sign.
Height (ft) measured from ground level to top of sign.

Zoning district

- C-1 Commercial
- C-2 Commercial
- M-2 Industrial
- _____ other acceptable zoning district

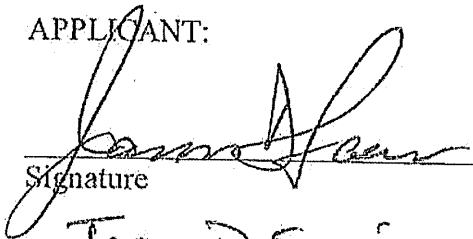
Applicant/Company Name:
Adams Outdoor Advertising
 " SAMS
 " _____
 " _____
 " _____

Address
 City/State/Zip
 Contact Person
 Telephone Number

The undersigned applicant requests permission to install and maintain the off-premise Billboard as described. Applicant agrees to comply with all applicable statutes, ordinances, rules and regulations of the State of Wisconsin, Dane County and Town of Madison.

Said applicant, its successors or assigns, acknowledges that the installation and maintenance of said Billboard might be subject to Dane County Zoning. The applicant, its successors or assigns assumes all risks if it fails to obtain Dane County Zoning's approval prior to installing said Billboard.

APPLICANT:

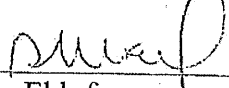

 Signature
Jason D. Sevari
 Printed Name

10/25/06
 Date

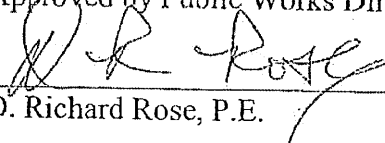
PERMIT

Permit approval is granted to authorize installation and maintenance of specific advertising or informative display described at the precise location defined. This permit will expire six months after the permit issuance date if the Billboard permitted is not installed by that date. This permit is revocable.

Approved by Building Inspector:


 Dan Eklof
10-31-06
 Date

Approved by Public Works Director:


 D. Richard Rose, P.E.
10-31-06
 Date

Approved by Town Board:

 Date

Documentation of Zoning
for
Outdoor Advertising Sign (Billboard) Permit

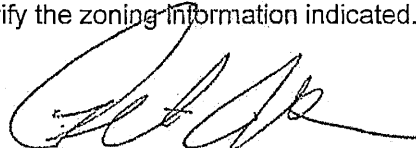
County	Dane
Township	Madison
Highway	12/18
Legal Description of Property	75 W. BELTLINE Hwy. SW 1/4 of the NE 1/4 of Section 36 Township 7 North, Range 9 East
Zoning Classification	C-2 <ul style="list-style-type: none">• Please attach a copy of the zoning ordinance in effect in your community.• Before a state permit for most signs may be issued, a review is required of the primary permitted uses in the zoning classification appearing above to assure compliance with state and federal regulations.
DATE SO ZONED – If Interstate Highway, provide documentation of zoning as of September 1, 1959.	May 18, 1950
Is a local sign permit (not building permit) required to erect this advertising sign?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes

As the duly authorized zoning administrator or their agent, I verify the zoning information indicated.

PETE CONRAD
(Name - Print)

210 MLK Jr. Blvd, Madison WI
(Mailing Address)

53703-2542
(Municipality, State ZIP Code)


(Signature) 8-14-2006
(Date)

Zoning Administrator
(Title – County Zoning Administrator/Town Clerk/etc.)

608.266.9078
(Area Code – Telephone Number)



**TOWN OF
MADISON FIRE
DEPARTMENT**

2120 Fish Hatchery Road
Madison, WI 53713
Phone #: (608) 210-7261
Fax #: (608) 210-7235

FAX

To: DENNY DREIER Date: 09-08-06

Company: WE DOT

Phone #: 246-7906 Fax #: 246-5383

From: DAN EKLOF Pages: 5 {Including this page}

Subject: TOWN OF MADISON SIGN (OFF PREMISE) ORDINANCE

- Urgent
- Please Review & Respond
- Per Your Request
- For Your Information

Comments:

THE TOWN BOARD DID APPROVE A VARIANCE FOR HEIGHT (55')
AND SIZE AT THE AUGUST 16, 2006 BOARD MEETING.
THIS SHOULD BE GO!

THANKS
DAN EKLOF



**TOWN OF MADISON
FIRE DEPARTMENT**



Dan Eklof
Firefighter / Paramedic / Building Inspector

The City of Madison Welcomes the Town of Madison Fact Sheet

The City of Madison will welcome a great portion of the Town of Madison on October 31, 2022. The dissolution of the Town is based upon the terms of the Cooperative Plan entered into by the City of Madison, the City of Fitchburg, and the Town of Madison in 2003. The process of dissolving the Town and wrapping up its business, is called the Final Attachment.

What is the purpose of this fact sheet?

The purpose of this factsheet is to share information about municipal services in the City of Madison with you in preparation of the final Town of Madison Attachment. There is nothing that you as a resident or property owner need to do. **Until October 31, 2022, your address will remain in the Town of Madison and the Town will be responsible for providing you municipal services in the same manner it currently does.** Also, the attachment to the City will not affect the school district in which your property is located.

For more information visit www.cityofmadison.com/Townofmadison (also available in Spanish and Chinese)

Are there any services that the City of Madison is currently providing?

Yes. In 2020, the City of Madison agreed to take over the Fire, Emergency Medical and Building Inspection services from the Town of Madison, effective Nov. 1, 2020. Town residents might have already noticed that the City of Madison is now responding to calls for these service in the Town along with inspection related services.

****Calls for any Police emergency service now and after October 31, 2022, shall continue to be made by dialing 911.****

As part of the dissolution of the Town of Madison, some properties will become part of the City of Fitchburg and others will become part of the City of Madison. How do I know which City will the property where I live or work at will be part of?

The City of Madison has created an interactive map that will allow you to type your address or use your mouse to find your parcel and learn which City will provide the public services you need. To learn more visit:

www.cityofmadison.com/city-hall/town-of-madison/map

What are the advantages of being served by the City of Madison?

Town residents and property owners will be eligible for City services and programs after official attachment Oct. 31, 2022. Some of those services include:

- Home Rehab Loans
- Rental Rehab Loans
- First Time Homebuyers
- Housing assistance or public housing through the City of Madison Housing Authority

- City of Madison Housing Resources
- Neighborhood Grants
- City Arts Grants
- The application program for the **Child Care Assistance Program** is currently open and Town of Madison residents who are in sections of the Town that will be attached to the City of Madison are now eligible to apply.
 - The City of Madison Child Care Assistance Program pays child care costs on a sliding fee scale for families who reside within the City of Madison, are ineligible for Wisconsin Shares Child Care Subsidy, and who meet the program eligibility requirements. The goal is to ensure high quality stable care for qualifying families with an emphasis on low-income families and families with high need

For further information visit: www.cityofmadison.com/townofmadison

What is an attachment?

Many people are familiar with the term annexation, which describes the statutory process when a City or Village expands by adding territory from an adjoining Town. An attachment has the same result, but occurs not based upon statutory processes, but based upon processes determined by the municipalities involved through a Cooperative Plan. The end result is the same and the territory in question is brought into the City or Village, even if the process is different.

Why is the City of Madison attaching properties of the Town of Madison?

Prior to 2003, the Town was the subject of numerous annexations of its territory by both the City of Madison and the City of Fitchburg, and there were multiple legal and political disputes among the municipalities about the future of the Town territory. Based upon the decades of disputes, the prospect of continued boundary disputes and protracted litigation, and an uncertain long-term future for the Town, the parties entered into the Cooperative Plan to determine the Town's future with certainty, end boundary disputes, and establish a basis for the intergovernmental cooperation between the parties during the nearly 20-year transition period while protecting the Town's tax base and continued operations during this period. At the end of the protected period, on October 31, 2022, the Town will cease to exist and will be absorbed into the two Cities.

How does this impact the Town of Madison residents, property owners, and business owners?

Final attachment of the Town to the Cities will directly impact all Town residents, property owners and employees, and, to a lesser extent, the residents and property owners of the Cities. Town residents will be immediately eligible for City services and programs, and will vote in the November 2022 election in the Cities.

Town property owners will also be eligible for City programs, and will receive 2022 tax bills in December 2022 from the City of Madison.

Home Fire Safety

In 2009, the Madison Common Council approved an ordinance to improve home fire safety. That ordinance now applies to homes and apartments that were formerly in the Town of Madison. The ordinance requires a smoke alarm in every bedroom and within 6 feet of every bedroom door. Smoke alarms must be powered by a 10-year tamper resistant battery or household power with battery backup. Smoke alarms must be installed and/or replaced by December 31, 2023, although for your safety we would strongly recommend doing so as soon as possible.

In the spring and summer of 2023, the Madison Fire Department intends to offer free smoke alarm installations in owner occupied single-family dwellings. Please watch for more information relative to the free smoke alarms.

How is refuse, large item and recycling pickup handled in the City?

Trash & Recycling

Before the final attachment, the City of Madison Streets Division will determine if trash and recycling service will be provided your property. If you receive curbside collection service from the Town and are attached to the City of Madison, you will likely receive collection service from the City of Madison's Streets Division. The first collection by the City of Madison will occur the week of October 31, 2022.

Trash and recycling will be picked up the following dates:

- Residents in the Fordem Ave area = Tuesdays (recycling every other week)
- Residents in the Morland Rd area = Thursdays (recycling every other week)
- Residents in the rest of southside area = Mondays (recycling every other week)

Schedules <https://www.cityofmadison.com/streets/refuse/collectionlookup.cfm>

If service will be provided, you will receive one trash cart and one recycling cart from the Streets Division prior to the first collection. You will also receive a collection calendar that informs you when to set out the trash and recycling for pickup.

You will be expected to put the correct items into those carts. Learn what goes into each cart at the Streets Division's website www.cityofmadison.com/streets

In order to have your carts collected, they need to be out at the curb in the space between the sidewalk and the curb by 6:30am. Please avoid placing carts directly in the street.

Large Item Collection

Large items are items that are too big for your collection carts, like furniture or appliances. Large item pickup is only provided after you schedule collection in a public street. You will be eligible to schedule large item pickup on October 31, 2022. In order to schedule your pickup, go to www.cityofmadison.com/LargeItemWorkOrder. You can also contact the Streets Division offices to help schedule the pickup. Some items do require additional fees.

You may contact the City's Streets Division at 608-266-4681 for Madison west of Park St. or 608-246-4532 for Madison east of Park St. with questions about trash, recycling and large item pickup.

More information about all of the Streets Division services, including brush collection, yard waste collection, snowplowing, pothole repair, and urban forestry services by visiting www.cityofmadison.com/streets .

Special Consideration: Private Roads

The City of Madison Streets Division does not collect trash, large items, brush, recycling, and yard waste from private roads. The Streets Division does not provide snowplowing on private roads, either. If your home is on a private roadway, please contact the Streets Division offices to discuss the specific plan for your home. Call 608-266-4681 for Madison residences west of Park St. or 608-

246-4532 for Madison residences east of Park St.

Will my children go to the same school?

Yes. School district boundaries **are not** affected by your attachment into the City.

Will my address change?

A majority of the properties in the Town of Madison will retain their current address. Some Town of Madison properties will require an addresses change due to having a non-conforming or a non-uniform street address and conflicts with City Ordinances (MGO 10.34). The purpose for uniform street addresses is to enable emergency vehicles to respond quickly to calls, expedite postal and other delivery services, eliminate confusion, and locate businesses and residences without difficulty or delay. Residents will be notified if their address will be changing.

Some example reasons for a change of address include:

- The address numbers are out of sequential order, located in the wrong hundred block, or have odd numbers that should be on the even side of the street and vice versa.
- The front door of the house faces a different street than what the current address is using.
- A multi-tenant commercial building has the tenants using the same address (duplicate address) instead of individual addresses or suite numbers.
- The name of the street has changed.

Other information about the process:

- The United States Postal Service will receive a copy of all of the Town of Madison addresses that are changing. They will have a cross reference to the old address and keep the old address in their database for at least a year.
- The properties with address changes will need to post the new address number on their house/building or in a place that can be seen from the street. The City of Madison does not use fire run number signs or allow numbers solely located on street mailboxes. The posted numbers must be at least 4 inches tall and attached to the house or directional signage. They need to post numbers and not characters (example: must be 430 and not Four Thirty). Any questions about posting locations can be directed to the [Fire Department](#).

Is my mailing city now Madison and does my ZIP code change?

Continue to use your existing postal city and zip code. Your mail will continue to go to the same post office.

Where will I vote?

You can verify your registration, polling place, sample ballot and absentee ballot status at myvote.wi.gov/. Because the attachment happens close to the General Election, there will be more information posted on this website and shared closer to the date to make sure residents know what options they have.

- **November 2022 Election**

Your vote will be counted in the Town of Madison for all 2022 elections, except the November 2022 General Election. Votes cast in the November 2022 Election will be administered and counted in the City of Madison. There will be no need to re-register. The voter's registration will be transferred from the Town to the City as soon as ballots are printed for the November Election.

Additional information about voting can be found on the City of Madison Clerk's Office Website: www.cityofmadison.com/clerk

Who will be my City representative?

The City of Madison has a Mayor and 20 Alders that represent specific areas of the City. Alder district boundaries was reconfigured in 2021 through the redistricting process. In October 2022, Town areas will be added to adjacent alder districts in the City, therefore determining your specific Alder.

There is a Town of Madison Redistricting map that shows the planned assignment of Town land to various Alder Districts. Draft Legislative District boundaries under consideration by the state place Town land in a separate Assembly District than the rest of South Madison, necessitating creation of new wards for Town land. Polling places will be assigned at the time wards are adopted by the City Council.

Map link: <https://tinyurl.com/27cy7t9h>

What police station do I call?

You can find Madison Police Department's Districts at www.cityofmadison.com/police/districts/
Continue to use 911 for all emergency police, fire and ambulance calls.

Will I have any new bills, fees or taxes?

- All properties in the City of Madison will begin receiving monthly municipal service bills, which are administered by the Madison Water Utility. The bill may include some or all of these categories of charges: water, sanitary sewer, urban forestry, landfill remediation, public fire protection, and storm water. Additional information and a sample utility bill can be found here: <https://www.cityofmadison.com/engineering/sanitary-sewer/madison-municipal-services-bill/utility-bill-explainer>. Storm Water Utility credits/adjustments may be available for lands over five acres that are actively farmed, for properties that do not discharge to the storm system, and for properties that have direct drainage discharges to waters of the state (eg. Wingra Creek, Lake Monona). All of these credits/adjustments are only available to you if you apply for the credit and are approved. Contact the City Engineering Division at 608-266-4751 for additional information.
- All City of Madison residents owning a dog or cat that is 5 months of age or older must have their pet licensed. Any questions may be directed to the City Treasurer's Office at 608-266-4771. <https://www.cityofmadison.com/finance/treasury/dog-cat-licenses>
- If you are the owner of the property, your real estate tax amount will be different, since you are in a different local municipality. Some services are billed separately and not placed on your

real estate tax bill. Water, sanitary sewer, landfill remediation, public fire protection, urban forestry and stormwater utility billings are all included on the monthly utility bill rather than on the tax bill.

- In addition to Dane County's wheel tax, a \$40 City of Madison local vehicle registration fee will be due at the time of vehicle registration or renewal with the state Division of Motor Vehicles after October 31. As required by state law, please update your vehicle kept in (VKI) status to reflect its location in the City of Madison at the following website: <https://wisconsin.gov/pages/online-srvcs/other-servs/vki.aspx>

As a property owner, will my property be reassessed?

Your property will be assessed, along with all other property in the City, as of January 1 of the year following the final attachment. The City values all property at full market value every year. Annual assessment notices are typically mailed to property owners in April. For more information and resources, please visit the City Assessor webpage at <https://www.cityofmadison.com/assessor/>

Right now, my property is served by a well and/ or a septic tank. Will I have to tie on to the City water and sewer system?

The City of Madison Water Utility has no current plans to extend sewer to properties not currently served. Once municipal water is available to your property you will be required to connect to the public water system. Until the water main is extended, your private well will continue to be the source of water for your home but must obtain a well operation permit from the Madison Water Utility.

The City of Madison Sewer Utility has no current plans to extend sewer to properties not currently served. Once municipal sewer is extended up to your property, property owners will be required to connect to the public sewer system and pay all applicable connection fees. Until such time as the City does extend sewer, your private septic system will continue to be the source of sanitary sewer service for your home. Your septic system must be kept in good standing with the Department of Public Health.

The City of Madison Water Utility will not be taking over the Lake Forest Water Cooperative when the Town of Madison attachment occurs in October of 2022. Members of the Lake Forest Co-op may continue to receive water from the Cooperative after the attachment and do not have to connect to the City's public water system at this time, because these parcels do not currently have access to a municipal water main.

If after connecting you are interested in keeping your private well for outdoor use only, you may do so after completing the permitting process. Contact the Madison Water Utility at 608-266-4654 for more information on obtaining a well operation permit or 608-266-4647 for information related to connecting to municipal water if available.

Learn more information on the Water Utility website: <https://www.cityofmadison.com/water/water-quality/private-wells/faqs-attached-properties-municipal-water-requirements>

Will the attachment affect the zoning of my property?

The Common Council adopted ordinances zoning all Town of Madison properties to City of Madison zoning districts at its September 6, 2022 meeting. The City zoning of the property will take effect at 11:59 pm on October 30, 2022 when the Town attaches to the City. Questions about the zoning of

Town parcels as of October 31 should be directed to Zoning at zoning@cityofmadison.com or (608) 266-4551.

Detail information about zoning districts can be viewed on the Town of Madison Interactive Map: <https://www.cityofmadison.com/city-hall/town-of-madison/map>

Additional information on City of Madison services is available at the City's website:
www.cityofmadison.com

A roster including contact information for various City officials and agencies is available at:
<https://www.cityofmadison.com/clerk/about/city-roster>

344 Wis.2d 122

Unpublished Disposition

See Rules of Appellate Procedure, Rule 809.23(3), regarding citation of unpublished opinions. Unpublished opinions issued before July 1, 2009, are of no precedential value and may not be cited except in limited instances. Unpublished opinions issued on or after July 1, 2009 may be cited for persuasive value.

NOTE: THIS OPINION WILL NOT APPEAR IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER TABLE.

Court of Appeals of Wisconsin.

TOWN OF BRADFORD, Plaintiff–

Appellant–Cross–Respondent,

v.

David G. MERRIAM, Individually, and as Personal Representative of the Estate of Mary A. Merriam, Defendants–Respondents–Cross–Appellants, Brian Hubreed, Defendant.

No. 2010AP1759.

|

July 5, 2012.

Appeal and Cross–Appeal from a judgment and an order of the circuit court for Rock County: Kenneth W. Forbeck, Judge. *Affirmed.*

Before LUNDSTEN, P.J., HIGGINBOTHAM and SHERMAN, JJ.

Opinion

¶ 1 SHERMAN, J.

*1 The Town of Bradford appeals an order of summary judgment and a judgment of the circuit court in favor of David G. Merriam, the present owner of Shady Hill Mobile Home Court located in Bradford, and Brian Hubreed, the owner of mobile home unit # 1 in Shady Hill.¹ The Town brought this action against Merriam and Hubreed claiming that unit # 1 encroached upon the Creek Road right-of-way. Merriam counterclaimed, seeking a declaration that Shady Hill is a valid, nonconforming use and, as such, is not subject to Bradford's zoning code provisions governing mobile home parks. The circuit court determined that unit # 1 does not encroach into the Creek Road right-of-way and that Shady Hill is a nonconforming use and, therefore, not subject

to the Town's zoning ordinances. The circuit court further determined that although Shady Hill is a nonconforming use, the mobile homes located within Shady Hill are subject to the Town's zoning ordinances if they are replaced or improved by 50 percent in value. We affirm.

BACKGROUND

¶ 2 Shady Hill is a mobile home park in the Town of Bradford and has been in existence since at least 1956. Located within Shady Hill is mobile home unit # 1, which is located south of Creek Road, an unrecorded public highway within the township of Bradford, near the intersection of State Highway 140. Unit # 1 has been positioned relatively in the same location since at least 1969.

¶ 3 In 1981, Creek Road was the subject of a road improvement project near Shady Hill. As part of the project, the centerline of Creek Road was moved north, away from Shady Hill, in a curved trajectory at the intersection between Creek Road and State Highway 140.² Prior to the 1981 road improvement project, unit # 1 was located between 21.5 and 22 feet from the centerline of Creek Road. Following the roadway project, unit # 1 was located approximately 50 to 52 feet from the new centerline of Creek Road.

¶ 4 In July 2008, the Town served upon Merriam an order for the removal of unit # 1, which it claimed encroached into the Creek Road right-of-way by approximately 13 feet. Following Merriam's refusal to move unit # 1, the Town brought the present action against Merriam and Hubreed, seeking an order requiring the removal of unit # 1 on the basis that it encroached upon the right-of-way of Creek Road. According to the Town, although the centerline of old Creek Road had been moved north away from unit # 1 in 1981, the road's right-of-way had not moved along with it. Rather, the relocation of the road's centerline expanded the dimensions of the right-of-way by 11 feet, as measured from the centerline of old Creek Road, to encompass both the right-of-way from the new centerline and the right-of-way as it existed prior to 1981. Thus, according to the Town, although the road's centerline had been moved north away from unit # 1 in 1981, unit # 1 remained within the right-of-way. Merriam denied that unit # 1 lies within Creek Road's right-of-way. He also filed a counterclaim against the Town seeking a declaratory judgment that Shady Hill is not in violation of any of the Town's ordinances. Merriam alleged that Shady Hill is a valid, nonconforming use and therefore is not subject to any of

the Town's zoning ordinances governing mobile home parks, which were adopted in 2005. Merriam also alleged that the replacement of mobile homes, or changes in the occupancy of existing mobile homes, does not enlarge Shady Hill's non-conforming use.

¶ 5 Both the Town and Merriam moved for summary judgment. Following a hearing on the motions, the circuit court concluded that the facts are undisputed that unit # 1 does not encroach into the new Creek Road right-of-way because old Creek Road and its right-of-way were abandoned when that road was rerouted. The court further concluded that new Creek Road has a 66 foot right-of-way (33 feet on either side of the new centerline), and that unit # 1 sits “approximately 52 feet from the center line of [new Creek Road],” which, according to the court “puts [unit # 1] outside of the roadway by 19 feet.” As to Merriam's counterclaim, the court concluded that “there is nonconforming use with regard to the land or park” that “also applies to the [mobile home] structures,” and as nonconforming uses, Shady Hill and the mobile homes within it are not subject to the Town's ordinance. The court further concluded that a change in occupancy of a mobile home does not affect the mobile home's status as a valid non-conforming use and that the ordinance is incorrect to the extent it provides otherwise. However, the court concluded that under WIS. STAT. § 62.23(7)(h) (2009–10),³ if any mobile unit is abandoned for 12 months or repaired in excess of 50 percent of its value, the mobile home's nonconforming use status is lost and the Town's zoning ordinances would then apply. Summary judgment was entered accordingly. The Town appeals and Merriam cross-appeals. Additional facts will be discussed below as necessary.

STANDARD OF REVIEW

*2 ¶ 6 “We review summary judgments de novo, applying the same methodology as the circuit court.” *Hardy v. Hoeflerle*, 2007 WI App 264, ¶ 6, 306 Wis.2d 513, 743 N.W.2d 843. Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*; WIS. STAT. § 802.08(2).

DISCUSSION

1. Unit # 1 Does Not Encroach into Creek Road's Present Right-of-Way

¶ 7 The Town contends on appeal that the circuit court erred in determining that unit # 1 does not encroach into the Creek Road right-of-way because the portion of the right-of-way unit # 1 previously encroached upon was discontinued by the Town following the relocation of Creek Road near Creek Road's intersection with State Highway 140. The Town argues that the right-of-way was extended, not moved, as a result of the relocation of Creek Road so that the current right-of-way encompasses the pre-1981 right-of-way in addition to the right-of-way created by the relocation of the road.

¶ 8 Creek Road is an unrecorded highway, which has been in existence since at least 1879. Any unrecorded highway that has been worked as a public highway for 10 years or more is presumed to be 66 feet wide. WIS. STAT. § 82.31(2)(a). Any encroachment upon this 66 foot right-of-way may be removed by the Town. *See* WIS. STAT. § 86.04(1). The burden of proof to establish an encroachment rests with the party asserting the encroachment. *Thornton v. Loiselle*, 270 Wis. 1, 3, 70 N.W.2d 32 (1955).

¶ 9 It is undisputed by the parties that unit # 1 was situated between 21.5 and 22 feet from the centerline of old Creek Road, thus within the old Creek Road right-of-way. It is also undisputed that currently unit # 1 is situated approximately 50 to 52 feet from centerline of new Creek Road. What is in dispute is whether, following the relocation of Creek Road, old Creek Road and its accompanying right-of-way were discontinued. When a highway is discontinued, the land reverts to the adjoining landowner. *Miller v. City of Wauwatosa*, 87 Wis.2d 676, 680, 275 N.W.2d 876 (1979); WIS. STAT. § 66.1005(1). As we explain below, if old Creek Road and its right-of-way were discontinued, the Creek Road right-of-way would extend only 33 feet on either side of that road's centerline, and unit # 1 would not be encroaching into Creek Road's right-of-way.

*3 ¶ 10 The Town contends that old Creek Road has not been discontinued because the procedural requirements to discontinue the road have not been initiated or completed. *See* WIS. STAT. § 66.1003 (discontinuance of public road). However, the procedures set forth in § 66.1003 are not the only methods by which a highway can be discontinued. A highway may also be discontinued by the method set forth in WIS. STAT. § 82.19(2)(b)2. Section 82.19(2)(b)2. provides

that “[a]ny highway that has been entirely abandoned as a route of vehicular travel, and on which no highway funds have been expended for 5 years, shall be considered discontinued.”

¶ 11 Referencing an earlier version of WIS. STAT. § 82.19(2)(b)2., the supreme court stated in *Miller*, 87 Wis.2d at 681, 275 N.W.2d 876:

although the alteration of a highway by changing its course is different from a proceeding to discontinue a highway, an alteration of an existing road constitutes a discontinuance of that part of the old road that is not included within the limits of the new road, even though no formal order of discontinuance is made.

The supreme court stated this is also true in cases in which the entire width of a portion of an existing roadway is eliminated by a relocation of that portion of the roadway. *Id.*

¶ 12 Notwithstanding the supreme court's holding in *Miller*, the Town appears to argue that the relocation of Creek Road did not result in the discontinuance of old Creek Road because the requirements of WIS. STAT. § 82.19(2)(b)2.—abandoned as a route of vehicular travel and no highway funding for five years—have not been established.

¶ 13 With respect to the first requirement, the Town argues that there is no evidence in the record that would substantiate a finding that Creek Road has been entirely abandoned, suggesting as evidence of this the existence of public utilities which are situated directly over unit # 1. WISCONSIN STAT. § 82.19(2)(b)2. specifies that the public highway must be “entirely abandoned as a route of vehicular travel.” We fail to see how the existence of public utility lines over unit # 1 is evidence that old Creek Road remains open for vehicular travel and the Town does not elaborate on how or why the existence of public utilities constitutes evidence of “vehicular travel” under § 82.19(2)(b)2. We have reviewed the record and have found no evidence that old Creek Road has been used for any vehicular travel since the 1981 relocation, and the Town does not claim that there has been any. Accordingly, we conclude that old Creek Road has been entirely abandoned for vehicular travel.

¶ 14 As to the second requirement, the Town argues that there is evidence in the record that it has spent money on maintaining old Creek Road. In support of this argument, the Town refers us to the deposition a land surveyor retained by the town to “locate the southerly line of Creek Road and position [unit # 1] ... in its relative position to [the] south right-of-way line.” The surveyor stated that it was his belief that the Town maintained old Creek Road. The surveyor's opinion, which does not detail any specific expenditures of money, does not establish that the Town has spent money maintaining old Creek Road since the relocation of Creek Road in 1981, and the Town does not direct this court to any other evidence that it did.

*4 ¶ 15 In summary, we conclude that the evidence is undisputed that Creek Road has been entirely abandoned for vehicular travel and, in the past five years, the town has not spent money maintaining it. Accordingly, we conclude that old Creek Road and its accompanying right-of-way, have been discontinued. The current right-of-way of new Creek Road lies thirty-three feet on either side of new Creek Road's centerline. It is undisputed that unit # 1 is situated outside that right-of-way. Accordingly, we conclude that unit # 1 does not encroach into the right-of-way.

2. *The Town's Ordinance Regulating Mobile Home Parks*

¶ 16 In 2005, the Town adopted ordinance No. 1–05, which “amend[ed] chapter 1 of the code of ordinances of the Town of Bradford, the zoning ordinance, relating to mobile home parks.” Among other things, ordinance No. 1–05 established setback restrictions on mobile homes located within a mobile home park. The circuit court, essentially concluding that ordinance No. 1–05 is a zoning ordinance, determined that Shady Hill is a nonconforming use under WIS. STAT. § 62.23(7)(h),⁴ and as such, is not presently subject to the ordinance. The court further concluded, however, that any unit within Shady Hill that is abandoned for 12 months or repaired in excess of 50 percent of the unit's value will lose its nonconforming use status and become subject to ordinance No. 1–05.

¶ 17 The Town contends the court erred in concluding that Shady Hill is not subject to ordinance No. 1–05. We understand the Town's argument to be that ordinance No. 1–05 is a non-zoning ordinance enacted pursuant to the Town's police powers regulating mobile homes for “health and safety reasons,” not a zoning ordinance and, thus, Shady Hill is

not afforded the nonconforming use protections under WIS. STAT. § 62.23(7)(h).

¶ 18 Under its police power, a local government may enact both zoning ordinances and non-zoning ordinances. See *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, ¶ 5, 338 Wis.2d 488, 809 N.W.2d 362. Both types of ordinances “inhabit closely related spheres” and distinguishing between the two is not a simple task. *Id.* As noted by the supreme court, “[t]he line distinguishing general police power regulation from zoning ordinances is far from clear.” *Id.*, ¶ 33 (citation omitted).

¶ 19 There is no bright-line rule for determining whether an ordinance is a zoning ordinance or a non-zoning ordinance. *Id.*, ¶ 8. Instead, a “functional approach” is utilized. *Id.* As explained in *Zwiefelhofer*:

*5 We catalogue the characteristics of traditional zoning ordinances.... We then compare the characteristics and purposes of the Ordinance to the characteristics and purposes of traditional zoning ordinances to determine whether the Ordinance should be classified as a zoning ordinance.

No single characteristic or consideration is dispositive of the question whether the Ordinance is a zoning ordinance. Nor may a court simply add up the number of similarities a challenged ordinance has to traditional zoning ordinances or the number of differences a challenged ordinance has from traditional zoning ordinances to determine whether a challenged ordinance is a zoning ordinance. Some characteristics, under the circumstances of the case, may be more significant than others.

Id., ¶¶ 8–9.

¶ 20 In *Zwiefelhofer*, the court was tasked with determining whether a town mining ordinance was a zoning ordinance or a non-zoning ordinance enacted under the town's police powers. See *id.*, ¶ 4. The court compared the ordinance at issue with a non-exhaustive list of characteristics that are traditionally present in a zoning ordinance: (1) the division of a geographic area into multiple zones or districts; (2) the allowance and disallowance of certain uses by landowners within established districts or zones; (3) an aim at directly controlling *where* a use takes place, as opposed to *how* that use takes place; (4) the classification of uses in general terms and the attempt to comprehensively address all possible uses in a geographic area; (5) a fixed, forward-looking determination

about what uses will be permitted as opposed to a case-by-case, ad hoc determination of what landowner will be allowed to use; and (6) the allowance by certain landowners to maintain their use of the land even though such use is not in conformance with the ordinance because the landowners' use of their land was legal prior to the adoption of the zoning ordinance. *Id.*, ¶¶ 36, 38–42. We apply the same approach in the present case.

¶ 21 First, like traditional zoning ordinances that create districts or zones in a town, ordinance No. 1–05 applies only to mobile home parks. It does not apply universally to all land in the Town.

¶ 22 Second, like traditional zoning ordinances that list uses permitted as of right in each district or zone and prohibit those not listed, ordinance No. 1–05 permits as of right the location of mobile homes in approved mobile home parks in the manner specified in the ordinance.

¶ 23 Third, like traditional zoning ordinances that directly control the location of activities, ordinance No. 1–05 controls the location of mobile homes in mobile home parks.

¶ 24 Fourth, like traditional zoning ordinances that endeavor to address and organize comprehensively all potential land uses in a geographic area in order to separate incompatible land uses, ordinance No. 1–05 addresses where mobile homes may be located in mobile home parks. The term “comprehensive” in this context “does not ordinarily refer to an ordinance that thoroughly, that is, comprehensively, regulates a single activity. The phrase ordinarily refers to an ordinance that addresses what classes of activities might be pursued in geographic areas.” *Id.*, ¶ 57.

*6 ¶ 25 Fifth, like traditional zoning ordinance that feature fixed rules, ordinance No. 1–05 does not operate on a case-by-case basis. Ordinance No. 1–05 applies to all mobile homes.

¶ 26 Sixth, like traditional zoning ordinances that allow certain preexisting uses to remain although they do not conform to the ordinance, ordinance No. 1–05 allows mobile homes in place as of November 17, 2004, to remain in place even if those mobile homes did not meet the setback requirements of ordinance No. 1–05.

¶ 27 All of the traditional characteristics of a zoning ordinance are present in ordinance No. 1–05. Our examination of the substantial similarities ordinance No. 1–05 has to traditional

zoning ordinances leads us to conclude that ordinance No. 1-05 is a zoning ordinance. Thus, the nonconforming use protections of WIS. STAT. § 62.23(7)(h) apply.

¶ 28 It is well established that “ a nonconforming use existing at the time a zoning ordinance goes into effect cannot be prohibited or restricted by statute or ordinance, where it is a lawful business or use of property and is not a public nuisance or harmful in any way to the public health, safety, morals or welfare.” *Des Jardin v. Town of Greenfield*, 262 Wis. 43, 47, 53 N.W.2d 784 (1952) (citation omitted). Only when a valid, nonconforming use constitutes a public nuisance, or is harmful to public health, safety or welfare, may it be prohibited or restricted. *Town of Delafield v. Sharpley*, 212 Wis.2d 332, 337-38, 568 N.W.2d 779 (1997); *see also Highway 100 Auto Wreckers, Inc. v. City of West Allis*, 6 Wis.2d 637, 647-48, 96 N.W.2d 85 (1959) (evidence of the existence of potential fire hazard to the public justified application of restrictive ordinance to nonconforming use).

¶ 29 We have reviewed the summary judgment submissions in this case and there are no facts to suggest that Shady Hill is “harmful to public health, safety or welfare.” *Delafield*, 212 Wis.2d at 337, 568 N.W.2d 779. Accordingly, we agree with the circuit court that Shady Hill is a valid nonconforming use which cannot be prohibited or restricted by ordinance No. 1-05.

3. The Mobile Homes within Shady Hill

¶ 30 Merriam contends on cross-appeal that the circuit court erred in determining on Merriam's counterclaim for declaratory relief that the mobile homes within Shady Hill are “structures” and, therefore, if they are abandoned for 12 months or repaired or altered by more than 50 percent of the structure's assessed value, the mobile home loses its nonconforming use status and must comply with the Town's zoning ordinance.

¶ 31 WISCONSIN STAT. § 62.23(7)(h) addresses nonconforming uses for purposes of zoning. It provides:

*7 The total structural repairs or alterations in [] a nonconforming building, premises, structure, or fixture [existing at the time of the adoption of the adoption or amendment of a

zoning ordinance] shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

¶ 32 Merriam does not dispute that the mobile homes within Shady Hill are structures. Merriam argues, however, that the replacement of a mobile home within the park should not result in the loss of that mobile home's nonconforming use protection because “[t]he nonconforming use is the use of the property as a mobile home community” and “[t]he replacement of homes within Shady Hill[] does nothing to alter or enlarge the nonconforming use of the property.”

¶ 33 WISCONSIN STAT. § 62.23(7)(h) lists three instances where nonconforming status will be lost: (1) the nonconforming use is extended; (2) total repairs or alterations of a nonconforming structure are made in excess of 50 percent of the structure's assessed value; or (3) the use of the nonconforming structure is discontinued for a period of 12 months. WIS. STAT. § 62.23(7)(h). In *County of Columbia v. Bylewski*, 94 Wis.2d 153, 170, 288 N.W.2d 129 (1980), the supreme court addressed whether the replacement of a mobile home, which was exempt from a county zoning ordinance because it was a nonconforming use, with a new mobile home resulted in the loss of the protection of the nonconforming use doctrine. The supreme court determined that when the old mobile home was removed and substituted with a new mobile home, alterations were made in excess of 50 percent of the assessed value of the nonconforming structure, which resulted in the loss of the protection afforded by the nonconforming use doctrine, meaning the new mobile home was subject to the county's zoning ordinance. *Id.*

¶ 34 Although *Bylewski* addressed a county zoning ordinance enacted under WIS. STAT. § 59.97, the predecessor to the current zoning statute pertaining to counties, WIS. STAT. § 59.69, the nonconforming use protections and limitations afforded under § 59.69(10) and WIS. STAT. § 62.23(7)(h) are substantially the same.⁵ Accordingly, we agree with the circuit court that if the replacement of a mobile home located in Shady Hill that is protected by the nonconforming use

doctrine is removed and replaced with a new one, which alters the assessed value of the protected mobile home by 50 percent, protection afforded by the nonconforming use doctrine is lost and the Town's zoning ordinance becomes applicable to the new mobile home.

Judgment and order affirmed.

Not recommended for publication in the official reports.

CONCLUSION

*8 ¶ 35 For the reasons discussed above, we affirm.

All Citations

344 Wis.2d 122, 820 N.W.2d 155 (Table), 2012 WL 2579631, 2012 WI App 97

Footnotes

- 1 Hubreed is not a party to this appeal.
- 2 To assist the reader, we will refer to Creek Road as it existed prior to the road's 1981 relocation as "old Creek Road" and we will refer to the road following the relocation as "Creek Road."
- 3 All references to the Wisconsin Statutes are to the 2009–10 version unless otherwise noted.
- 4 WISCONSIN STAT. § 62.23(7) addresses zoning by a municipality. Subsection (h), which addresses nonconforming uses, provides:

Nonconforming uses. The continued lawful use of a building, premises, structure, or fixture existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the ordinance. The nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building, premises, structure, or fixture shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

- 5 WISCONSIN STAT. § 59.69(10) provides:

Nonconforming uses (am) An ordinance enacted under this section may not prohibit the continuance of the lawful use of any building, premises, structure, or fixture for any trade or industry for which such building, premises, structure or fixture is used at the time that the ordinances take effect, but the alteration of, or addition to, or repair in excess of 50 percent of its assessed value of any existing building, premises, structure, or fixture for the purpose of carrying on any prohibited trade or new industry within the district where such buildings, premises, structures, or fixtures are located, may be prohibited. The continuance of the nonconforming use of a temporary structure may be prohibited. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

Similarly, WIS. STAT. § 62.23(7)(h) provides:

The total structural repairs or alterations in such a nonconforming building, premises, structure, or fixture shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. If the nonconforming use is discontinued

for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

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BEFORE THE CITY OF MADISON URBAN DESIGN COMMISSION

In the matter of the appeal of:

Adams Outdoor Advertising

Regarding the property located at:

75 Nob Hill Road

Tax Parcel No. 070936104060

**APPELLANT ADAMS OUTDOOR ADVERTISING’S SUPPLEMENTAL BRIEF IN
SUPPORT OF ITS RIGHT TO MAINTAIN A DIGITAL IMAGE SIGN AT 75 NOB
HILL ROAD AS A NONCONFORMING USE**

I. SUPPLEMENTAL FACTUAL SUMMARY

Adams Outdoor Advertising (“Adams”) owns and operates a network of advertising billboards and has had an advertising sign erected at 75 Nob Hill Road¹ (the “Site”) since 1999. Adams’ first lease with the Property Owner for the erection of an advertising sign on the Site is dated March 24, 1999, and ran for a 10-year term. (Procter Second Decl. Ex. 6). On June 15, 2006, Adams entered a second lease (“Lease 2”) with the Property Owner to maintain a new advertising sign on the Site. (*Id.* Ex. 7). Lease 2 was for a 10-year term with automatic renewals and remains in effect. (*Id.*) In accordance with Lease 2, Adams erected a 14 x 48-foot LED sign (the “Sign”) at the Site in 2006.

The City argues the Sign violates Section 31.045(3)(i) of the City Sign Ordinance and lacks legal nonconforming status. Yet the facts establish that the Sign is a legal, nonconforming use and/or structure.

¹ The Site’s address was 75 West Beltline Highway in the Town of Madison. The City changed the address to 75 Nob Hill Road when it was attached to the City. (See Procter Second Decl. ¶ 3).

At the time the Sign was erected in 2006, the Site was in the Town of Madison (the “Town”), Dane County (the “County”), and was subject to Town and County ordinances; the Site was not subject to City ordinances. The Town granted permits for the construction of the Sign and as articulated in the Appellant’s prior filing; the Sign complied with all applicable Town ordinances at the time it was erected. (*See* Procter Decl. Exs. 1, 2). Appellant and the County disputed whether the Sign complied with all County ordinances at the time it was installed. Appellant and the County litigated the issue, which was ultimately resolved via a settlement, in which the County agreed the Sign had legal nonconforming status with the applicable County ordinances. (Procter Second Decl. Ex. 8). Under the settlement agreement between Adams and the County, the County acknowledged and agreed the “sign shall hereafter be regarded by the County as legal and nonconforming” and may “remain up as is indefinitely hereafter.” (*Id.*). The Sign thus did not violate either Town or County regulations at the time the Site was attached into the City.

After the City attached the Site in 2022, the City sign’s regulations became applicable to the Sign for the first time. The Sign existed legally under Town and County regulations for 14 years before coming under City purview. Importantly, in 2006, when the Sign was constructed, the City’s own Street Graphics Control Ordinance did not prohibit so-called static digital image signs. (*See id.* at Ex 10). Therefore, if the City had attached the Site in 2006, the Sign would now have legal nonconforming status under the City’s ordinances.

II. ARGUMENT

a. The analysis relevant to legal nonconforming structures is the same as the analysis for legal nonconforming uses.

In its previous filing, Adams explained that the Sign constitutes a legal, nonconforming use. The City, however, may argue the Sign constitutes a structure and not a use. The analysis remains the same: legal nonconforming structures have a right to be maintained. City Code §

28.192 (“A lawful nonconforming building or structure existing on the effective date of this ordinance may be continued although it does not conform to the provisions of this ordinance with respect to bulk characteristics including, but not limited to, setback, open space, floor area ratio, height, density, parking facilities, amount of parking, and style, provided that any additions or enlargements shall conform to the provisions of the ordinance.”); *Marris v. City of Cedarburg*, 176 Wis. 2d 14, 33-34, 498 N.W.2d 842 (1993).

III. CONCLUSION

Ultimately, the question before the UDC is one of fairness. The record demonstrates the Sign complied with the Town ordinances and had legal nonconforming status under the County ordinances. The County’s granting of nonconforming status trumps the City ordinances. Adams constructed the Sign in 2006, and the Sign has been used lawfully to display static digital advertisements since then. The only change has been the City limits. But the expansion of the City limits does not change the legal nonconforming status of the Sign and does not negate Adams’ vested rights in the use and operation of the Sign. Adams established the Sign legally and operates the Sign legally.

Furthermore, if the City’s own applicable regulations were applied to the Sign starting when it was constructed in 2006, the Sign would also have legal nonconforming status. The City’s argument that the Sign is unlawful simply due to the timing of the attachment of the Site is unfair and constitutes an attempt to void the long-established legal nonconformity doctrine as applied to Adams.

Dated this 19th day of January 2024.

AXLEY BRYNELSON, LLP



Robert C. Procter, SBN 1034777

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BEFORE THE CITY OF MADISON URBAN DESIGN COMMITTEE

In the matter of the appeal of:

Adams Outdoor Advertising

Regarding the property located at:

75 Nob Hill Road

Tax Parcel No. 070936104060

SECOND DECLARATION OF ROBERT C. PROCTER

I, Robert C. Procter, declare under penalty of perjury that the following is true and correct to the best of my knowledge and recollection:

1. I am an adult resident of the state of Wisconsin. I am a partner at Axley Brynelson, LLP and am licensed to practice law in the state of Wisconsin. I represent Adams Outdoor Advertising (“Adams”) in its appeal of the Building Inspector’s determination that Adams’ billboard located at 75 Nob Hill Road (the “Billboard”) violates the City of Madison’s sign ordinance.

2. I make this declaration on my personal knowledge.

3. The property address for the Billboard was 75 West Beltline Highway when it was the Town of Madison, and was changed to 75 Nob Hill Road when it was attached to the City

Attached as Exhibit 6 to this declaration is a true and correct copy of the first lease Adams had with the then-owner of the property located at 75 Nob Hill Road, Mike Duffy.

4. Attached as Exhibit 7 to this declaration is a true and correct copy of the second lease Adams had with the then-owner of the property located at 75 Nob Hill Road, Mike Duffy. The lease depicted in Exhibit 7 is still in effect.

5. On or about July 18, 2019, Mike Duffy sold the property on which the Billboard is located to 7787 Westbelt, LLC. Mr. Duffy retained an easement upon, over, under, across and above part of the property for exterior sign purposes. Attached as Exhibit 8 to this declaration is a true and correct copy of the Reservation and Declaration of Sign Easement entered by Mr. Duffy and 7787 Westbelt, LLC, which is dated on or about July 18, 2019, for the benefit of the Billboard.

6. Attached as Exhibit 9 to this declaration is a true and correct copy of a Settlement Agreement between Adams, the Town of Madison, and Dane County, entered on April 24, 2012, regarding the Billboard. Pursuant to the Settlement Agreement, Dane County “acknowledges and agrees that Adams’ digital sign (including both faces) [i.e., the Billboard] on the beltline at 75 W. Beltline Highway (“A-1 Location”) in the Town of Madison may remain up as is indefinitely and hereafter. The County acknowledges and agrees that such sign shall hereafter be regarded by the County as legal and nonconforming.”

7. Attached as Exhibit 10 to this declaration is a true and correct copy of the City of Madison’s Street Graphics Control Ordinance, first adopted on May 3, 1977, inclusive of all revisions through March 15, 2007.

Dated this 19th day of January, 2024.



Robert C. Procter, SBN 1034777
Attorneys for Adams Outdoor Advertising
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Madison, WI 53701-1767
Phone: (608) 283-5661
Facsimile: (608) 257-5444
E-mail: rprocter@axley.com

Subscribed and sworn to before me
this 19 day of January, 2024



Denise M. Russart
Notary Public, State of Wisconsin
My commission expires: 3.17.2027



Adams Outdoor Advertising

Lessor # 9805
Telephone # 271-0655
SSN/FED ID # 39-1616711

LEASE

THIS AGREEMENT OF LEASE, made and entered this 24th day of March, 1999, by and between Mike Duffy - Al Transmission of 75 W. Beltline Hwy. Madison, WI 53713

hereinafter known as Lessor and ADAMS OUTDOOR ADVERTISING, hereinafter known as Lessee, whose address is 102 E Badger Road, Madison, Wisconsin 53713, phone 608/271-7900

1 WITNESSETH: Lessor hereby leases demises and grants exclusive use and possession to said Lessee, its successors and assigns as much of the premises (with free access to and upon same) located at 75 W. Beltline Hwy Madison Dane

as may be necessary for the construction and maintenance of advertising structures and displays along with supports and devices therefor Said property is located on the N-S-E-W side of W. Beltline Hwy approximately 1/4 feet/miles N-S-E-W of Rimrock Road

and will be used for display as follows:

1 Backlit 10' x 30' Billboard w/10' vee

2 Lessor grants to Lessee the exclusive right to erect and maintain said advertising structure and displays for a term of 10 years, from date of commencement of actual construction of same upon construction to MAY 31, 2009 at the annual rental rate of \$2,250.00 payable in annual installments

3 Unless Lessee, at least thirty days prior to the expiration of this lease agreement, provides written notice of its cancellation of the within lease agreement to Lessor, this lease shall automatically renew itself, on the same terms and conditions, for an additional five-year period It shall continue year-to-year thereafter unless terminated by either party with at least thirty days written notice

4 Lessor agrees no other use will be granted that in any way obstructs the clear view of Lessee's advertising structure or displays and will not permit other advertising or displays to be placed next to, or adjacent to, Lessee's sign structure that will in any way distract attention from the structure and displays of the Lessee Lessor shall in no way hinder the clear and unobstructed view of said advertising structure Lessee has the right to remove any trees or underbrush which may interfere with the visibility or the maintenance of the advertising structure, or the right of way granted the Lessee herein to maintain said structure Lessor agrees not to grant other leases upon said property or any part thereof, for the purpose of any advertising or display, for the duration of this lease

5 Lessor represents and warrants that he is the owner of the above-described premises or that he has the legal authority to represent and execute this document for all the owners; and, further that he has the legal right to convey to Lessee total access to the premises to perform all acts necessary to conduct advertising and display business

6 All signs, structures, materials, equipment and other property placed upon the above-described premises shall remain the personal property of Lessee and may be removed by Lessee Lessor shall not take, use tamper with, or otherwise disturb such property and shall not allow third parties to take, use tamper with, or otherwise disturb such property

7 In the event of any of the following: (a) that Lessee's advertising structure or displays become partially or entirely obstructed for any reason; (b) the value of Lessee's structure is diminished for any reason, to include diversion, reduction or obstruction of traffic; or (c) Lessee is prevented from constructing, maintaining, or using the structure and displays by reason of any governmental authority, then Lessee may terminate this lease upon thirty days written notice, and Lessor agrees thereupon to return to Lessee any rent paid in advance for the unexpired term

8 During the term of this lease, Lessee agrees to reasonably indemnify and save harmless Lessor from injury and damages to third parties caused by Lessee's sole negligence and to reasonably repair and make good any and all property damage to said premises directly resulting from the installation, maintenance or taking down of said advertising structure or displays excepting ordinary wear and tear

9 In the event of condemnation or threat of condemnation, Lessee shall have the right to timely participate in any condemnation award or settlement to the extent of Lessee's damage for the loss of revenue of the structure; the costs of removal from the above-described premises; replacement costs; and the loss of its leasehold interest and other related damages

10 All rental payments and written notices required by this lease shall be sent to Lessor at the address shown on this lease until Lessee receives written modification thereof from Lessor

11 All words used herein in the singular number shall include the plural, and the present tense shall include the future, and the masculine gender shall include the feminine and neuter This lease agreement shall inure to the benefit of, and be binding upon, the personal representative, assigns, and successors in title to the parties hereto The parties are not bound by stipulations, agreements, statements or warranties, implied or expressed, not recited in writing in the within lease.

12. Adams Outdoor Advertising agrees to provide 2 floodlights mounted on the structure as well as illumination to said floodlights for the lifetime of the lease.

IN WITNESS WHEREOF the hands and seals of the parties hereto on the 24th day of March 1999

LESSOR By: Mike Duffy Print Name

LESSEE ADAMS OUTDOOR ADVERTISING

Signature of Mike Duffy

Signature of Owner, Leasing Manager

This Lease supersedes the lease dated 3/15/99



LEASE AGREEMENT

Lease # 9805

Board/Structure # _____

THIS AGREEMENT, made this 15th day of June, 2006, by and between ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP ("Lessee"), whose address is 102 E. Badger Road, Madison WI 53713

and Mike Duffy - A1 Transmission ("Lessor"), whose address is 75 W. Bellline Highway, Madison WI 53713; WITNESSETH:

1. **DEMISE:** Lessor hereby leases and demises to Lessee the following described property ("Property") for the purpose of erecting, operating, maintaining, repairing, modifying and reconstructing outdoor advertising structures, together with any advertising, equipment and accessories that Lessee may desire to place thereon ("Structures"), and Lessor warrants to Lessee the quiet enjoyment of the Property during the term of this lease; the Property is located in the City/County of Town of Madison / Dane in the State of Wisconsin, and is more particularly described as:

Existing Structure(s) <input checked="" type="checkbox"/>	Address: <u>75 W. Bellline Highway</u>	Tax Parcel #: <u>032/0709-361-9070-0</u>
Existing 12' x 25' back to back poster panel is to be taken down and reconstructed. This lease shall be for a 14' x 48' back to back "bulletin" display. In the event Lessee is unable to obtain permit approval to reconstruct the sign, this lease shall be void, and the agreement will revert to the lease agreement between Lessee and A-1 Transmission dated March 24, 1999.		
R957/555 SEC 36-7-9 PRT W1/2 NE1/4 COM SEC CTR TH N 1153 FT TH N65DEGE 476 2 FT TH S 32.88 FT TO POB TH N65DEGE 100 FT T H S 177.95 FT TH S89DEGW 91 24 FT TH N 137.02 FT TO POB		

Lessor also hereby grants to Lessee the following easements over the Property and adjacent property owned or controlled by Lessor: a) an easement for reasonable access to Lessee's Structures; b) an easement to maintain an unobstructed view of the advertising copy on the Structures by passing motorists and pedestrians, including, but not limited to, the right to trim and remove any trees and other vegetation as often as Lessee in its sole discretion deems appropriate to prevent obstructions; and, c) an easement to connect utilities to Lessee's Structures

2. **TERM:** This Lease is for a term of ten (10) years, commencing on the 1st day of July, 2006, and shall continue in full force and effect and be automatically extended for a like term, and thereafter automatically for successive like terms; after the initial extended term, Lessor and Lessee shall each have the right to terminate this lease by giving Notice of termination to the other as provided for herein at least ninety (90) days in advance of the next automatic lease term extension.

3. **RENT:** Rent shall commence on the later of completion of the Structure or commencement of the term and shall be the amount of \$ See Addendum, payable See Addendum

4. **STRUCTURES:** All Structures erected by or for the Lessee or its predecessors-in-interest on the Property shall at all times be and remain the property of the Lessee and may be removed by the Lessee before or within a reasonable time of termination or expiration of this lease, notwithstanding that such Structures are intended by Lessor and Lessee to be permanently affixed to the Property. Similarly, all license and permit rights relating to the use of the Property for outdoor advertising purposes are and shall at all times be and remain the property of the Lessee.

5. **REPRESENTATIONS:** Lessor represents that it is the owner or the authorized agent of the owner of the Property and has full authority to enter into this Lease Agreement as or on behalf of owner. If ownership of the Property changes, Lessor shall promptly notify Lessee of such change and shall furnish the new owner with a copy of this Lease Agreement. Lessor agrees not to enter into any lease or other relationship with any of Lessee's competitors for the erection, operation or maintenance of any outdoor advertising structure on the Property or on any adjacent property.

6. **CANCELLATION:** If, in Lessee's sole opinion: a) the view of the advertising copy on any Structure becomes obstructed; b) the Property cannot be safely used for the erection, maintenance or operation of any Structure for any reason; c) the value of any Structure is substantially diminished, in the sole judgment of the Lessee, for any reason; d) the Lessee is unable to obtain, maintain or continue in force any necessary permit for the erection, use or maintenance of any Structure as originally erected; or, e) the use of any Structure, as originally erected, is prevented by law or by exercise of any governmental power; then Lessee may, at its option, either: (i) reduce and abate rent in proportion to the impact or loss that such occurrence has upon the value of Lessee's Structure for so long as such occurrence continues; or, (ii) cancel this Lease and receive a refund any prepaid rent, prorated as of the date of cancellation.

Rent not to be unreasonably reduced by Tenant.
[Signature]

7. **INDEMNIFICATION:** Lessee shall indemnify and hold Lessor harmless from all injuries to the Property or third persons caused by Lessee, Lessee's employees, agents, licensees and contractors; Lessor shall indemnify and hold Lessee harmless from all injuries to Structures or third persons caused by Lessor, Lessor's employees, agents, licensees and contractors.

8. **CONDEMNATION:** In the event that all or any part of the Property is acquired or sought to be acquired by any entity or person possessing or acting on behalf of any entity possessing the power of eminent domain, whether by condemnation or sale in lieu thereof, Lessee shall be entitled, in its sole and absolute discretion, to: a) contest the acquisition; b) reconstruct any of its Structures on the remaining property of the Lessor; and/or, c) recover damages and compensation for the fair market value of its leasehold and Structures taken or impacted by the acquisition.

9. **ASSIGNMENT:** This Lease is binding upon the heirs, successors and assigns of both Lessor and Lessee, with the exception of any termination rights of Lessor set forth in this Lease Agreement or any addendum or subsequent amendment, which rights may only be exercised by the original Lessor (whose name is set forth at the top of this lease) and not by or for the benefit of any entity with the power of eminent domain. Lessor agrees not to terminate or assign this lease for the benefit of any competitor of Lessee without Lessee's written permission. Lessee shall have the absolute right to assign its rights under this lease.

10. **RIGHT OF FIRST REFUSAL TO PURCHASE:** Lessee is granted the right to purchase the Property at the same price and on the same terms as any proposed sale that Lessor desires to consummate. In the event such sale of the Property is proposed, whether by offer (or counter-offer) of Lessor to a third-party or by an offer (or counter-offer) from a third-party to Lessor (either case being referred to herein as the "Offer"), Lessor shall first provide each and every such Offer, in writing, to Lessee in the manner set forth in paragraph 11 of the Lease Agreement and Lessee shall have thirty (30) days to agree in writing to purchase the Property for the price and on the terms set forth in the Offer; otherwise, the Offer shall be deemed to have been rejected by the Lessee. In the event Lessee rejects an Offer, Lessor may proceed to consummate the sale with the third-party at the same price and on the same terms as those set forth in the Offer. Further, Lessee shall have a right of first refusal to meet any offer for the lease of any portion of the real property for outdoor advertising purposes. Lessee shall exercise the option within thirty (30) days after receipt of written notice of the terms of the third-party lease. This Lease and the right of first refusal granted herein shall be binding on successors and assigns of Lessor and Lessee. Lessor will give notice of Lessee's right of first refusal when listing the Property for sale and not accept nor make any offer or counteroffer except in accord with the terms of this Lease Agreement.

11. **NOTICE:** Any notice ("Notice") to Lessor or Lessee described in this Agreement in order to be effective must be in writing and sent certified mail, return receipt requested, and then shall only be effective upon the earlier of a) the date that said Notice is delivered and received by a person at the address specified in this Agreement; or, b) the date that is three (3) days after mailing (postage prepaid) by certified mail, return receipt requested, to such address; provided that in either case Notice shall be delivered to such other address as Lessor or Lessee, as the case may be, has previously designated in writing and provided to the other by Notice as set forth herein.

12. **MEMORANDUM OF LEASE:** Lessor agrees that this Lease Agreement may be recorded.

13. **MISCELLANEOUS:** In the event of litigation between Lessor and Lessee predicated upon this Lease Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs. Neither Lessor nor Lessee shall be bound by any terms, conditions or oral representations that are not set forth in this Lease Agreement. The law of the state in which the Property is located shall govern. This Lease Agreement (and any addendum) represents the entire agreement of Lessee and Lessor with respect to the Structures and the Property.

14. **ADDENDUM:** There is is not an addendum attached to this Lease Agreement and incorporated by this reference (check one).

Adams Outdoor Advertising Limited Partnership
By: Adams Outdoor Advertising, Inc
Its Managing General Partner

Accepted By: Randall F. Romig
Randall F. Romig, Vice President
Its Authorized Corporate Officer

Approved By: C. J. [Signature]
General Manager

Witness (1)

Witness (2)

By: [Signature]
Lessor or Authorized Representative

Soc. Sec or FEIN #: _____

Lessor's phone #: _____

Witness (1)

Witness (2)

Lease # 9805
Board / Structure # _____

ADDENDUM TO LEASE

THIS ADDENDUM is executed concurrently with, attached to and made part of a LEASE AGREEMENT, dated June 15, 2006, ("lease"), between ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP ("Lessee") and Mike Duffy - A1 Transmission ("Lessor"). In addition to the provisions set forth in the LEASE AGREEMENT, Lessee and Lessor also agree to the following:

RENT ADJUSTMENT: The rent stated in paragraph 3 of the Lease Agreement shall be according to the following schedule:

~~\$ 4,800.00~~

~~\$4,000.00 per year per face for a standard 14' x 48' vinyl facing.~~ *WJD PFR*

~~'\$5,000.00 per year per face for a 14' x 48' "trivision" facing.~~

\$9,000.00 per year per face for a 14' x 48' Electronic (LED) facing.

~~Rent shall be increased by 3% annually.~~

Rent shall be increased annually in accordance with the Consumer price index (CPI-U). ~~3%~~
Increase shall not exceed Four percent (4%) in any given year. minimum increase shall be three percent (3%) per year.
IN THE EVENT OF A CONFLICT between the Lease and the Addendum, the provisions of this Addendum shall take priority; in all other respects, the Lease remains unchanged.

Adams Outdoor Advertising Limited Partnership

By: Adams Outdoor Advertising Inc.
Its Managing General Partner

Accepted By: *Randall F Romig*
Randall F Romig, Vice President
Its Authorized Corporate Officer

Approved By: *C. J. [Signature]*
General Manager

Witness (1)

Witness (2)

By: *Mike Duffy*
Lessor or Authorized Representative

Soc Sec or FEIN #: _____

Lessor's Phone #: _____

Bridgette A. McCulloch
Witness (1)

Witness (2)

Document Number

RESERVATION & DECLARATION
OF SIGN EASEMENT

KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS

DOCUMENT #
5505528
07/18/2019 12:05 PM
Trans Fee:
Exempt #:
Rec. Fee: 30.00
Pages: 10

See attached Reservation & Declaration of Sign Easement affecting real property located at 75 West Beltline Highway in the Town of Madison, Dane County, State of Wisconsin, and more particularly described, as follows:

A parcel of land located in the West Half (W 1/2) of the Northeast Quarter (NE 1/4) of Section Thirty-Six (36), Town Seven North, Range Nine East, in the Town of Madison, Dane County, Wisconsin, to wit: Commencing at the Southwest corner of the Northeast Quarter (NE 1/4) of said Section 36; thence North 1153.00 feet; thence North 65°50' East, 476.20 feet; thence South 32.88 feet to the point of beginning; thence North 65°50' East, 100.00 feet; thence South 177.95 feet; thence South 89°59'39" West, 91.24 feet; thence North 137.02 feet to the point of beginning.

Atty. Nicholas J. Loniello
131 West Wilson Street - Suite 1201
Madison, WI 53703
Name and Return Address

032/0709-361-9070-0
PARCEL NUMBER

RESERVATION & DECLARATION OF SIGN EASEMENT

WHEREAS, Michael J. Duffy (“Duffy”) is the owner of commercial real property located at 75 West Beltline Highway in the Town of Madison, Dane County, State of Wisconsin more particularly described in Exhibit A annexed hereto (the “Property”); and

WHEREAS, Duffy intends to sell the Property to 7787 Westbelt, LLC (“Westbelt”) pursuant to a Land Contract bearing even date herewith; and

WHEREAS, Duffy desires to retain an easement in gross upon, over, under, across and above a part or piece of the Property for exterior sign purposes; and

WHEREAS, Westbelt desires to join in the execution of this instrument to manifest its consent and agreement to be bound by this Reservation & Declaration of Sign Easement (the “Sign Easement”), and its intention to acquire the Property subject to this Sign Easement;

NOW, THEREFORE, Duffy and Westbelt do hereby reserve, declare and mutually covenant and agree, as follows:

1. *Summary of Four Easements & Their Purposes.* Four easements are created by this instrument. They are summarized as follows:

- A “Ground Easement.” The Ground Easement is a small area of the Property upon, over and under which the holder of the Sign Easement or its lessee may construct, maintain, repair, replace and operate foundations, poles, protective bollards, transformers and other apparatus attached to the ground for the support, elevation, operation, repair, maintenance or replacement of elevated exterior billboards or other exterior signage and their associated apparatus.
- An “Aerial Easement.” The Aerial Easement is an elevated cubical of space 15 feet above ground level, and which envelopes and surrounds the Ground Easement. Within the Aerial Easement the holder of the Sign Easement or its lessee may construct, maintain, repair, replace and operate exterior billboards or signage and related apparatus including without limitation lighting and illumination devices, mechanical apparatus, catwalks, camera arms and communication or telecommunication devices. All sign devices or improvements within the Aerial Easement must be at least 15 feet or more above ground level, the ground surface thereof being reserved for the use of the owner of the Property for vehicular and equipment storage.

- An "Access Easement." The "Access Easement" is an established route or corridor for holder of the Sign Easement or its lessee to have ingress and egress of vehicles or pedestrians to the Ground Easement and Aerial Easement from the Highway 12 & 18 frontage road.
- A "Utility Easement." The "Utility Easement" is the right of the holder of the Sign Easement or its lessee to continue the use and enjoyment of all existing connections to utility or communications services, including electrical and telecommunications services, plus the right to repair, maintain, replace and relocate the utility lines upon the Property.
- The dimensions and location of the Ground Easement, Aerial Easement and Access Easement are described with particularity in this instrument and the attached Plat of Survey. The Utility Easement is at the place where such utility lines are now located, or hereafter relocated, and are not described in either this instrument or the attached Plat of Survey.

2. *Ground Easement Description.* The area of the Property subject to the Ground Easement is illustrated on the attached Plat of Survey, and more particularly described as follows:

A Ground Easement located in the West ½ of the NE ¼ of Section 36, T7N, R8E, Town of Madison, Dane County, Wisconsin, more particularly described as follows: Commencing at the NE corner of Lot 4, C.S.M. No. 2064; thence N 65°54'43"E along the Southerly R/W line of U.S.H. 12 & 18 frontage road, 22.30 feet to the point of beginning; thence continue N 65°54'43"E, 17.00 feet; thence S 24°05'17"E, 28.00 feet; thence S 65°54'43"W, 17.00 feet; thence N 24°05'17"W, 28.00 feet to the point of beginning.

3. *Aerial Easement Description.* The area of the Property subject to the Aerial Easement is illustrated on the attached Plat of Survey, and more particularly described as follows:

An Aerial Easement located in the West ½ of the NE ¼ of Section 36, T7N, R9E, in the Town of Madison, Dane County, Wisconsin, more particularly described as follows: Commencing at the NE corner of Lot 4, C.S.M. No. 2064; thence N 65°54'43"E along the Southerly right of way line of the U.S.H. 12 & 18 frontage road, 3.70 feet to the point of beginning; thence continue N 65°54'43"E, 55.00 feet; thence S 24°05'17"E, 62.00 feet; thence

S 65°54'43"W, 55.00 feet; thence N 24°05'17"W, 62.00 feet to the point of beginning.

4. *Access Easement Description.* The area of the Property subject to the Access Easement is illustrated on the attached Plat of Survey, and more particularly described as follows:

An Access Easement located in the West ½ of the NE ¼ of Section 36, T7N, R9E, Town of Madison, Dane County, Wisconsin, more particularly described as follows: Beginning at the NE corner of Lot 4, C.S.M. No. 2064; thence N 65°54'43"E along the Southerly R/W line of U.S.H. 12 & 18 frontage road, 100.10 feet; thence S 00°01'56"W, 67.93 feet; thence S 65°54'43"W, 100.15 feet; thence N 00°04'22"E, 67.95 feet to the point of beginning.

5. *Use & Enjoyment.* Without limiting the generality of the foregoing, this Sign Easement includes: (a) the right to temporarily park and maneuver vehicles, cranes and equipment within the Ground Easement and in the vicinity of the Ground Easement (i.e., under the Aerial Easement) for the purposes of facilitating the repair, maintenance, construction and installation of signage; (b) the air rights to maintain any billboard or other advertising structures and related apparatus above the surface of the land and within the Aerial Easement; (c) the right to maintain lateral and subjacent support of the advertising structure including its base, foundation and support systems within the Ground Easement; and (d) the right to attach antennas and other communications, telecommunications, cameras and control equipment within either the Ground Easement or the Aerial Easement.

6. *Regulation of Ground Surface.* The following particular provisions regulate the respective rights and obligations of the owner of the Property and the holder of the Sign Easement or its lessee regarding the use of the ground surface:

- The owner of the Property shall have the exclusive right to use and enjoy the ground surface beneath the Aerial Easement (and any Utility Easement located therein) for vehicular parking and equipment storage purposes, subject to the rights of the holder of the Sign Easement or its lessee to have temporary access to such surface areas for the purpose of making necessary repair, replacement or maintenance to exterior signage and related apparatus.
- The owner of the Property shall have the exclusive right to control traffic, parking and storage upon the ground level beneath the Aerial Easement and any Utility Easement located therein, including the right to install and maintain traffic signs and striping of vehicular traffic lanes and parking stalls.

- In the event of an unexpected failure or breakdown of lighting, mechanical equipment, telecommunications equipment or other apparatus, upon request the owner of the Property shall give the holder of the Sign Easement or its lessee immediate access to the ground surface of the Property for temporary access of vehicles or cranes or other repair apparatus. For this purpose the owner shall promptly relocate vehicles and equipment as necessary to facilitate such access for the completion of repairs. All unforeseen and unexpected repairs shall be completed by the holder of the Sign Easement or its lessee as soon as practical.
- In the event of any scheduled or expected repair, maintenance, replacement, demolition or reconstruction of any improvements within the Sign Easement, Aerial Easement or Utility Easement, the holder of the Ground Easement or its lessee shall give the owner of the Property a minimum 48 hour notice of its intention to commence such work, together with a description of the work involved and expected dates and times of commencement and completion. Upon receiving such notice, the owner of the Property shall promptly relocate vehicles and equipment as necessary to facilitate completion of work.

7. *Utility Easements.* The location of the utility easements shall be identical to the locations of the existing utility service lines at the time of the execution of this instrument between the easement area and the public rights of way. However, if it becomes necessary to relocate any utility service lines, the same may be relocated as reasonably necessary. The holder of the Sign Easement or its lessee shall be solely liable and responsible to pay the whole cost of any relocated any utility lines, and further responsible to pay the whole cost and charges for utility services. The utility easements carry with them the right to use portions of the Property near the utility lines to maintain, repair or replace such utility lines.

8. *No Obstructions.* The owner of the Property shall not cause or permit any gate, fence or other obstruction to the use and enjoyment of this Sign Easement. The holder of this Sign Easement and its lessee shall not cause or permit any gate, fence or other obstruction to the use and enjoyment of the ground surface by the owner of the Property.

9. *Visibility & Advertising Restrictions.* The owner of the Property shall not cause or permit any plantings, buildings or other improvements upon the Property or any adjacent property under the control of the owner that would obstruct, partially or entirely, the view of billboard or other advertising placed within the easement area, or lessen the advertising value of the easement area. The maintenance and continuation of an unobstructed view of advertising and billboard signage within the easement area by eastbound and westbound traffic along the adjacent Highway 12 and 18 corridor is material to the purposes of the easement. Monetary damages for obstruction of the view are inadequate remedy and difficult to ascertain. Accordingly, the holder of the Sign Easement

or its lessee shall be entitled to injunctive relief to prevent any obstruction of the intended view. The owner of the Property further covenants and agrees with the holder of the Sign Easement and its lessee and that the owner of the Property will not cause or permit any other third party advertising structures or signs to be located upon the Property except only "on premises" advertising for the specific business located upon the Property is permitted.

10. *In Perpetuity.* This Sign Easement shall exist in perpetuity, and shall forever burden the Property for the benefit of the holder of this Sign Easement, and its successors or assigns, and its lessees.

11. *Sale & Assignment.* The holder of this Sign Easement may sell and assign all of his rights under this Sign Easement to any third party by an instrument recorded in the office of the Register of Deeds for Dane County, State of Wisconsin. All rights under this instrument are freely and likewise saleable and assignable to other third parties by any subsequent grantee or assignee.

12. *Maintenance of Easement Area.* The holder of this Sign Easement and its lessee shall be responsible to maintain the Ground Easement free of noxious weeds and vermin. The owner of the Property and its successors or assigns are responsible to maintain the paved portions of the remainder of the Property, and further responsible for snow and ice removal.

13. *Condemnation.* If any part of the Property and the easement area is taken or threatened to be taken by condemnation or eminent domain, then the holder of this Sign Easement and or its lessee shall be entitled to seek compensation for the value of their respective interests in the Sign Easement and the revenues to be earned by the use and enjoyment of the Sign Easement. In the event there is only one award of compensation instead of separate awards, the owner of the Property, the holder of the Sign Easement and any lessee of the Sign Easement from the holder agree to divide the single award according to the value of their respective interests to be determined by agreement between the parties, and if they fail to agree within a reasonable time not to exceed 30 days after the determination of a single award, then by binding arbitration in accordance with the American Arbitration Association's rules for the arbitration of real estate matters, with the arbitrator being selected by the American Arbitration Association or similar professional group.

14. *Choice of Law.* This instrument shall be governed exclusively by the provisions set forth herein and by the laws of the State of Wisconsin without regard to conflicts of law principles.

15. *Partial Invalidity.* If any term or provision of this instrument or the application thereof to any person or circumstance shall to any extent be invalid or

unenforceable, the remainder of this instrument or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this instrument shall be valid and enforceable to the fullest extent permitted by law.

16. *Entire Agreement.* This instrument constitutes the entire agreement and understanding by and between the parties hereto. All prior agreements, promises negotiations or representations not expressly set forth in this instrument are of no force and effect. Any amendment to this instrument shall be of no force and effect unless it is in writing and signed by the owner of the Property and holder of the easement rights granted by this instrument.

17. *Amendment & Termination.* The owner of the Property and the holder of the easement right hereby granted may amend, modify or terminate this instrument only by an agreement in writing, signed by the parties and recorded in the office of the Register of Deeds for Dane County, Wisconsin. The owner and holder of the Sign Easement may, however, unilaterally terminate this instrument by removing all advertising structures and billboards and notifying the owner of the Property in writing of its intention to surrender its rights under this instrument and terminate the easement granted hereby, and by executing and recording a document declaring that the easement hereby granted has been surrendered and terminated.

18. *Sign Permits.* If any governmental agency requires that the owner of the Property join in or consent to the application for any permit or approval necessary for the erection, construction, operation, maintenance or replacement of any advertising signage or billboard within the easement area, the owner of the Property and its successors or grantees covenant and agree to join in or consent to the application for such permit or approval.

19. *Westbelt's Consent.* By its execution of this instrument, Westbelt consents to the execution and recording of this instrument. Westbelt further acknowledges and agrees that its ownership of the Property is subject to the easement rights hereby reserved and declared.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Duffy and Westbelt have executed this Reservation & Declaration of Sign Easement, intending to bind themselves and the Property to all the terms and provisions hereof.

Dated this 16 day of July, 2019.

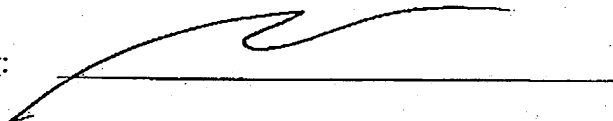


MICHAEL J. DUFFY

Dated this 16 day of July, 2019.

7787 WESTBELT, LLC

By:



LUKE HELAR, Authorized Member

By:



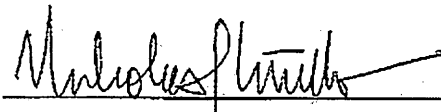
MARCUS J. NELSON, Authorized Member

[ACKNOWLEDGMENT FOLLOWS]

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss
DANE COUNTY)

Personally came before me this 16th day of July, 2019, the above named Michael J. Duffy, and also the above named Luke Heiar and Marcus J. Nelson, to me known to be the persons who executed the foregoing and acknowledged the same.



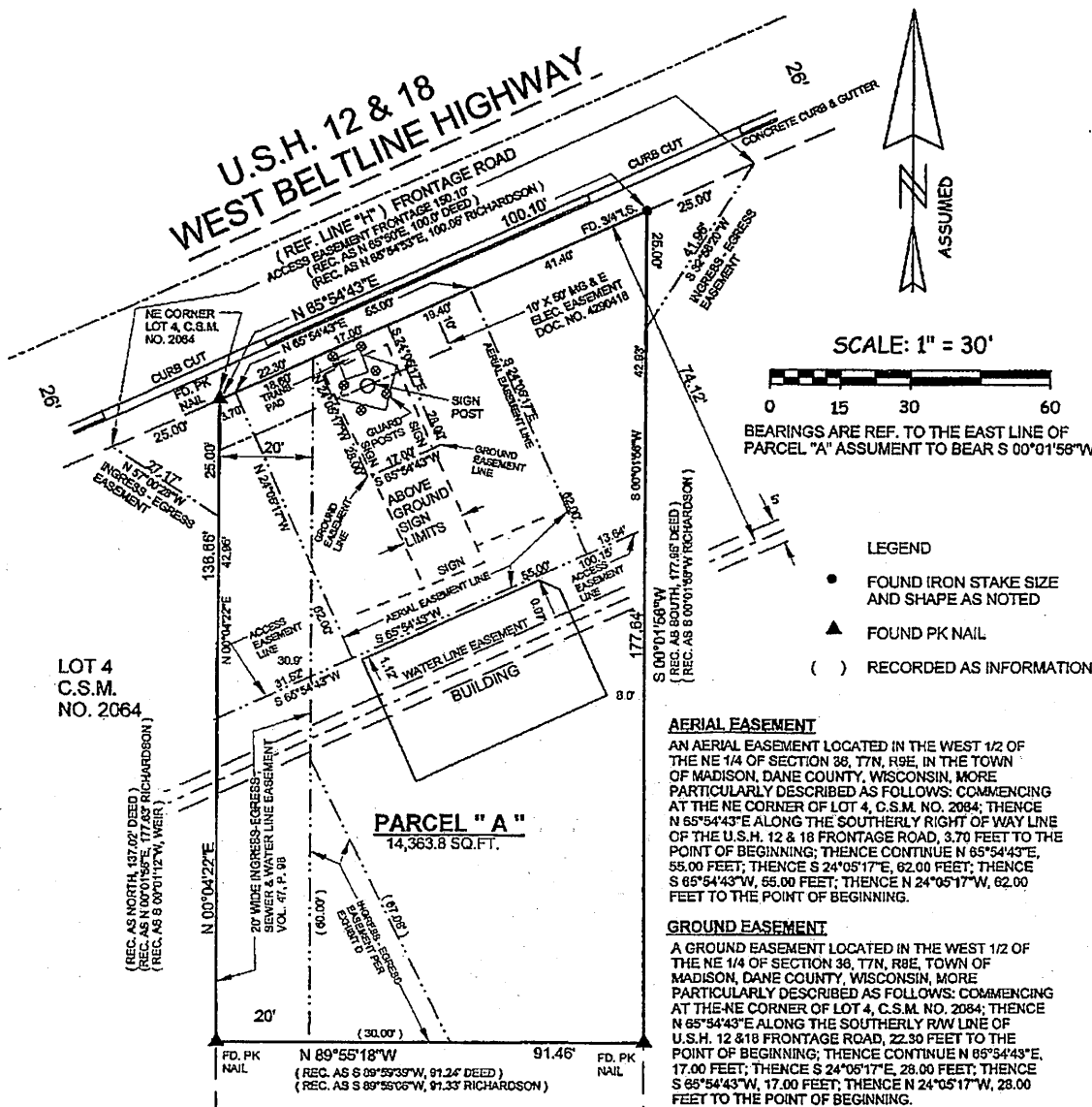
NICHOLAS J. LONIELLO, Notary Public
Dane County, Wisconsin
My Commission Is Permanent.

This Instrument Drafted By:

Atty. Nicholas J. Loniello
LONIELLO & ASSOCIATES
131 West Wilson Street - Suite 1201
Madison, WI 53703

s:1905031534.24

U.S.H. 12 & 18 WEST BELTLINE HIGHWAY



SCALE: 1" = 30'

BEARINGS ARE REF. TO THE EAST LINE OF PARCEL "A" ASSUMED TO BEAR S 00°01'58"W

- LEGEND**
- FOUND IRON STAKE SIZE AND SHAPE AS NOTED
 - ▲ FOUND PK NAIL
 - () RECORDED AS INFORMATION

AERIAL EASEMENT
 AN AERIAL EASEMENT LOCATED IN THE WEST 1/2 OF THE NE 1/4 OF SECTION 38, T7N, R9E, IN THE TOWN OF MADISON, DANE COUNTY, WISCONSIN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NE CORNER OF LOT 4, C.S.M. NO. 2064; THENCE N 65°54'43"E ALONG THE SOUTHERLY RIGHT OF WAY LINE OF THE U.S.H. 12 & 18 FRONTAGE ROAD, 3.70 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N 65°54'43"E, 55.00 FEET; THENCE S 24°05'17"E, 62.00 FEET; THENCE S 65°54'43"W, 55.00 FEET; THENCE N 24°05'17"W, 62.00 FEET TO THE POINT OF BEGINNING.

GROUND EASEMENT
 A GROUND EASEMENT LOCATED IN THE WEST 1/2 OF THE NE 1/4 OF SECTION 38, T7N, R9E, TOWN OF MADISON, DANE COUNTY, WISCONSIN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NE CORNER OF LOT 4, C.S.M. NO. 2064; THENCE N 65°54'43"E ALONG THE SOUTHERLY RAW LINE OF U.S.H. 12 & 18 FRONTAGE ROAD, 22.30 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N 65°54'43"E, 17.00 FEET; THENCE S 24°05'17"E, 28.00 FEET; THENCE S 65°54'43"W, 17.00 FEET; THENCE N 24°05'17"W, 28.00 FEET TO THE POINT OF BEGINNING.

ACCESS EASEMENT
 AN ACCESS EASEMENT LOCATED IN THE WEST 1/2 OF THE NE 1/4 OF SECTION 38, T7N, R9E, TOWN OF MADISON, DANE COUNTY, WISCONSIN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NE CORNER OF LOT 4, C.S.M. NO. 2064; THENCE N 65°54'43"E ALONG THE SOUTHERLY RAW LINE OF U.S.H. 12 & 18 FRONTAGE ROAD, 125.10 FEET; THENCE S 32°58'20"W, 41.98 FEET; THENCE S 00°01'58"W, 42.93 FEET; THENCE S 65°54'43"W, 100.15 FEET TO THE EAST LINE OF LOT 4, C.S.M. NO. 2064; THENCE N 00°04'22"E ALONG THE EAST LINE OF SAID LOT 4, 42.95 FEET; THENCE N 57°00'28"W, 27.17 FEET TO THE SOUTHERLY RAW LINE OF U.S.H. 12 & 18 FRONTAGE ROAD; THENCE N 65°54'43"E ALONG SAID RAW LINE, 25.00 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION: PER KNIGHT/BARRY COMMITMENT FOR TITLE INSURANCE, FILE NO. 1029868

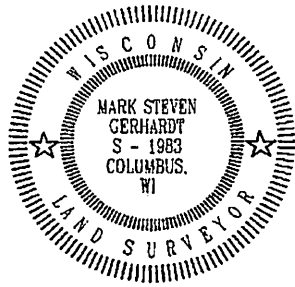
A PARCEL OF LAND LOCATED IN THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 38, TOWNSHIP 7 NORTH, RANGE 9 EAST, IN THE TOWN OF MADISON, DANE COUNTY, WISCONSIN, TO-WIT: COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 38; THENCE NORTH, 1153.00 FEET; THENCE NORTH 65°50' EAST, 478.20 FEET; THENCE SOUTH, 32.88 FEET TO THE POINT OF BEGINNING; THENCE NORTH 65°50' EAST, 108.00 FEET; THENCE SOUTH, 177.85 FEET; THENCE SOUTH 89°59'39" WEST, 91.24 FEET; THENCE NORTH, 137.02 FEET TO THE POINT OF BEGINNING.

SURVEYOR'S CERTIFICATE:

I, Mark Steven Gerhardt, Professional Land Surveyor, S-1983, do hereby certify that I have surveyed the property shown on this plat in accordance with the descriptions and instructions furnished by the persons who caused this survey to be made and that this plat is a correct and accurate representation of said survey.

Date: May 29, 2019 
 Mark Steven Gerhardt,
 Professional Land Surveyor, S-1983

PREPARED FOR:
 LONIELLO AND ASSOC.
 131 W. WILSON STREET, SUITE 1201
 MADISON, WI. 53703



BADGER SURVEYING AND MAPPING SERVICE 525 WEST PRAIRIE STREET, COLUMBUS, WISCONSIN 53825 - (608) 244-2010		
SCALE: 1" = 30'	APPROVED BY: M. S. GERHARDT	DRAWN BY: M.S.G.
DATE: MAY 29, 2019		REVISED:
PLAT OF SURVEY		
		DRAWING NUMBER 19G-25

STATE OF WISCONSIN
SUPREME COURT

ADAMS OUTDOOR ADVERTISING, L.P.

Plaintiff-Respondent-Petitioner,

TOWN OF MADISON

Appeal No.: 2010AP00178

Involuntary Plaintiff,

-vs-

COUNTY OF DANE,

Defendant-Appellant.

SETTLEMENT AGREEMENT

This Settlement Agreement is made and shall be considered effective and binding as of the time and date it is executed by the parties.

The above parties agree as follows:

1). Adams shall pay to the County no later than [REDACTED] [REDACTED] as and for the resolution and payment of all fees, costs, fines, forfeitures and any and all other obligations it may have to the County under the facts and circumstances surrounding the above-captioned case and Case Number 12-CV-0962 in the Circuit Court for Dane County, Wisconsin ("Case II").

2). The County acknowledges and agrees that Adams' digital sign (including both faces) on the beltline at 75 W. Beltline Highway ("A-1 location") in the Town of Madison may remain up as is indefinitely and hereafter. The County acknowledges and agrees that such sign shall hereafter be regarded by the County as legal and nonconforming. Adams acknowledges

that its use of the A-1 location sign is subject to all laws and regulations regarding the use and maintenance of a nonconforming structure.

3). Adams shall, no later than May 31, 2012, remove the digital face on its sign structure at 500 W. Beltline Highway in the Town of Madison ("Zimbrick location") and thereafter operate said sign as a static, externally illuminated, non-digital sign.

4). Adams shall cause to be dismissed its Petition to the Wisconsin Supreme Court in this action. This case shall thereafter be dismissed on the merits, with prejudice and without costs to either party.

5). Adams shall cause to be dismissed Case II.

6). This Agreement shall be considered irrevocable and binding upon the parties effective as of the time and date executed by the parties.

7). Any rulings, orders or events in the Wisconsin Supreme Court after such time and date shall not affect nor alter this Agreement in any way.

8). The parties shall act in good faith to consummate this Agreement as written.

9). No party to this Agreement shall be considered to have admitted or acknowledged liability or fault by signing this Agreement.

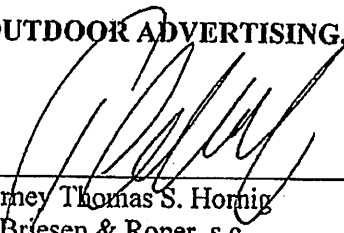
10). All issues related to Adams' digital sign at the A-1 location, as well as the sign at issue in the above-captioned matter, pending or existing among the parties referred to herein are fully and finally resolved by this Agreement.

11). Adams acknowledges that this Agreement shall have no precedential effect, and it does not release Adams from complying with Dane County Ordinances in the future, nor from liability for any future Dane County Ordinance violations.

Dated in Madison, Wisconsin this 24th day of April, 2012.

ADAMS OUTDOOR ADVERTISING, L.P.

By:



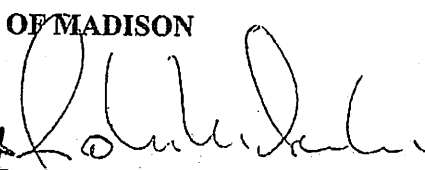
Attorney Thomas S. Hornig
von Briesen & Roper, s.c.
Counsel for Adams Outdoor Advertising, L.P.

4/23/12
Date

5:00 PM
Time

TOWN OF MADISON

By:



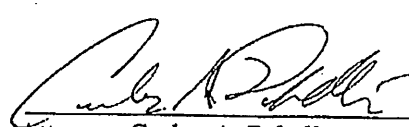
Attorney John Gerlach
LaRowe Gerlach and Roy, LLP
Counsel for the Town of Madison

4/23/12
Date

3:00 pm
Time

COUNTY OF DANE

By:



Attorney Carlos A. Pabellon
Assistant Corporation Counsel

4/24/12
Date

9:49 am
Time

CHAPTER 31

STREET GRAPHICS CONTROL ORDINANCE

(Ch 31 R. & new Ch 31 Cr. by Ord. 5859)

Adopted May 3, 1977

Published by the direction of the Common Council of the City of Madison,
in accordance with Section 66.0103, Wisconsin Statutes.

CHAPTER 31

STREET GRAPHICS CONTROL ORDINANCE

Section

- 31.01 Short Title.
- 31.02 Purpose and Scope.
- 31.03 Rules and Definitions.
- 31.04 Administration and General Provisions.
- 31.05 Nonconforming Street Graphics.
- 31.06 Reserved For Future Use
- 31.07 Wall and Roof Graphics.
- 31.075 Pennants, Flags and Decorative and Promotional Banner(s). (Cr. by Ord. 10,809, Adopted 1-4-94)
- 31.08 Ground Graphics.
- 31.09 Projecting Graphics.
- 31.10 Window Graphics.
- 31.11 Advertising Street Graphics and Off-Premise Directional Graphics. (Am. by Ord. 10,162, 12-28-90)
- 31.12 Changeable Copy Street Graphics. (Cr. by Ord. 10,283, 7-15-91)
- 31.13 Districts of Special Control.
- 31.14 Agricultural, Conservancy, and Residential Districts.
- 31.15 Tables of Permitted Graphics.
- 31.16 - 31.18 Reserved For Future Use.
- 31.19 Penalties and Violations.
- 31.20 Severability.

31.01 SHORT TITLE. This ordinance shall be known and may be cited as the Street Graphics Control Ordinance.

31.02 PURPOSE AND SCOPE.

- (1) The purpose of this ordinance is to create the legal framework for a comprehensive but balanced system of street graphics, and thereby to facilitate an easy and pleasant communication between people and their environment. With this purpose in mind, it is the intention of this ordinance to authorize the use of street graphics which are:
 - (a) Compatible with their surroundings, including existing and planned principal uses and development;
 - (b) Appropriate to the type of activity to which they pertain;
 - (c) Expressive of the identity of individual proprietors or the community as a whole;
 - (d) Legible in the circumstances in which they are seen;
 - (e) Designed and positioned so as not to present any hazard to traffic safety; and
 - (f) Not dominant but accessory to principal uses of land and improvements.
(Am. by Ord. 9005, 11-14-86)
- (2) The sections contained in this code shall be binding alike upon every owner of a building, every lessee, and every person in charge or responsible for or who causes the construction, repair, relocation or alteration of any street graphic in the City of Madison.
- (3) This code shall apply to all street graphics.

31.03 RULES AND DEFINITIONS.

- (1) Rules. In the construction of this ordinance, the rules and definitions contained in this section shall be observed and applied, except when the context clearly indicates otherwise: (a) Words used in the present tense shall include the future.
- (b) Words in the singular number shall include the plural number, and the plural the singular.
- (c) The word “shall” is mandatory and not discretionary.
- (d) The word “may” is permissive.
- (e) (R. by Ord. 7085, 9-6-80)

- (2) Definitions. For the purpose of this code, certain terms are hereby defined as follows:

Above Roof Graphic. A street graphic which is displayed above the roof line.

Accessory Graphic. A graphic on a large building subordinate in area to the principal graphic, located elsewhere than the primary signable area, listing other businesses or generic services or departments in the building, such as pharmacy, optical, auto repair, garden center and excluding product brand names. (Cr. by Ord. 11,928, 8-30-97)

Advertising Street Graphic. A street graphic containing a commercial or noncommercial message which directs attention to a business, commodity, service, political candidate or cause, public service, social cause, charity, community affair or entertainment, not related to the premises at which the street graphic is located, or which directs attention to a business, commodity, service or entertainment which is conducted, sold or offered elsewhere than on the premises at which the street graphic is located. Advertising appearing on public transportation vehicles shall not be regulated by this ordinance. (Am. by Ord. 9005, 11-14-86)

Alteration. Any major alteration to a street graphic, but shall not include routine maintenance, painting or change of copy of an existing street graphic.

Approved Combustible Material. An approved combustible material shall include:

1. Wood or materials not more combustible than wood.
2. Combustible plastics, which, when tested in accordance with ASTM Standard Method for Flammability of Plastics over 0.050 inch in thickness (D 635-44) burn no faster than 2.5 inch per minute in .060 inch in thickness.

Architectural Detail. Any projection, relief, change of material, window or door opening which is on the facade of a building. Where an overall consistent pattern of projections or reliefs exists on a signable area, they shall not be considered architectural details.

Attached Canopy. A canopy that is attached to and supported by a building, which may also be supported by additional vertical ground supports or other structures, but does not project over the public right-of-way. (Cr. by Ord. 12,513, 12-20-99)

Awning. An awning is a rooflike cover, temporary in nature, which projects from the wall of a building. (Am. by Ord. 9062, 1-15-87)

Awning, Internally Illuminated. An awning consisting of a rigid frame covered with vinyl, plastic, or other translucent material which is internally illuminated. (Cr. by Ord. 9523, 7-15-88)

Banner. A suspended graphic made of a flexible material such as canvas, sailcloth, plastic or waterproof paper.

Building Entrance Identification Graphic. A wall graphic used to identify building entrances such as, “Emergency Room Entrance”, “Lubrication”, “Wash Rack”. Such graphics would customarily be found on large buildings.

Building Line. A line established by ordinance beyond which no building may extend. A building line may be referred to as “required setback”.

Business Banner. A banner which is used in place of a business street graphic and which contains a commercial or noncommercial message, and which is subject to the size and placement requirements for ground, projecting, wall, roof and above-roof graphics. (Cr. by Ord. 9005, 11-14-86)

Business Opening Graphic. A graphic designed to assist customers in locating a new business or building which may be displayed for a period not to exceed thirty (30) days following the opening of a new business or building. (Am. by Ord. 9005, 11-14-86)

Business Street Graphic. A graphic used for identification purposes, which directs attention to a business or profession conducted upon the premises at which the street graphic is located, which may also refer to goods or services produced, offered for sale or obtained at such premises, and which may also include political, social, public service or other noncommercial messages. (Am. by Ord. 7539, 10-14-81)

Canopy. A permanent roof structure attached to and supported by the building and projecting over public property but does not include a projecting roof. (Am. by Ord. 12,513, 12-20-99)

Changeable Copy. Any street graphic which is characterized by changeable copy, letters, or symbols, regardless of method of attachment.

Commercial Message. A message which directs attention to a business, commodity, service or entertainment enterprise which is intended to produce a monetary profit or earnings which may lawfully inure to the benefit of any private shareholder or individual and the income of which is taxable under the Internal Revenue Code. (Cr. by Ord. 9005, 11-14-86)

Comprehensive Design Review. A process whereby the Madison Urban Design Commission ("UDC") reviews all existing and proposed street graphics on a building, building site or zoning lot upon request of an applicant, seeking approval for a Comprehensive Sign Plan. The UDC may recognize unique, exceptional and innovative effort to integrate street graphics with building architecture and materials by approving a Comprehensive Sign Plan that includes special allowances for all street graphics within the building site or zoning lot, and which may also incorporate other approvals as authorized in sec. 31.04(2)(b)2.b. (Am. by Ord. 9817, 7-27-89; ORD-08-00063, 6-24-08)

Comprehensive Sign Plan. A complete plan for all street graphics on a building, building site or zoning lot that has been approved by the Urban Design Commission through a Comprehensive Design Review. (Cr. by ORD-08-00063, 6-24-08)

Conditional Use Graphic. A graphic which because of its unique or varying characteristics cannot be properly classified as a permitted graphic in a particular district and must be approved by the Plan Commission subject to the provisions of Section 28.12(10).

Condominium Identification Street Graphic. An identification street graphic for a condominium established under Chapter 703 of the Wisconsin Statutes, that displays the name, address(es) and number(s) of the buildings(s) located within a single condominium. (Cr. by Ord. 13,338, 6-7-03)

Curb Level. The curb level for any building is the level of the established curb in front of such building measured at the center of such front. Where no curb elevation has been established, the City Engineer shall establish such curb elevation.

Decorative Banner. A banner containing no message or logo which is displayed for the purpose of adding color and interest to the streetscape. (Cr. by Ord. 9005, 11-14-86)

Design Extension. Any addition to a street graphic which is added to or protrudes from the top, sides, or lower edge of the main or principal portion of the street graphic. (Cr. by Ord. 11,234, 4-13-95)

Detached Building. A building surrounded by open space on the same lot or built to the lot line.

Detached Canopy. A canopy that is a permanent, free-standing roofed-over structure, with four open sides, accessory to but not attached to a principal building. (Cr. by Ord. 12,513, 12-20-99)

Directional Street Graphic. A graphic designed to guide or direct pedestrian or vehicular traffic on the premises on which the graphic is located.

Electric Street Graphic. Any graphic containing electric wiring, material, or devices.

Facade. Any separate face of a building, including parapet walls, and roof surfaces or any part of a building which encloses or covers usable space. Where separate faces are oriented in the

same direction, or in the direction within forty-five (45) degrees of one another, they are to be considered as part of a single facade.

Flag. A device generally made of flexible material, such as cloth, paper, or plastic, and displayed on strings. It may or may not include copy. This definition does not include the flag of any country, state, city, county, corporation or institution.

Flashing Street Graphic. A graphic any part of which is varied in brightness, color or message at intervals more frequently than once every two minutes.Graphic. A device comprised of any words, symbols, numerals, shapes or forms and any combination thereof, designed to convey identity, meaning or express feeling.

Gross Area (for street graphics other than those made up of separate individually mounted letters or symbols). The entire area within a single continuous perimeter enclosing the extreme limits of such graphic and in no case passing through or between any adjacent elements of same. However, such perimeter shall not include any structural elements lying outside the limits of such graphic and not forming an integral part of the display.

Gross Area (for street graphics made up of individually mounted letters or symbols). The sum of the areas encompassed by the smallest possible squares or rectangles enclosing the extreme limits of each letter or symbol which is a part of that graphic.

Ground Street Graphic. A graphic attached to the ground independent of any building.

Identification Street Graphic. A graphic which contains no advertising but is limited to the name, address and number of a building, institution, or person and to the activity carried on in the building or institution or the occupation of the person.

Illuminated Street Graphic. A graphic designed to give forth any artificial or reflected light, either directly from a source of light incorporated in or connected with such graphic, or indirectly from an artificial source, so shielded that no direct illumination from it is visible elsewhere than on the graphic and in the immediate proximity thereof.

Incombustible Material. Any material which will not ignite at, or below, a temperature of one thousand two hundred (1,200) degrees Fahrenheit during an exposure of five (5) minutes and which will not continue to glow at that temperature. Tests shall be made as specified in UBC Standard No. 4-1-61.

Inflatable Street Graphic. A freestanding or moored graphic which may be filled with air or gas causing it to expand or swell out like a balloon or other figure and if inflated with a gas lighter than air may rise and float above the ground. (Cr. by Ord. 9538, 7-28-88)

Large Buildings. Those buildings exceeding one hundred twenty-five (125) feet in length or having eight (8) stories or more in height. (Cr. by Ord. 11,928, 8-30-97)

Logo. For the purpose of this ordinance, the term "logo" shall mean a symbol or trademark commonly used to identify a business or organization but which in itself contains no more than two words or numerals.

Marquee. (See Canopy or Marquee)

Menu Board. A changeable copy graphic, enclosed in a lockable or latchable protective case or covering, which is mounted firmly to a wall, and is placed at a height not to exceed eight (8) feet nor below three and one-half (3 1/2) feet, does not exceed ten (10) square feet in area and projects no more than four (4) inches from the surface of the wall. (Cr. by Ord. 9005, 11-14-86)

Merchandise Graphic. A graphic made of flexible nonmetallic material attached to, and advertising, merchandise displayed outside of an enclosed building. (Cr. by Ord. 9538, 7-28-88)

Motion Street Graphic. Any graphic possessing visible moving parts or parts that appear to move.

Mural. A picture illustration or abstract expression containing no commercial message applied directly to and made integral with a wall or window surface. (Am. by Ord. 9538, 7-28-88)

Neighborhood Identification Street Graphic. Any graphic containing the name of the neighborhood in which it is located.

Nonconforming Street Graphic. Any street graphic which does not comply with all the regulations of this ordinance.

Nonconforming Use. Any use of land or buildings which does not comply with all the regulations of Chapter 28 (Zoning Code) or of any amendment hereto governing use for the zoning district in which such use is located. (Am. by Ord 7085, 9-6-80)

Noncommercial Message. A message, the sole purpose of which is to direct attention to a political, social, community or public service issue and is not intended to produce a monetary profit or earnings which may lawfully inure to the benefit of any private shareholder or individual and the income of which is exempt from taxation under the Internal Revenue Code. (Cr. by Ord. 9005, 11-14-86)

Number. For the purposes of this ordinance, the term number shall mean a number or combination of numerals used to identify or designate one particular item such as a quantity, price, telephone number or address of a property.

Occupant. The holder of an occupancy permit.

Off-Premise Directional Graphic. A ground graphic, including a theater program directory graphic, designed to guide or direct the public to a business, service or entertainment activity. (Cr. by Ord. 10,907, 5-13-94)

Parking Lot Directional Graphic. (See Directional Street Graphic)

Parking Lot Regulation Graphic. A graphic designating the conditions of use or identity of such parking area.

Pennant. A tapered or dove-tailed banner or flag.

Person. May include a firm, association, organization, partnership, trust, company, or corporation as well as an individual.

Political Street Graphic. Any street graphic which states the name and/or picture of an individual seeking election or appointment to a public office, or pertaining to a forthcoming public election or referendum, or pertaining to or advocating social or political views or policies. (Am. by Ord. 9005, 11-14-86)

Portable Street Graphic. A graphic which is not permanently attached to the ground or a building or designed to be permanently attached to the ground or a building, including but not limited to, trailers or other vehicles which are used principally as a graphic, posters, "sandwich boards" or other freestanding signboards, regardless of whether such graphics are attached to the ground or to a building or structure. (Am. by Ord. 9538, 7-28-88)

Principal Building. A non-accessory building in which is conducted the principal use of the lot on which it is located.

Project Graphic. A street graphic describing a construction or improvement project including the names of contractors, architects, engineers, owners or occupants. Project graphics provide a temporary substitute for permanent street graphics which may be obscured during construction and inform the general public and public officials who is responsible for construction activities. (Am. by Ord. 9538, 7-28-88)

Projecting Street Graphic. A graphic which is attached to the wall of a building and projects more than fifteen (15) inches beyond such wall.

Promotional Banner. A banner or series of banners containing a noncommercial message displayed to call attention to cultural events, charity campaigns or neighborhood sponsored activities. (Cr. by Ord. 9005, 11-14-86)

Public Service Street Graphic. Any street graphic primarily to promote noncommercial items of general interest to the community. (Am. by Ord. 9005, 11-14-86)

Real Estate Street Graphic. A street graphic pertaining to the sale, lease, or rental of the property upon which it is located.

Roof Line. The uppermost line of the roof of a building including original parapets, but not including facades which are extended for the purpose of creating or expanding a signable area. (Am. by Ord. 9818, 7-27-89)

Roof Street Graphic. A graphic erected on the roof of a building no portion of which is above the roof line.

Rotating Street Graphic. (See Motion Street Graphic)

Scoreboard. A scoreboard is a graphic designed to provide information to spectators at athletic events which may or may not contain advertising messages or public service announcements. Scoreboards may include flashing street graphics as approved herein. (Cr. by Ord. 7990, 4-26-83)

Sign. Street graphic.

Signable Area. One designated area of the facade of the building up to the roof line which is free of windows and doors or major architectural detail on which street graphics are to be displayed.

Street Graphic. Any graphic, including its supporting structure, frame, electrical and all other accessory components, which is located outside of an enclosed building or any graphic displayed on or within three (3) feet of the interior of a window which is visible from the exterior. (Am. by Ord. 9997, 4-27-90; Ord. 12,648, 7-28-00)

Subdivision Identification Graphic. Any graphic containing the name of the subdivision in which it is located.

Swinging Street Graphic. (See Motion Street Graphic)

Symbol. Something that stands for or suggests something else by reason of relationship, association, convention or resemblance placed or erected for public view as a street graphic or as a part of a street graphic.

Temporary Street Graphic. A graphic permitted for a limited period of time to identify a business when normal traffic flow is diverted so as to decrease the effectiveness of existing permanent street graphics. (Cr. by Ord. 5880, 6-6-77)

Theater Program Directory Graphic. A ground graphic that contains the name of the theater complex and a listing of the program being presented. (Cr. by Ord. 10,907, 5-13-94)

Time and/or Temperature Graphic. A flashing graphic giving the time and/or temperature.

Wall Street Graphic. A graphic which is attached to a wall of a building and projects not more than fifteen (15) inches from such wall.

Window Street Graphic. Any street graphic which is displayed, painted on, applied to, or affixed to the exterior or interior of a window; or displayed within three (3) feet of the interior of a window; and which is visible from the exterior. For purposes of this ordinance, "window" shall include any glass or transparent panels on exterior doors. Merchandise available for purchase within the premises and displayed within three (3) feet of the interior of a window shall not be considered a window graphic under this definition. (Am. by Ord. 12,648, 7-28-00)

31.04 ADMINISTRATION AND GENERAL PROVISIONS.

(1) Interpretation.

- (a) In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements for the promotion and protection of the public health, safety, and general welfare.
- (b) Where the conditions imposed by any provision of this ordinance upon the erection or maintenance of street graphics containing commercial messages are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this ordinance or of any other law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive or which impose the higher standards or requirements shall govern. (Am. by Ord. 9005, 11-14-86)
- (c) Any street graphic authorized in this chapter is allowed to contain any noncommercial message in addition to or in lieu of any other message. (Cr. by Ord. 10117, 9-27-90)

(2) Organization.

- (a) The administration of this ordinance is hereby vested in five (5) offices of the City of Madison:
1. The Office of the Director of the Building Inspection Division; (Am. by ORD-08-00109, 10-7-08)
 2. The Urban Design Commission;
 3. The Building Board of Examiners and Appeals;
 4. The City Plan Commission.
 5. The Director of Planning and Community and Economic Development.
- (b) Authority and duties for these offices are as follows:
1. Director of the Building Inspection Division. (Am. by ORD-08-00109, 10-7-08)
 - a. Approve and issue street graphic permits.
 - b. Inspect construction and erection.
 - c. Enforce the regulations of this ordinance.
 2. The Urban Design Commission.
 - a. Hear appeals on the decision of the Director of the Building Inspection Division relating to street graphics other than of structural or mechanical concern. (Am. by ORD-08-00109, 10-7-08)
 - b. After a public hearing as provided in Section 33.25(4)(e)3., may:
 - i. Approve a sign up to twenty-five percent (25%) larger or higher than the maximum square footage or height otherwise allowed or reduce the yard or setback required if a variance:
 - A. Is necessary for a sign located on the site of an establishment to be identifiable and legible from the nearest roadway at prevailing speeds; and
 - B. Will result in a sign more in scale with the building and site and in a superior overall design.
 - ii. Permit signs which will front on roads which according to the official map or capital improvement program indicate a change of size of that road or a change of zoning in the future as if the change were currently in effect;
 - iii. Permit the use of an above-roof graphic on a given zoning lot in a commercial district provided that the graphics on adjacent properties reduce the effectiveness of other types of conforming street graphics or where topographic relationships between structures and right-of-ways would deem their use appropriate;
 - iv. Permit the use of an above-roof graphic when the architecture of the building does not provide a reasonable signable area;
 - v. Permit the use of wall graphics on building facades not adjacent to off-street parking areas where, due to a variation of building setbacks, a signable area exists, provided the area of the graphic shall not exceed the area of the wall graphic permitted on the front of the building;
 - vi. Approve a Comprehensive Sign Plan as described in sec. 31.04(2)(c) below.
 - vii. Permit an above-canopy graphic that crosses architectural detail to be erected closer than five (5) feet to the nearest face of a building under Sec. 31.071(2)(c), if the proposed graphic would not substantially detract from the contribution of the architectural detail to the overall building design. (Cr. by Ord. 12,513, 12-20-99; Am. by Ord. 12,685, 9-25-00)

- viii. Approve additional street graphics for wayfinding purposes on certain zoning lots as authorized under Sec. 31.14(2)(b)4.a. (Am. by Ord. 13,144, 9-24-02)
- ix. Approve a condominium identification street graphic of up to thirty-two (32) square feet, as authorized under sec. 31.14(2)(b)6. (Cr. by Ord. 13,338, 6-7-03)
- x. Where used in this section 31.04(2), the words “sign” and “street graphic” shall be interchangeable.
- xi. The UDC shall make a final decision on an appeal under 31.04(2)(b)2.a. or an application under sec. 31.04(2)(b)2.b. or 31.04(2)(c) within sixty (60) days of the application, unless the applicant waives this deadline in writing or in person at a UDC meeting.

3. Building Board of Examiners and Appeals.

- a. Hear appeals relating to matters of structural or mechanical concern.
- b. Hear complaints against street graphic erectors filed by the Director of the Building Inspection Division. (Am. by ORD-08-00109, 10-7-08)

4. City Plan Commission. Act upon conditional use applications and appeals that are directed to the Plan Commission under this Chapter.

5. The Director of Planning and Community and Economic Development. Act upon off-premise directional graphics and scoreboards at athletic fields.

(Sec. 31.04(2)(b) Am. by ORD-08-00063, 6-24-08)

(Sec. 31.04(2) Am. by Ord. 9730, 3-15-89)

(c) Comprehensive Design Review (“CDR”) by the Urban Design Commission.

The Urban Design Commission may approve a Comprehensive Sign Plan on a building site or zoning lot, to allow special allowances for all signs on private property regulated under this Chapter, beyond the restrictions contained elsewhere in this Chapter, and which may also incorporate other approvals authorized in ss. 31.04(2)(b)2.b., in order to meet the following purpose:

The purpose of the Comprehensive Design Review is to determine whether unique, exceptional, and innovative use of materials, design, color, lighting, and other design elements; resulting in visual harmony created between signs, building(s), and building site; are sufficient to warrant special allowances beyond the restrictions contained elsewhere in this Ordinance. The Comprehensive Sign Plan shall encompass the proposed new signs requested by the applicant and approved by the UDC, and any approved modifications to existing signs on the same building site or zoning lot. For the signs included in the Comprehensive Design Review, the restrictions of this Ordinance shall not apply and there shall be no predetermined requirements for those signs except those requirements which shall be made part of the approved Comprehensive Sign Plan.

1. Comprehensive Design Review Procedure.

- a. The applicant shall file the required application with the required fee(s); submit site plans showing all existing and proposed buildings and signs, location and dimensions of each requested signable area; a color graphic of each proposed sign with dimensions; and any other materials as may be required by the UDC or elsewhere in these Ordinances.
- b. The UDC shall review all proposed and existing signs on the buildings and zoning lot, and may require modifications to existing signs over which the applicant has control.

- c. The UDC's decision to approve a Comprehensive Sign Plan shall be after a public hearing on the application, following the UDC's procedures for a public hearing in sec. 33.02(4)(e)3.
 - d. The UDC shall make a final decision on application for CDR within sixty (60) days of the application, unless the applicant waives this deadline in writing or in person at a UDC meeting.
2. Comprehensive Design Review Criteria. The UDC shall apply the following criteria upon review of an application for a Comprehensive Sign Plan ("Sign Plan"):
- a. The Sign Plan shall create visual harmony between the signs, building(s), and building site through unique and exceptional use of materials, design, color, any lighting, and other design elements; and shall result in signs of appropriate scale and character to the uses and building(s) on the zoning lot as well as adjacent buildings, structures and uses.
 - b. Each element of the Sign Plan shall be found to be necessary due to unique or unusual design aspects in the architecture or limitations in the building site or surrounding environment.
 - c. The Sign Plan shall not violate any of the stated purposes in ss. 31.02(1) and 33.02(2).
 - d. All signs must meet minimum construction requirements under sec. 31.04(7).
 - e. The Sign Plan shall not approve Advertising Street Graphics or Off-Premise Directional Graphics beyond the restrictions in Sec. 31.11.
 - f. The Sign Plan shall not be approved if any element of the plan:
 - presents a hazard to vehicular or pedestrian traffic on public or private property,
 - obstructs views at points of ingress and egress of adjoining properties,
 - obstructs or impedes the visibility of existing lawful signs on adjacent property, or
 - negatively impacts the visual quality of public or private open space.
 - g. The Sign Plan may only encompass signs on private property of the zoning lot or building site in question, and shall not approve any signs in the right-of-way or on public property.
3. Changes to Comprehensive Sign Plan. Any changes to the approved plan must first be approved by the UDC using the full CDR process, except that the Director of the Building Inspection Division or designee may grant approval for minor changes that are compatible with the concept approved by the UDC and the standards in sec. 31.04(2)(c)2., upon approval of the Planning Division Director or designee. (Am. by ORD-08-00109, 10-7-08)
4. Violation of Approved Comprehensive Sign Plan. Once a Comprehensive Sign Plan has been approved, no person shall erect or cause to be erected any street graphic not approved on the Plan, or alter or relocate any street graphic displayed pursuant to the Plan, without first obtaining approval under the procedures in 31.04(2)(c)4. above, and obtaining all required sign permits from the Director of the Building Inspection Division or designee. (Am. by ORD-08-00109, 10-7-08)
- (Sec. 31.04(2)(c) Cr. by ORD-08-00063, 6-24-08)
- (d) Appeals from Decisions of the UDC. A decision of the Urban Design Commission under sec. 31.04(2)(b)2. or 31.04(2)(c) shall be a final administrative decision for purposes of judicial review. Any person aggrieved by the decision of the Urban Design Commission may commence an action seeking the remedy available by certiorari within thirty (30) days of the decision. (Sec. 31.04(2)(d) Cr. by ORD-08-00063, 6-24-08)

- (3) Application for Permit, Plans and Specifications.
- (a) Street graphics may be erected, moved, enlarged, or reconstructed within the City of Madison as prescribed and permitted in the Madison General Ordinances when a permit therefor shall have been issued by the Director of the Building Inspection Division, unless a permit is not required under Section 31.04(8) of this ordinance. (Am. by Ord. 8081, 7-29-83; Ord. 12,648, 7-28-00; ORD-08-00109, 10-7-08)
 - (b) Applications for permits shall be filed with the Director of the Building Inspection Division on application forms which will be provided by the Director of the Building Inspection Division. The application form shall be accompanied by a photograph of the property, a plot plan, construction and installation plans including specifications and engineering data. When all of the provisions of this ordinance or other ordinances relating to such street graphic shall have been complied with and when the applicant has paid the required fee for every such application, the permit may be granted. The Director of the Building Inspection Division may prescribe suitable regulations consistent with the provisions of this ordinance concerning the form and contents of all applications for permits herein required. (Am. by Ord. 8081, 7-29-83)
 - (c) The applications shall be accompanied by the written consent of the owner or lessee of the premises upon which the street graphic is to be erected.

- (d) It shall be unlawful for any person to erect, repair, alter, relocate, maintain, or change copy, except for signs designed for changeable copy, within the City of Madison any street graphic as defined in this ordinance without first obtaining a permit from the Director of the Building Inspection Division and making payment of any fees required by this ordinance, unless a permit is not required under Section 31.04(8) of this ordinance or unless otherwise exempt from obtaining a permit or paying a fee under the provisions of this ordinance. All electric graphics shall, in addition, be subject to the provisions of the Electrical Code (Chapter 19), and the permit fee required thereunder. (Am. by Ord. 8081, 7-29-83; Ord. 12,648, 7-28-00)
- (e) It shall be the duty of the Director of the Building Inspection Division, upon the filing of an application for permit to examine such plans and specifications and other data and the premises upon which it is proposed to erect the street graphic and if it shall appear that the proposed graphic is in compliance with all the requirements of this code and all other laws and ordinances of the City of Madison, he shall then issue the permit. If work authorized under a permit has not been completed within six (6) months after date of issuance, the said permit shall become null and void. (Am. by Ord. 8081, 7-29-83)
- (f) All rights and privileges acquired under the provisions of this ordinance or any amendment thereto, are mere permits, revocable at any time by the Director of the Building Inspection Division, and all such applications shall contain this provision. (Am. by Ord. 8081, 7-29-83)
- (g) Identification of a Street Graphic. When the permit for any type of street graphic is issued, a metal tag shall accompany such permit. This tag shall be affixed to the street graphic at the time of erection, in a place visible for inspection, as proof of issuance of the permit.

(Sec. 31.04(3) Am. by ORD-08-000109, 10-7-08)

(4) Fees.

- (a) Permit fee for any street graphic shall be one dollar and seventy-five cents (\$1.75) per square foot of the gross area, and two dollars and fifty cents (\$2.50) per square foot of the gross area for all advertising graphics, but in no case less than twenty-five dollars (\$25) payable to the City Treasurer provided, however, the permit fee for changing the face or copy of a street graphic other than a graphic designed for changeable copy shall be one dollar and fifty cents (\$1.50) per square foot of the gross area but in no case less than ten dollars (\$10). (Am. by Ord. 9366, 12-21-87)
- (b) Fee for failure to obtain a permit before starting work shall be doubled except in cases of emergency.
- (c) The application fee for hearing of appeals, requests for variance and review of comprehensive design plans by the Urban Design Commission shall be two hundred dollars (\$200) payable to the City Treasurer. (Cr. by Ord. 9817, 7-27-89; Am. by Ord. 13,216, 12-20-02)

(5) Licenses.(a) General Provisions.

1. Any person desiring to engage in the business of erecting, removing, servicing or maintaining street graphics as required by this code, shall be required to be licensed.
2. Licensee required to pass an examination administered under the direction of the Director of the Building Inspection Division. (Am. by Ord. 8081, 7-29-83; ORD-08-00109, 10-7-08)
3. An application shall be filed with the Building Inspection Division of the Department of Planning and Community and Economic Development ten (10) days prior to the date on which an examination is to be held. An examination fee of ten dollars (\$10) shall accompany the application for examination. (Am. by Ord. 8081, 7-29-83; ORD-08-00109, 10-7-08)
4. Examinations for graphic erector's license shall be given by the Building Inspection Division of the Department of Planning and Community and Economic Development by appointment with the Zoning Administrator. (Am. by Ord. 9217, 6-11-87; ORD-08-00109, 10-7-08)
5. Upon passing the examination, payment to the City Treasurer of one hundred twenty-five dollars (\$125), and recording required bonds or insurance, an annual license will be issued for erecting, removing, servicing or maintaining all street graphics listed in this code. Renewal for each succeeding year shall be one hundred twenty-five dollars (\$125). (Am. by Ord. 8191, 12-28-83)
6. It shall be unlawful for any person with a graphic erector's license to allow the use of her/his license, directly or indirectly, for the purpose of obtaining local permits for others, except that a person with a graphic erector's license may lawfully obtain permits for corporations or firms who are actively engaged in the outdoor graphic contracting business with a recognized business location, provided that such person be permanently employed by such firm or corporation.
7. It is further provided that in the event that any person holding a graphic erector's license shall sever her/his connection with an outdoor graphic contracting and erection firm, association or corporation which has been in continuous operation within the City of Madison for a period of one (1) year or more and there shall be no other person in such firm, association or corporation, or employed by it, who is licensed under the provisions of this chapter, the Director of the Building Inspection Division may issue permits to that firm, association or corporation until the next regular examination period. At that time, some other member or employee of the firm, association or corporation must apply for a license to conduct the business of outdoor graphic erection and contracting according to the provisions of this code. In the event that such applicant fails to obtain such license, then said firm, association, or corporation shall employ a licensed outdoor graphic erector to conduct the business of outdoor graphics erection and contracting within thirty (30) days after said applicant for license has been notified of her/his failure to meet the license requirements. If any work done by such firm, association or corporation pursuant to permits issued by the Director of the Building Inspection Division shall fail to meet all requirements of the Madison General Ordinances and regulations of the State of Wisconsin or any of its departments, the Director of the Building Inspection Division shall not issue further permits until such firm, association or corporation shall have obtained a license to conduct the business of outdoor graphics erection and contracting in accordance with the provisions of this code. (Am. by Ord. 8081, 7-29-83; ORD-08-00109, 10-7-08)

8. Every license shall expire on the thirtieth (30th) day of June following the date of its issue, and may be renewed upon payment to the City Treasurer of the renewal fee not later than the first day of July of the year in which the license expires. Should any person fail to renew her/his license by July 1st of the year in which the said license expires, s/he will be required to make application for and take the examination for a new license in the same manner as a new applicant before s/he will be issued a new license. Temporary licenses shall not be issued.
 9. Any license may be revoked by the Building Board of Examiners and Appeals should the licensee violate any ordinance or law relating to outdoor graphics. No license shall be revoked except by a majority vote of the Building Board of Examiners and Appeals at a regular meeting, and no license shall be revoked unless the licensee has been notified in writing of the charges against her/him at least ten (10) days before such meeting. The licensee shall have the right to appear before the Board to answer the charges and present testimony in her/his defense. Any person whose license shall have been revoked shall not again be licensed within a period of one (1) year from date of such action.
- (b) Inactive License.
1. After one (1) year, the licensee may establish an inactive status if s/he is not actively engaged in the graphics contracting business, or where more than one person holds an active license for the firm.
 2. The inactive licensee shall pay a renewal fee of ten dollars (\$10) per year to maintain his inactive status.
 3. Inactive licensee not required to post required bond or liability insurance.
- (c) Class C Electrical License.
1. Class C licensee may engage in the bending and all work pertaining to neon tubing. S/he may hang neon inside window, decorative, or directional street graphics; install outside and inside outline neon. S/he shall not connect the transformers to the 115 volt circuits.
 2. Any person making application or Class C License must show proof that s/he has had at least three (3) years experience in the neon graphic business.
 3. The fee for a new applicant for Class C License shall be ten dollars (\$10). Renewal fee for each succeeding year shall be ten dollars (\$10).
- (d) Bonds and Liability Insurance. Every person licensed to erect street graphics shall file with the Director of the Building Inspection Division a performance bond in the sum of ten thousand dollars (\$10,000) with sureties satisfactory to the City Attorney conditioned that such person shall faithfully comply with all the provisions and requirements of this chapter with respect to the construction, alteration or location and safety of said street graphics and conditioned further to indemnify, save and hold harmless said City of Madison and its officials from any and all claims, damages, losses, liabilities, actions, suits or judgments which may be presented, brought, secured or sustained against the City of Madison or any of its officials on account of the construction, maintenance, alterations or removal of any said street graphics or by reason of any accidents caused by or resulting therefrom. In addition, every person licensed to erect street graphics shall carry commercial general liability insurance in the amount of at least five hundred thousand dollars (\$500,000) in the aggregate. As evidence of that coverage the licensee shall provide a Certificate of Insurance, on a form provided by the City. (Am. by Ord. 10,809, 1-4-94; ORD-08-00109, 10-7-08)

- (6) Unsafe and Unlawful Street Graphics and Structures.
- (a) If the Building Inspection Division of the Department of Planning and Community and Economic Development shall find that any street graphic regulated herein is unsafe or insecure, or is being maintained in violation of the provisions of this code, it shall give written notice to the permittee thereof and the owner of the street graphic or of the property on which it is located. If the permittee, owner, or user fails to remove or alter the structure so as to comply with the standards herein set forth within five (5) days after such notice or within two (2) hours for portable or inflatable street graphics, such street graphic may be removed or altered to comply by the Director of the Building Inspection Division at the expense of the permittee or owner of the property upon which it is located. Alternatively, a citation may be issued or the violation may be referred to the City Attorney for prosecution of a forfeiture and/or injunctive action. Repeat violations may be prosecuted by issuance of a citation or referred for prosecution immediately without the above-mentioned notice. The Director of the Building Inspection Division shall refuse to issue a permit to any permittee or owner who refuses to pay costs so assessed. The Director of the Building Inspection Division may cause any street graphic which is an immediate peril to person or property to be removed summarily and without notice. (Am. by Ord. 9538, 7-28-88; ORD-08-00109, 10-7-08)
- (b) Bracing of Street Graphics. No street graphic or structure or any part of such structure as defined in the preceding sections, or any anchor, brace, guidewire or guide rod shall be attached, fastened or anchored to any fire escape, fire ladder or stand pipe, and no such structure or any part of such structure or anchor brace, guidewire or guide rod shall be erected, put up or maintained so as to cover or obstruct any roof, required doorway, required window or other opening of any building so as to prevent or hinder ingress or egress through such required door, doorway, window, exit or other opening, or so as to prevent or hinder the raising or placing of ladders against such building by the Fire Department of the City of Madison as necessity therefore may require.
- (c) Street Graphics Not to Constitute a Traffic Hazard. No street graphic as regulated by this ordinance shall be erected at the intersection of any streets in such a manner as to obstruct free and clear vision as further delineated in other sections of this ordinance; or at any location where, by reason of the position, shape or color, it may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal or device; or which makes use of the words "STOP", "LOOK", "DRIVE-IN", "DANGER", or any other word, phrase, symbol, or character in such manner as to interfere with, mislead or confuse traffic.
- (d) Flashing, Motion Street Graphics and Displays. Flashing, motion street graphics and displays either motor driven or wind propelled are prohibited except as provided for in Section 31.15(2) and Section 31.15(3). Also prohibited are flashing internally illuminated window graphics located within three (3) feet of any window. (Am. by Ord. 7990, 4-26-83)
- (e) Public Right-of-Ways.
1. No street graphic, advertisement, cabinet or obstruction, or any other object shall be placed upon, over, or in any public highway right-of-way, including the sidewalk, street, alley or public ground, or upon posts, trees or other supports in any public street or public ground, except that this section shall not be construed to prohibit the erection or placing of official traffic control devices, signs, signals or markers or other signs authorized by law or this ordinance, or of any other object specifically authorized by law of the State of Wisconsin or by these ordinances. This section shall not prohibit carrying of portable hand-held signs on the sidewalk or other pedestrian ways, when done so in compliance with Sec. 31.04(6)(k)5. (Am. by ORD-05-00193, 12-20-05; Renumb. by CHA-06-00006, 11-2-06--Non Charter Provision)

2. This subsection does not apply to those matters set forth in sec. 3.51(4)(i), MGO. This is a Charter Ordinance adopted pursuant to sec. 66.0101, Wis. Stats., and Article XI, Sec. 3 of the Wisconsin Constitution. (Cr. by CHA-06-00006, 11-2-06)
- (f) Suspended Street Graphics. No street graphic or other structure as defined in this section shall be fixed to or suspended from any other street graphic so that the distance from the lower side of the street graphic or projection will be less than eight (8) feet from the top of the sidewalk. (Am. by Ord. 12,513, 12-20-99)
- (g) Pennants and Flags. Pennants and flags are not permitted except as provided for in Section 31.15(2) and Section 31.075 of this ordinance. Refer to definition of flag in Section 31.03(2) for exceptions. (Am. by Ord. 10,809, Adopted 1-4-94)
- (h) Street Graphics Affixed Flat Against Building Walls. No street graphic affixed flat against a building wall shall extend beyond any edge of such wall, and no street graphic shall be painted or posted directly upon any wall except as provided for in Section 31.15(2) and Section 33.19(5)(d) or (e) of these ordinances. (Am. by Ord. 6886, 1-23-80; Ord. 12,364, 4-13-99)
- (i) Maintenance and Removal of Street Graphics.
1. All street graphics and structures shall be properly maintained and kept in an overall clean, neat state of appearance. It shall be the responsibility of the permit holder or property owner to maintain graphics and structures.
 2. Street graphics which no longer serve the purpose for which they are intended, or are not maintained, or which have been abandoned shall be removed by the latest permit holder, the property owner, or by the City at the expense of the property owner.
 3. Street graphics which have been damaged or defaced shall be cleaned, repaired or removed by the most recent permit holder or property owner, or by the City of Madison. If the City of Madison repairs or removes the structure, the expense of doing so will be charged to the current permit holder or property owner.
- (Sec. 31.04(6)(i) Am. by Ord. 10,158, 12-14-90)
- (j) Use of Motion Picture Machines, Projected Images, or Stereopticons in Conjunction With Graphics. No person shall use, operate or employ any motion picture machine, projected images or stereopticons in conjunction with any street graphics or structure, building, wall or any other structure.
- (k) Portable Street Graphics. Portable street graphics, other than the exceptions enumerated herein, shall be prohibited because they are generally more distracting and hazardous to pedestrian and traffic safety, less compatible with surrounding uses and graphics, of lesser quality and more difficult to uniformly regulate than permanent street graphics, which are the preferred alternative. The exceptions shall be limited to the following:
1. Portable graphics used in a parade for which a permit has been issued under Section 12.87(11).
 2. Portable graphics exempted under Subdivisions (8)(a), (b) and (f) and merchandise graphics under Section 31.15(3) herein.
 3. Portable graphics on any public street and adjacent private property provided a street use permit has been issued under Sec. 10.056 and during noncommercial, nonprofit special events held at public parks, churches, and other large public or private open spaces where such events may be permitted, subject to the following conditions:

- a. Displays may not exceed fifteen (15) feet in height and may not be displayed from rooftops unless approved by the Common Council under Sec. 10.056 or the Board of Parks Commissioners for displays in public parks.
 - b. Displays must be set back sixty (60) feet from the traveled portion of any public street or highway and one hundred (100) feet from any intersection, unless approved by the Common Council under Sec. 10.056 or the Board of Parks Commissioners for displays in public parks.
 - c. Displays may not occupy parking spaces for persons with disabilities, drive aisles, or required parking spaces for multi-tenant properties, may not violate other applicable regulations including but not limited to the provisions of this subsection, and must be safely displayed and secured to prevent wind-blown hazards and vandalism. (Am. by ORD-06-00099, 8-2-06)
4. Portable graphic used on private property only as a business opening graphic, subject to the applicable requirements and conditions of paragraph 3. above, except that a fee of twenty-five dollars (\$25) per week or one hundred dollars (\$100) for thirty (30) days shall be paid prior to display at the Office of the Director of the Building Inspection Division. (Am. by Ord. 9538, 7-28-88; ORD-08-00109, 10-7-08)
 5. Hand-carried portable signs on private property with the owner's permission or hand-carried signs on the public sidewalk or other pedestrian way, if the person carrying the sign or the sign itself is not in violation of other ordinances or laws applicable to the location and conduct, including but not limited to obstructing traffic, obstructing the sidewalk, trespassing, or conducting or participating in an event for which a parade permit, street use permit or park use special event permit would be required by city ordinance, but without such a required permit. Portable hand-carried signs shall be prohibited on certain bridges and overpasses as stated in Sec. 31.04(6)(m) and this exception shall not apply. Nothing in this exception shall be construed to limit the application of Secs. 31.04(6)(c) or (e) of this ordinance, Wis. Stats. Chapter 86 and any regulations created by the Department of Transportation, or any other federal, state or local law that prohibits or restricts signs in highways or other right-of-ways, except as expressly stated herein. (Cr. by ORD-05-00187, 12-20-05)
- (l) Inflatable Street Graphics. Inflatable street graphics, other than the exceptions enumerated herein, shall be prohibited because they are generally more distracting and hazardous to pedestrian and traffic safety, less in scale and less compatible with surrounding uses and graphics, of lesser quality and more difficult to uniformly regulate than permanent street graphics which are the preferred alternative. The exceptions shall be limited to the following:
1. Balloons and inflatable figures and displays used in a parade for which a permit has been issued under Section 12.87(11).
 2. Registered hot air balloons in use and momentarily moored but not being used primarily as a street graphic.
 3. Novelty-type balloons less than two (2) feet in diameter and less than three (3) feet in any dimension tethered or moored no more than ten (10) feet above the ground and inflatable devices exempted under (8)(f) herein.
 4. Inflatable graphics, including registered hot air balloons moored and being used primarily as a street graphic, on any public street and adjacent private property provided a street use permit has been issued under Sec. 10.056 and during noncommercial, nonprofit special events held at public parks, churches, and other large public or private open spaces where such events may be permitted, subject to the following conditions:

- a. General public liability and property damage insurance is provided for the inflatable device with the City of Madison being named as an additional insured. Liability coverage shall include minimum limits of three hundred thousand dollars (\$300,000) per occurrence and property damage limits of fifty thousand dollars (\$50,000) per occurrence;
 - b. Displays may not exceed thirty-five (35) feet in height and may not be displayed from rooftops or moored or tethered with the device floating more than one foot off the ground unless approved by the Common Council under Sec. 10.056 or the Board of Park Commissioners for displays in public parks;
 - c. Displays must be set back sixty (60) feet from the traveled portion of any public street or highway and one hundred (100) feet from any intersection unless approved by the Common Council under Sec. 10.056 or the Board of Parks Commissioners for displays in public parks;
 - d. Displays may not occupy parking spaces for persons with disabilities, drive aisles, or required parking spaces for multi-tenant properties and must be safely displayed in accordance with the manufacturer's instructions and applicable Federal Aviation Administration (FAA) regulations. (Am. by ORD-06-00099, 8-2-06)
5. Inflatable graphics used on private property only as a business opening graphic, subject to the applicable requirements and conditions of paragraph 4. above, except that a fee of twenty-five dollars (\$25) per week or one hundred dollars (\$100) for thirty (30) days shall be paid prior to display at the Office of the Director of the Building Inspection Division. (Am. by ORD-08-00109, 10-7-08)

(Cr. by Ord. 9538, 7-28-88)

- (m) Street Graphics on Bridges and Overpasses. No person shall display, place, erect, post, maintain, install, affix, or carry any street graphic, including a hand-carried sign, on any portion of a vehicular or pedestrian bridge or overpass that passes over a freeway or expressway as defined in Wis. Stats. sec. 346.57, or a controlled access highway as defined in Wis. Stats. sec. 990.01, when such highway has a speed limit of more than 40 miles per hour, whether the highway is under the jurisdiction of the federal, state or local government, provided that such sign or graphic is visible from such freeway, expressway or controlled access highway.

This paragraph shall not apply to "official traffic control devices" as defined in Wis. Stats. sec. 340.01(38), 2003-04 and as may be amended, which are authorized by law and erected by the authority having jurisdiction over the highway or right of way. Nothing in this subsection shall be construed to limit or restrict the application of Secs. 31.04(6)(c) and (e) of this ordinance, Wis. Stats. Chapter 86 and any regulations created by the Department of Transportation, or any other federal, state or local law that prohibits or restricts the placement of signs in highways or other right-of-ways. (Cr. by ORD-05-00193, 12-20-05)

(7) Construction Requirements.

- (a) Street Graphic Structure. Street graphic structure shall be of incombustible materials with the exception that nonelectric business and identification graphics not exceeding thirty-two (32) square feet in area nor six (6) feet in height aboveground and located in a landscaped area may have a preservative treated wood graphic structure.
- (b) Structural Trim. Structural trim of street graphics may be of approved combustible material.
- (c) Street Graphic Facings. Street graphic facings shall be of incombustible materials or approved combustible materials.
- (d) Letters, Decorations and Embellishments.
 - 1. Letters, decorations and embellishments of graphics shall be of incombustible materials or other approved combustible materials.
 - 2. Letters, decorations and embellishments, in cut-out or irregular form, maintained in conjunction with, attached to, or superimposed upon any street graphic shall be safely and securely built or attached to the street graphic structure.
- (e) Electric Street Graphics.
 - 1. The application for a permit for erection of a street graphic in which electrical wiring and connections are to be used, shall be submitted to the Electrical Inspector. The Electrical Inspector shall examine the plans and specifications respecting all wiring and connections to determine if the same shall be made, wired and constructed in accordance with the ordinances of the City of Madison relating to electrical wiring and construction, and he shall approve said application if the said plans and specifications comply with said code. This action of the Electrical Inspector shall be taken prior to submission of the application to the Director of the Building Inspection Division for final approval of the erection permit. (Am. by Ord. 8081, 7-29-83; ORD-08-00109, 10-7-08)
 - 2. All electrical graphics other than those bearing the label of approval of a recognized testing laboratory shall be inspected in the shop of the corporation, firm or person fabricating or erecting the electric graphic, or may be inspected on the premises where the said electrical graphic is to be erected.
 - 3. All electrical graphics shall be equipped with a watertight safety switch. The switch shall be located where the electrical supply enters the graphic.
 - 4. Covers of service openings shall be securely fastened by chain or hinges.
- (f) Wind Pressure. All street graphics shall be designed, constructed and anchored to withstand a horizontal wind pressure of not less than thirty (30) pounds per square foot of exposed area.
- (g) Dead Load. All sign structures shall be constructed and fastened to adequately support the dead load of any graphic.
- (h) Footings. All footings for supports of ground graphics shall be not less than three (3) feet six (6) inches below the existing ground level.
- (i) Attachment. Projecting graphics which are permitted may not be attached to any part of an unbraced wall above a point of bearing of the roof rafters.
- (j) Roof or Above-Roof Graphics. Graphics constructed on the roof of a building shall be thoroughly secured and anchored.

- (8) Exemptions. Notwithstanding the purpose and scope of this ordinance stated above, the Common Council recognizes the need for certain specialized street graphics to serve governmental, noncommercial, freedom of speech and expression, and limited commercial purposes without substantial controls. Identification, real estate, governmental and temporary graphics may increase traffic safety, while noncommercial decorations and graphics serve necessary freedom of expression purposes. Although commercial in nature, temporary graphics replace permanent graphics which cannot be seen due to public works activities; real estate graphics are necessary due to the unique locational permanence of properties, in contrast to goods and services sold thereon; and Warner Park athletic field graphics are consistent with the stated purpose and scope without need for further regulation. No permit will be required for the following street graphics provided, however, said street graphics shall be subject to provisions of the General Ordinances of the City of Madison. (Am. by Ord. 9538, 7-28-88; Ord. 12,648, 7-28-00)
- (a) Real estate graphics or graphics expressing any noncommercial message in residential districts not exceeding twelve (12) square feet in area which advertise the sale, rental or lease of the premises upon which said graphics are located only, or which contain any noncommercial message. (Am. by Ord. 10117, 9-27-90)
 - (b) Real estate graphics or graphics expressing any noncommercial message in special, commercial and manufacturing districts not exceeding thirty-two (32) square feet in area which advertise the sale, rental or lease of the premises upon which said graphics are located only, or which contain any noncommercial message. (Am. by Ord. 10117, 9-27-90)
 - (c) Identification street graphics denoting only the name and profession of the occupant in a commercial building, public institutional building or dwelling, and not to exceed two (2) square feet in area. (Am. by Ord. 8947, 8-29-86)
 - (d) Memorial graphics or tablets, names of buildings and date of erection when cut into any masonry surface.
 - (e) Traffic or other municipal graphics, legal notices, railroad crossing graphics, warning, and such temporary emergency or noncommercial graphics as may be approved by the Common Council or state law. (Am. by Ord. 9538, 7-28-88)
 - (f) Holiday or other temporary noncommercial decorations and ornamental lighting on private property, including inflatable devices temporarily displayed in a required rear yard of a residentially zoned property which do not contain any commercial message or logo or depict any commercial symbol or character and which do not exceed fifteen (15) feet in height. (Am. by Ord. 9538, 7-28-88)
 - (g) Temporary graphics denoting owner, occupant, architect, engineer or contractors located on street occupancy barricades only. Refer to Section 29.10(7) of the Building Code.
 - (h) Temporary leaflet-type commercial and noncommercial messages placed on kiosks or information boards which are erected on private property in the public right-of-way pursuant to the encroachment proceedings in Section 10.31 of the Madison General Ordinances. Kiosks and information boards help to minimize and eliminate clutter and provide convenient alternatives to attachment of leaflets to trees or public structures in the right-of-way. (Am. by Ord. 9538, 7-28-88)
 - (i) Street graphics erected for governmental purposes by the City of Madison on City-owned lands, park property or City-owned and occupied buildings twenty-four (24) square feet or under in area and constructed at a minimum height of two (2) feet and maximum height of ten (10) feet above the curb when erected by the Parks, Traffic Engineering Divisions, or the Economic and Community Development Division of the Department of Planning and Community and Economic Development. (Am. by Ord. 9748, Adopted 4-4-89)

- (j) Election Campaign Graphics. Street graphics containing a “political message” during an “election campaign period”, pursuant to Section 12.04, Wis. Stats., provided that such graphics shall not exceed twelve (12) square feet in area, shall not have any electrical, mechanical or audio auxiliary component, and shall not be attached to or placed on utility poles, trees, traffic devices, or within the public way and, if affixed to a permanent structure, shall not extend beyond the perimeter of the structure or obstruct any window, door, fire escape, ventilation shaft or other area which is required by an applicable building code to remain unobstructed. (R. and Re-Cr. by Ord. 8947, 8-29-86)
 - (k) Window street graphics as allowed under Section 31.10 of these ordinances. (Am. by Ord. 12,648, 7-28-00)
 - (l) Street graphics oriented primarily to spectators, erected inside of or attached to, interior walls, fences or scoreboards at the Warner Park athletic field, provided permission is granted by the City Parks Commission. (Am. by Ord. 10117, 9-27-90)
 - (m) Other graphics specifically authorized by laws of the State of Wisconsin, including but not limited to, access and parking for the person with a disability graphics, gasoline price graphics and warning graphics placed upon utility poles and structures. (Cr. by Ord. 9538, 7-28-88; Am. by ORD-06-00099, 8-2-06)
 - (n) Graphics displayed on the lowest twelve inches (12”) of the principal face or side panels of awnings provided they do not exceed six inches (6”) in height. (Cr. by Ord. 9523, 7-15-88)
 - (o) Project graphics not regulated elsewhere in this ordinance. (Cr. by Ord. 9819, 7-27-89)
 - (p) Temporary graphics denoting the times and locations of public hearings before the Plan Commission and Common Council on applications for map amendments or conditional uses. (Cr. by Ord. 13,045, 4-9-02)
- (9) Superseding Regulations.
- (a) Graphics Located Near Interstate Highways. All graphics hereafter erected within six hundred sixty (660) feet from the edge of the interstate highway easement or property measured horizontally along a line normal or perpendicular to the center of the interstate highway shall be subject to the provisions of Section 84.30, Wis. Stats. and Section Hy. 19.00 through 19.05, Wis. Adm. Code.
 - (b) The following sections supersede any conflicting provisions in this chapter:
 1. Section 28.04(21)(b).
 2. Sections 28.08(7)(c) 7 and 8.
 3. Section 28.09(3)(d)15.c.
 4. Section 28.09(3)(d)16.e.
 5. Section 28.09(3)(d)17.c.
 6. Section 28.10(4)(d)19.c.

31.05 NONCONFORMING STREET GRAPHICS.

- (1) Any existing street graphic except an advertising street graphic, which was conforming at the time of erection and becomes nonconforming on or before the effective date of this ordinance, may be continued provided that no increase in size, illumination, or flashing of such street graphic shall be made and further provided that in the event of a change of use all street graphics shall conform to the provisions of the zoning district in which said graphics are located except as provided for in Section 31.05(3) and where two or more uses have sign frames on a single ground sign structure, faces only in such frames may be changed to serve new uses. (Am. by Ord. 7946, 2-25-83)
- (2) Nonconforming Advertising Street Graphics.
 - (a) Any existing advertising street graphic, and its supporting structure if other than a wall graphic, which is located on any zoning lot with frontage on State Street, on the Inner or Outer Ring or on streets connecting the Inner Ring and Outer Ring shall be removed by the owner thereof at no cost to the City no later than December 31, 1983. For purposes of this subsection, the term "Inner Ring" shall mean the connecting pattern of streets abutting the Capitol Square, to wit: Main Street, Pinckney Street, Mifflin Street and Carroll Street. The term "Outer Ring" shall mean the connecting pattern of streets one block off the Capitol Square, to wit: Doty Street, Webster Street, Dayton Street and Fairchild Street. All other existing advertising graphics within the No Advertising Graphic District, except for the Howard Johnson directional bulletin located at 525 University Avenue which may only continue as a directional graphic, the two roof graphics located at 753 East Washington Avenue and the three ground graphics located at 640 Williamson Street, shall be removed by the owner at no cost to the City at the rate of no less than one graphic per year beginning in calendar year 1983. However, all such graphics shall be removed no later than December 31, 1989.
 - (b) Any other advertising street graphic existing as of November 1, 1983, including those excepted from or otherwise not included in the areas set forth in Subdivision (a) above, may be continued provided that it may not be relocated, replaced, expanded, enlarged, repositioned or raised in height. Such existing advertising street graphics may not be restored or reconstructed if damaged or destroyed by fire or other casualty or act of God to the extent that the total cost of restoration to the condition in which it was before the occurrence shall exceed 50% of its assessed value or the cost to replace with a new structure of equal quality, whichever amount is lower. The determination of eligibility for restoration or reconstruction hereunder shall be made by the Urban Design Commission and any restoration or reconstruction without the approval of the Urban Design Commission is prohibited. Violation of this subdivision shall result in the said graphic being subject to immediate removal by the owner thereof at no cost to the City. Ordinary repairs or normal maintenance shall be considered required by law hereunder. (Am. by Ord. 9806, 6-29-89)

(Sec. 31.05(2) Am. by Ord. 8164, 12-2-83)
- (3) Existing nonconforming commercial uses in residential zoned districts may be permitted to erect street graphics which do not conform to the district in which such use is located provided such street graphics are approved as a conditional use by the Plan Commission according to the standards of Section 28.12(10)(g) of the Madison General Ordinances.

31.06 AWNING GRAPHICS.

- (1) Graphics may be displayed on the lowest twelve inches (12") of the principal face or side panels of awnings provided they do not exceed six inches (6") in height.
- (2) An awning may be designated a signable area as an alternative to one on the building facade provided that the awning does not exceed it in area. The area of graphics displayed shall be no more than forty percent (40%) of the area of the principal face of the awning or two (2) square feet of graphics for each lineal foot of building frontage, but not to exceed one hundred percent (100%) of the signable area.

- (3) Any internally illuminated awning to be erected on property which is zoned residential, or which is within one hundred (100) feet and directly across the street visible from property which is zoned residential or which is adjacent to, or across the street from, a designated landmark or a public park, will require City Plan Commission approval under the procedure and provisions of Section 28.12(10) of the Madison General Ordinances after the review and recommendation of the Urban Design Commission.
 - (4) The illumination level of an internally illuminated awning shall not exceed seventy-five (75) footlamberts.
- (Sec. 31.06 Cr. by Ord. 9523, 7-15-88)

31.07 WALL AND ROOF GRAPHICS.

- (1) Subject to the requirements of the Tables of Permitted Graphics, Section 31.15, any occupant may display wall or roof graphics. Wall graphics may be attached flat to or pinned away from the wall.
- (2) Wall and Roof Graphics. All wall and roof graphics shall be displayed within the selected signable area. The signable area may be determined by choosing one area of the building facade as defined under "signable area" in Section 31.03(2). The signable area for a wall graphic may be divided for building occupants. When the building facade is divided by architectural details designating separate occupancies, each occupant will be allowed a signable area. The total signable area shall not exceed that permitted in Sec. 31.07(3) of this ordinance. Directional street graphics, menu boards and not more than one (1) logo may be placed outside the designated signable area in a location otherwise conforming with the requirements of this chapter. Directional street graphics, menu boards or logos exceeding the confines of a six (6) square feet rectangle shall be approved by the Urban Design Commission.

For buildings exceeding 125 feet in length or eight (8) stories or more in height, see Subsection (7) for additional signable areas. The size of the signable area is determined by calculating the number of square feet which are enclosed by an imaginary rectangle or square drawn around the selected area. This area is subject to the following restrictions:

(Introductory Paragraph Am. by Ord. 11,928, 8-30-97)

- (a) Where a building consists of two (2) or more stories, wall graphics containing the name and/or logo of places of entertainment and/or assembly seating two hundred (200) or more persons may extend to the juncture of the roof with the building wall or to the top of any parapet, but wall graphics for all other activities may not extend above the sill of the second story windows; if the occupant is located above the first floor, the graphics may not extend above the sill of the third story window.
- (b) Signable area for roof graphics may not extend above the height limit permitted for a ground graphic at that location.
- (c) The signable area may be above the roof in manufacturing districts. The signable area above the roof line in the M1 and M2 districts is calculated on the wall facade and can be transferred above the roof line if no wall graphic is to be displayed." (Am. by Ord. 11, 860, 5-19-97)
- (d) (R. by Ord. 11, 860, 5-19-97)
- (3) The permitted gross area of wall, roof and above-roof graphics is to be no more than forty percent (40%) of the signable area or two (2) square feet of graphics for each lineal foot of building frontage but not to exceed one hundred percent (100%) of the signable area.
- (4) Wall, roof, and above-roof graphics are also subject to the additional following height limitations:
 - (a) If graphics are placed between windows, the height of the graphic may not exceed two-thirds (2/3) the height of the space between windows.
 - (b) An above-roof graphic may extend to a maximum height of ten(10) feet above the roof line. (Am. by Ord. 11,860, 5-19-97)
- (5) (R. by Ord. 11, 860, 5-19-97)

- (6) Off-Street Parking. Wall graphics may be displayed on the side or rear of a building adjacent to an off-street parking area if the off-street parking area is thirty-three (33) feet or more in width. Such graphics shall be subject to the same limitations as graphics on the street side of the building but shall not exceed the area of the maximum size wall graphic permitted on that property. However, the side or rear of the building adjacent to the off-street parking area shall not be included when calculating the signable area allowable to wall graphics on the street side.
- (7) Large Buildings.
- (a) On each facade of the building, where the total wall signage on the facade does not exceed that permitted in Sec. 31.07(3) of this ordinance and a principal graphic is displayed, up to four (4) accessory graphics, the square footage of each which shall not exceed 50% in area and 50% in the height of the principal graphic, may be permitted.
- (b) For buildings eight (8) stories or more in height, an additional signable area for each facade may be selected provided that the additional signable area shall not exceed five percent (5%) of the area of the facade.
- (Am. by Ord. 11,928, 8-30-97)
- (8) Business banners may be used as wall graphics under the provisions of Subsections (2) through (4) hereof and are subject to the same construction requirements under Section 31.04(7). (Cr. by Ord. 9005, 11-14-86)
- (9) (R. by Ord. 10,809, Adopted 1-4-94)

31.071 CANOPY GRAPHICS

A street graphic may be displayed on a canopy, subject to the provisions of this subsection.

- (1) Canopy fascia graphics. A graphic may be displayed on the fascia of a canopy. Such graphic shall be considered a wall graphic, with the fascia of the attached canopy acting as the signable area. The signable area for a canopy fascia graphic shall not project beyond the limits of the canopy in any direction, and shall be no wider than the width of the canopy.
- (2) Above-canopy graphics. In lieu of a canopy fascia graphic or wall graphic, a maximum of one (1) graphic may be erected on the top of an attached canopy, except where the canopy is facing two street frontages or facing an off-street parking area which is thirty-three (33) or more feet in width, a maximum of two (2) graphics may be erected on the top of said canopy. Any above-canopy graphic shall be subject to the following additional restrictions:
- (a) The graphic shall be the business name or business logo only.
- (b) The graphic shall have a vertical dimension no higher than the roofline of the corresponding building facade and no higher than two (2) feet above the canopy, except as allowed in Sub. (2)(c)2., herein.
- (c) The graphic shall be constructed only of free-standing letters, numbers, other characters, or free-standing business logos, subject to the following:
1. The supporting sign construction for a logo must conform to the shape of the logo.
 2. A logo shall be limited to four (4) square feet in area to be measured by drawing the smallest possible square or rectangle enclosing the extreme limits of the logo. The logo shall not extend above the roofline of the corresponding building facade. However, a logo may exceed the two (2) foot height limit.
- (d) The horizontal dimension of the graphic shall be no wider than the width of the attached canopy on which it is displayed, or the width of the corresponding facade, whichever is narrower.
- (e) An above-canopy graphic may be placed at any distance from the face of the building, except a graphic which crosses architectural detail may not be displayed closer than five (5) feet from the nearest face of the building, unless prior approval of the Urban Design Commission has been obtained under Section 31.04(2)(b)2.b.vii.

- (3) Miscellaneous canopy graphics. A graphic may be displayed on a detached canopy or an attached canopy with no signable fascia area as described in Subsec. (1), if approved by the Urban Design Commission as part of a Comprehensive Design Review under Sec. 31.04(2)(b)2.b.vi. The maximum size of any canopy graphic approved under this subsection shall be not more than ten percent (10%) of the total area of an imaginary vertical plane measured from the upper edge of the canopy to the lowest point of the canopy on which face the graphic will be attached, excluding any supporting structures. The horizontal dimension of the graphic shall be no wider than the width of the canopy on which it is displayed. In no case shall a canopy graphic be approved unless it is in compliance with Sec. 31.04(6)(f). In addition to meeting the objectives of a Comprehensive Design Review, any graphic approved under this subsection shall integrate harmoniously into the design of the canopy structure, building, and overall signage treatment; and may be approved in lieu of other permitted graphics as provided in this Chapter. (Am. by Ord. 12,685, 9-25-00)

(Sec. 31.071 Cr. by Ord. 12,513, 12-20-99)

31.075 PENNANTS, FLAGS AND DECORATIVE AND PROMOTIONAL BANNER(S).

- (1) It shall be unlawful for the owner or occupant of any property to permit the placement or display of any pennants, flags or decorative and promotional banners upon private property except in compliance with the following:
- (a) A permit fee of twenty-five dollars (\$25) for each promotional banner.
 - (b) A minimum clearance of eight feet (8') shall be required over walkways and twelve feet (12') over parking areas.
 - (c) Review and approval by the Director of Planning and Community and Economic Development or her/his designee.
 - (d) No pennant, flag or banner shall be so installed to intrude into any public right-of-way.
- (2) It shall be unlawful for any person to install, place or display any pennant, flag or decorative and promotional banner in the public right-of-way except in compliance with the following:
- (a) A permit fee of fifty dollars (\$50) for each promotional banner.
(Am. by Ord. 12,016, 2-2-98)
 - (b) A minimum vertical clearance of seventeen feet (17') shall be maintained from the roadway to the bottom of the banner when mounted on poles, except on State Street where the clearance shall be a minimum of sixteen feet (16'). When mounted to a structure, the minimum vertical clearance shall be no lower than the bottom of the structure.
 - (c) The maximum tensile strength of any rope, cord or other attachment device to be used for attaching banners to City property shall be four hundred (400) pounds.
 - (d) Attachment of any banner to a City pole shall be by existing eye bolts or other method approved by the City Department of Transportation.
 - (e) A certificate of insurance evidencing the existence of commercial general liability insurance shall be filed with the City Department of Transportation before banner installation with minimum limits of \$500,000 per occurrence with the City named as an additional insured.
- (3) Any pennant, flag or decorative and promotional banner installed placed or displayed in the public right-of-way in violation of this ordinance shall be removed at the owner's expense which shall be in addition to and in excess of any forfeiture or storage fees for violating this ordinance.
- (4) Any person who violates any provision of this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be subject to a forfeiture of not less than thirty dollars (\$30) nor more than two hundred dollars (\$200) and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

(Section 31.075 Cr. by Ord. 10,809, Adopted 1-4-94)

31.08 GROUND GRAPHICS.

For each zoning lot, no more than two (2) ground graphics may be displayed of the area and height indicated in the Tables of Permitted Graphics, Section 31.15, provided:

- (1) The zoning lot is accessible by automobile and/or has off-street parking on the premises; or
- (2) The edge of the building or structure in which the activity is conducted is set back at least thirty-five (35) feet from the edge of the adjacent street or highway right-of-way.
- (3) The height of a ground graphic shall be measured from the top of the graphic to the grade at the base of the supporting structure.
- (4) The total area of the ground graphic does not exceed that permitted for one ground graphic in the Tables of Permitted Graphics, Section 31.15(1).
- (5) An occupant may have both ground and projecting graphics provided only one of these graphics exceeds twelve (12) square feet in gross area provided that in no case shall more than two (2) ground graphics be permitted on any zoning lot.

31.09 PROJECTING GRAPHICS.

- (1) In commercial or manufacturing districts, occupants may display one projecting graphic on each street frontage subject to the provisions of Section 31.08(5). The permitted area of projecting graphics is shown in the Tables of Permitted Graphics, Section 31.15.
- (2) The following additional regulations also apply to projecting graphics:
 - (a) Projecting graphics must clear the sidewalk by at least eight (8) feet, and may project no more than fifteen (15) inches into the public right-of-way. Marquee graphics are excluded from this constraint.
 - (b) Where setbacks permit, projecting graphics may not extend more than six (6) feet from the building face.
 - (c) Projecting graphics may extend to the juncture of the roof with the building wall or to the top of any parapet. If the building consists of two (2) or more stories, projecting graphics for places of entertainment and places of assembly seating two hundred (200) or more persons may extend to the juncture of the roof with the building wall or to the top of any parapet, but projecting graphics for all other occupants may not extend above the sill of the second story window unless the occupant is located above the first floor in which case the projecting graphic may not extend above the sill of the third story window.
- (3) In lieu of a projecting graphic permitted in Subsections (1) and (2) hereof, occupants may elect to use a wall graphic located on the side of the building displaying the name of the establishment only, subject to the area and other limitations contained in Subsection (1) hereof and Section 31.07.
- (4) Business banners may be used as projecting graphics under the provisions of this section and are subject to the same construction requirements under Section 31.04(7). Business banners may project beyond fifteen (15) inches into the public right-of-way when they are attached to or suspended from a canopy or awning. Pennants, flags and decorative and promotional banners are subject to the requirements of Section 31.07(9). (Cr. by Ord. 9005, 11-14-86)

31.10 WINDOW GRAPHICS.

Window street graphics as defined in Section 31.03(2), may be displayed without a permit, subject to the following restrictions:

- (1) Window graphics consisting solely of individual alphabetic letters, numerals, or other symbolic characters without any background may be displayed but shall not cover more than thirty (30) percent of the total window area.
 - (2) Window graphics that combine the individual characters allowed in Subsection (1) with other opaque objects, logos, or images or any type of background may be displayed but shall not exceed twenty (20) percent of the total window area.
 - (3) The "total window area" shall be one continuous panel of glass or other transparent material, or a set of two or more panels divided by mullions of six (6) inches in width or narrower. Panels surrounded on all sides by solid walls or mullions wider than six (6) inches shall be considered individual windows.
 - (4) The size of the graphic shall be determined by measuring a box around each group of characters, objects, images, logos and any background.
 - (5) For purposes of this section, any banner attached to the outside of a window shall not be considered a window street graphic.
 - (6) Window street graphics that are internally illuminated and flashing are prohibited.
- (Am. by Ord. 12,648, 7-28-00)

31.11 ADVERTISING STREET GRAPHICS AND OFF-PREMISE DIRECTIONAL GRAPHICS. (Title Am. by Ord. 10,162, 12-28-90)

- (1) Existing advertising street graphics are nonconforming and permitted to remain only in the C2, C3, and C3L Commercial Districts and the M1 and M2 Manufacturing Zoning Districts as regulated in this section and in Section 31.15(3), subject to the nonconforming advertising street graphics provisions of Section 31.05(2). Notwithstanding any other provision of these ordinances, new, relocated and replacement advertising street graphics are prohibited. Off-premise directional graphics are permitted only in the C1, C2, C3, and C3L Commercial Districts, and the M1 and M2 Manufacturing Districts as regulated in this section. (Am. by Ord. 10,327, 11-29-91)
- (2) General Regulations.
 - (a) In addition to the regulations in this subsection, advertising street graphics shall conform to all other provisions of this chapter except size, height, setback and signable area regulations which apply only to other street graphics.
 - (b) Advertising street graphics, and their supporting structures if other than a wall graphic, shall be spaced at intervals of not less than three hundred (300) feet when viewed from one directional flow of street traffic.
 - (c) Reserved For Future Use. (R. by Ord. 8164, 12-2-83)
 - (d) An advertising street graphic which is a wall graphic shall not exceed three hundred (300) square feet in area and shall not project beyond the limits of the facade on which it is located.

- (e) No advertising street graphic which is a ground graphic shall exceed three hundred (300) square feet in area, except that any advertising street graphic which is located on a zoning lot with frontage on a street on which the speed limit exceeds forty-four (44) miles per hour, provided that such advertising street graphic conforms to all other provisions of this chapter, may be as large as seven hundred and fifty (750) square feet in area.
- (f) No advertising street graphic shall exceed thirty (30) feet in height except that a design extension may exceed the permitted height limit by no more than eight (8) feet provided that the sum total of the area of all such extensions does not exceed seventy-eight (78) square feet in area. The total sum of the area of all design extensions in excess of thirty (30) feet in height shall be determined by calculating the area of the smallest square or rectangle, the sides of which are perpendicular to the ground, that encompasses all such design extensions. In no case shall any design extension which protrudes from the top edge of an outdoor advertising graphic exceed eight (8) feet in height even where the height of the main or principle portion of the outdoor advertising graphic is less than thirty (30) feet. In the event this provision relating to extensions is amended or repealed, any extensions permitted hereunder shall be promptly lowered in height or removed, accordingly, by the owner at no cost to the City. (Am. by Ord. 11,234, 4-13-95)
- (g) The following setbacks for advertising street graphics are required:
 - 1. An advertising street graphic situated parallel to the right-of-way line must be set back a distance equal to its height.
 - 2. An advertising street graphic perpendicular, or nearly so, to the street right-of-way line must be set back three (3) feet from the property line.
- (h) Roof or above-roof advertising street graphics shall not be permitted.
- (i) No advertising street graphics are permitted in districts of special control.
- (j) No advertising street graphics are permitted on lots on which dwelling units are located, except caretakers' or guards' dwelling units shall be permitted on the same lot with advertising street graphics. (Am. by Ord. 9209, 6-1-87).
- (k) No advertising street graphics shall be permitted on the front facade of any building.
- (l) No advertising street graphic shall be located in any required front yard or in the last ten (10) feet of any required rear yard.
- (m) No advertising street graphic shall be located on any zoning lot which is occupied by a nonconforming use. (Cr. by Ord. 6077, 1-6-78)
- (n) No off-premise directional graphic shall exceed sixteen (16) feet in height nor thirty-two (32) square feet in area. (Cr. by Ord. 8805, 2-27-86)
- (o) Not more than one (1) off-premise directional graphic shall be located on any zoning lot. (Cr. by Ord. 8805, 2-27-86)

- (p) The following setbacks for off-premise directional graphics are required:
 - 1. An off-premise directional graphic situated parallel to the street right-of-way must be set back a distance equal to its height.
 - 2. An off-premise directional graphic perpendicular, or nearly so, to the street right-of-way must be set back three (3) feet from the property line.
(Cr. by Ord. 8805, 2-27-86)
- (q) Off-Premise directional graphics meeting the purpose of the ordinance as described in Sec. 31.02(1) may be approved by the Director of Planning and Community and Economic Development, and, in case of rejection, may be appealed to the Plan Commission. (Cr. by Ord. 8805, 2-27-86)
- (r) Any design extension which causes an advertising street graphic or off-premise directional graphic to exceed its total permitted square footage of area is strictly prohibited. (Cr. by Ord. 11,234, 4-13-95)

31.12 CHANGEABLE COPY STREET GRAPHICS. Changeable copy street graphics are permitted provided that:

- (1) The changeable copy is integral to a business identification graphic.
 - (2) The combined area of the changeable copy and business identification graphic does not exceed that which is permitted in Section 31.15 of this ordinance.
 - (3) That the characters forming the changeable copy message shall be of one color.
- (Sec. 31.12 Cr. by Ord. 10,283, 7-15-91)

31.13 DISTRICTS OF SPECIAL CONTROL.

- (1) Historic Districts. Section 33.19 of the Madison General Ordinances permits the City to designate Historic Districts. The plan for an Historic District may include specific street graphic regulations which shall supersede the provisions of this ordinance.
- (2) Urban Design Districts. Section 33.25 of the Madison General Ordinances permits the City to designate Urban Design Districts. The Urban Design Plan for any such district may include specific graphic regulations which shall supersede the provisions of this ordinance.
- (3) Planned Community Development District (PCD). In the Planned Community Development district, street graphics shall be classified and permitted in accordance with the requirements under the C1 district, unless different requirements are recommended by the Urban Design Commission and are made a part of an approved recorded Specific Implementation Plan. If such different requirements are approved they shall be, along with the recorded plan itself, construed to be and enforced as a part of this ordinance. (Am. by Ord. 7441, 6-18-81)
- (4) Planned Unit Development District (PUD). In the Planned Unit Development district, there shall be no predetermined specific regulations for street graphics, but such requirements as are made a part of an approved recorded precise development plan agreed upon by the owner and the City shall be, along with the recorded plan itself, construed to be and enforced as a part of this ordinance.
- (5) Planned Community Mobile Home Park District. The same regulations shall apply as those regulating street graphics in the PUD district.
- (6) No Advertising Graphic District. The No Advertising Graphic District is the area bounded by Lake Mendota on the North, Lake Monona on the South, Livingston Street on the East and Park Street from Lake Mendota to Dayton Street to Bedford Street to Lake Monona on the West. This district is of special importance historically and includes past, present and future redevelopment projects representing significant public and private investments. (Cr. by Ord. 8164, 12-2-83)
- (7) Research Park-Specialized Manufacturing District-RPSM. In the Research Park-Specialized Manufacturing District, street graphics shall be permitted in accordance with Section 28.10(2)(h)6. of the Madison General Ordinances and as approved by the City Plan Commission subject to the conditional use provisions of Section 28.12(10) of the Madison General Ordinances. (Cr. by Ord. 8386, 7-25-84)
- (8) Annexed Lands. Lands annexed to the City after the effective date of this subsection shall be a district of special control as defined above. (Cr. by Ord. 9332, 11-30-87)
- (9) C4 Central Commercial District. In the C4 Central Commercial District, all street graphics shall conform to any requirements for street graphics found in the "Urban Design Guidelines for Downtown Madison" published by the Urban Design Commission and referenced in Sec. 28.09(5), in addition to the provisions of this ordinance. (Cr. by Ord. 13,413, 9-24-03)

31.14 AGRICULTURAL, CONSERVANCY, AND RESIDENTIAL DISTRICTS.

(1) Conservancy and Agriculture Districts. Street graphics shall be classified and permitted in accordance with the requirements under the R1 district, provided, however, for any commercial use allowed as a conditional use in the Conservancy or Agriculture district, the regulations governing street graphics in the C1 district shall apply.

(2) Residential Districts.

(a) Street graphics which are subject to the following regulations are not required to conform to the regulations set forth in Sections 31.07, 31.08, 31.09 and 31.10.

(b) In the R1 district, the following nonilluminated street graphics are permitted under the conditions specified provided that no street graphic shall violate the provision for vision clearance set forth in Section 28.04(12)(e) of the Madison General Ordinances.

1. Nameplates and Identification Street Graphics.

a. Residential Buildings. There shall be not more than one nameplate, not exceeding two (2) square feet in area, and indicating only the name and address of the occupant or a permitted occupation for each dwelling unit, provided that on a corner zoning lot or a through lot, two such nameplates for each dwelling unit, one facing each street, shall be permitted. For multiple-family dwellings, apartment hotels, fraternity and sorority houses and lodging houses, a single identification street graphic, not exceeding three (3) square feet in area and indicating only the name and address of the building and the name of the management thereof, may be displayed, provided that on a corner zoning lot or a through lot, two such street graphics, one facing each street, shall be permitted.

b. Nonresidential Buildings. For nonresidential buildings, a single identification street graphic, not exceeding six (6) square feet in area and indicating only the name and address of the building and the principal occupant may be displayed, provided that on a corner zoning lot or a through lot, two (2) such street graphics, one facing each street, shall be permitted. All street graphics shall be affixed flat against building walls.

c. Height. No street graphic shall project higher than one story or twelve (12) feet above curb level, whichever is lower.

(Am. by Ord 13,144, 9-24-02)

2. Real Estate and Noncommercial Street Graphics.

a. Area and Number. There shall be not more than one such street graphic for each zoning lot, except that on a corner zoning lot, or a through lot or a lot abutting a waterway, two (2) street graphics, one facing each street or waterway, shall be permitted. No exempt street graphic shall exceed twelve (12) square feet in area in Residential districts or thirty-two (32) square feet in other districts. Such street graphic may be affixed flat against building walls or may be attached to the ground. No street graphic attached to the ground shall be closer than ten (10) feet to any lot line. (Am. by Ord. 9538, 7-28-88)

b. Height. No street graphic shall project higher than one story or twelve (12) feet above curb level, whichever is lower.

(Am. by Ord 13,144, 9-24-02)

3. Street Graphics Accessory to Parking Areas.
- a. Area and Number. Street graphics designating parking area entrances or exits are limited to one (1) street graphic for such exit or entrance, and to a maximum area of two (2) square feet each. One (1) street graphic per parking area, designating the conditions of use or identity of such parking area and limited to a maximum area of nine (9) square feet, shall be permitted. On a corner zoning lot or a through lot, two (2) such street graphics, one facing each street, shall be permitted. No street graphic shall project beyond the property line into the public way.
 - b. Height. No street graphic shall project higher than ten (10) feet above curb level.

(Am. by Ord 13,144, 9-24-02)

4. Church Bulletins, Hospital, School and PRD Identification Street Graphics.
- a. Area and Number. One (1) wall and one (1) ground identification street graphic per street frontage may be displayed street graphic per street frontage may be displayed with a maximum of two (2) ground graphics and two (2) wall graphics per zoning lot. Additional wall or ground graphics for wayfinding purposes may be permitted when approved by the Urban Design Commission when the zoning lot is occupied by two (2) or more of the uses described above and the size of the lot, number of vehicular and pedestrian entrances, and layout of the buildings require additional street graphics for wayfinding purposes in order to promote traffic and pedestrian safety. Street graphics under this paragraph shall not exceed twelve (12) square feet in area nor be closer than ten (10) feet to any lot line except such street graphic may be increased in area by one (1) square foot for each additional foot that the street graphic is set back more than twelve (12) feet from the street lot line. No street graphic under this paragraph shall exceed thirty-two (32) square feet in area.
 - b. Height. No street graphic shall project higher than one story, or twelve (12) feet above the curb level, whichever is lower.

(Am. by Ord 13,144, 9-24-02)

5. Project Graphics. The Zoning Administrator may issue a permit for the following nonilluminated project street graphics:
- a. A street graphic describing a construction or improvement project including the names of the contractors, architects, engineers, owners or occupants, provided that such street graphic may be in place only during the period that said project is under construction and while valid building permits are in force and further provided that only one such street graphic may be erected per street frontage, and no such graphic shall exceed thirty-two (32) square feet in area.
 - b. A street graphic located on a City-owned property and describing the intended development and any related information for such property, provided no such street graphic shall exceed thirty-two (32) square feet in area per street frontage.

6. Condominium Identification Street Graphics.

- a. A condominium may display condominium identification graphic(s) if the total acreage of the property of the condominium, as determined by the legal description within the condominium instruments, is one and one-half (1 ½ acres) or more and the condominium includes eight (8) or more units. For purposes of sec. 31.14(2)(b)6., the terms “condominium,” “condominium instruments,” “property,” and “units” shall have the meanings found in Ch. 703 of the Wisconsin Statutes.
- b. Number, Area, and Setback. One (1) wall and one (1) ground identification graphic per street frontage may be displayed; with a maximum of two ground (2) graphics and two (2) wall graphics per condominium. Condominium identification street graphics shall not exceed twelve (12) square feet in area, except that the Urban Design Commission may approve a graphic of more than twelve (12) but not more than thirty-two (32) square feet under sec. 31.04(2)(b)2.b. herein. No condominium identification street graphic shall be closer than ten (10) feet to any lot line.
- c. Height. No condominium identification street graphic shall project higher than one story, or twelve (12) feet above the curb level, whichever is lower.

(Cr. by Ord. 13,338, 6-7-03)

- (c) In the R2, R2S, R2T, R3, R4, R4A, and R4L districts, regulations governing street graphics in the R1 district shall apply. (Am. by Ord 13,144, 9-24-02)
 - (d) In the R5, R6, and R6H districts, the regulations governing street graphics in the R1 district shall apply, except for the following:
 - 1. For multiple-family dwellings, apartment hotels, fraternity and sorority houses, and lodging houses, a single identification street graphic, not exceeding twelve (12) square feet in area and indicating only the name and address of the building and the name of the management thereof, may be displayed, provided that on a corner zoning lot, two (2) such street graphics, one facing each street, shall be permitted.
 - 2. For nonresidential buildings, a single identification street graphic, not exceeding twelve (12) square feet in area and indicating only the name and address of the building and the principal occupant may be displayed, provided that on a corner zoning lot, two (2) such street graphics, one facing each street, shall be permitted.
 - 3. For a dwelling located on a lot that is to the rear of another lot and access to the street is only the width of a driveway, one (1) directional graphic not exceeding three (3) square feet may be placed in the front yard of the property fronting on the street provided:
 - a. Permission is obtained from the owner of the property on which the graphic is to be located;
 - b. Only the name, address, and name of management thereof is indicated;
 - c. A street graphic permit is obtained prior to the erection of the graphic; and
 - d. The street graphic does not exceed three (3) feet in height and is a minimum of six (6) feet from the front lot line.
- (Sec. 31.14(2)(d)3. Cr. by Ord. 6348, 8-24-78; Am. by Ord. 13,144, 9-24-02)
- (e) In the OR and RS districts, the street graphic requirements of the R6 district shall apply provided the area and content of nameplates and identification street graphics shall only be limited to those requirements for nonresidential buildings.

31.15 TABLES OF PERMITTED GRAPHICS.

(1) Table 1.

****COMMERCIAL AND MANUFACTURING ZONING DISTRICTS
SIZE LIMITS FOR BUSINESS GRAPHICS, BY SPEED LIMIT, LANES OF TRAFFIC**Graphic Types

	Ground				Projecting	Wall & Roof	Above Roof
How Seen	Zones C1 & C4, O-1		Zones C2, C3, C3L O-L, O-2, O-3, M1, M2		All Zones	All Zones	M1 & M2 Only
Lanes Speed	Max Ht.	Max. Gross Area (sq. ft.)	Max. Ht.	Max. Gross Area (sq. ft.)	Max. Gross Area (sq. ft.)	Portion of Signable Area for Use	Portion of Signable Area for Use
0-34	12'	32	16'	32	20	40%	40%
2-3 35-44	12'	32	16'	50	20	40%	40%
45+	14'	32	16'	72	20	40%	40%
0-34	12'	32	16'	40	32	40%	40%
4-5 35-44	14'	32	16'	64	32	40%	40%
45+	16'	32	20'	80	32	40%	40%
0-34	14'	32	16'	48	32	40%	40%
6+ 35-44	16'	32	18'	72	32	40%	40%
45+	18'	32	22'	144	32	40%	40%

NOTE: Building Entrance Identification Graphics shall not exceed twelve (12) square feet in gross area and are permitted in all Commercial and Manufacturing Districts.

**RPSM-Research Park-Specialized Manufacturing District street graphics are regulated by Section 31.13(7). (Am. by Ord. 8387, 7-25-84)
(Sec. 31.15(1) Am. by Ord. 10,020, 5-14-90)

(2) Table 2.

COMMERCIAL AND MANUFACTURING ZONING DISTRICTS
SPECIAL PURPOSE GRAPHICS
 (Permit Required)

Yes - Permitted

C.U. - Conditional Use Permit

Purpose, Kind & Type of Graphic	Zoning Districts		
	C1, C4, O-1	C2, C3 & C3L O-2, O-3, O-4	M1 & M2
Awning, Canopy	Yes	Yes	Yes
Business Banners	Yes	Yes	Yes
Theater Marquee	Yes	Yes	Yes
Time & Temperature	C.U.	C.U.	C.U.
Sidewalk Showcase	C.U.	Yes	Yes
Pennants, Decorative & Promotional Banners & Flags on Private Property**	Yes	Yes	Yes
Mural	C.U.	C.U.	C.U.
Neighborhood & Subdivision Identification****	Yes	Yes	Yes
Public Service	C.U.	C.U.	C.U.
Project Graphic over 144 sq. ft.***	Yes	Yes	Yes
Church & Hospital	Yes	Yes	Yes
Building Entrance Identification	Yes	Yes	Yes
Business Opening Graphics	Yes	Yes	Yes
Temporary Street Graphics	Yes	Yes	Yes

**Subject to Approval of Director of Department of Planning & Development.

***When approved by Urban Design Commission.

****Subject to approval of Director of Department of Planning and Community and Economic Development or her/his designee after notification to Neighborhood Association and Alderperson.
 (Am. by Ord. 10,809, Adopted 1-4-94; Ord. 12,513, 12-20-99)

(3) Table 3.

ALL ZONING DISTRICTS
EXEMPT GRAPHICS
 (No Permit Required)

While no permit is required for wall and ground graphics of the kind listed below,
 adherence to the following regulations is required.

Kind of Graphic	Gross Area (sq. ft.)	Height Maximum	Setback (Ground Graphic)	Illumination	Number per Street Front
Parking Lot Regulation	9	10'	10'	Yes*	2
Parking Lot Directional	3	10'	---	Yes*	2
Real Estate or Noncommercial	12	15'	10'	No	1
Real Estate or Noncommercial	6 or less**	15'	---	No	1
Election Campaign Graphics	12	15'	10'	No	1 per candidate or cause
Window Graphics	20% or 30% See 31.10	---	---	Yes	---
Municipally Owned Signs	32	10'	10'	Yes	---
Municipally Owned Public Safety Signs	***	***	***	Yes	***
Scoreboards**** Advertising Graphics & Promotional Banners at Athletic Fields & Elementary, Middle and High Schools	As approved by Parks Comm. or Dir. of Planning and Develop.	As approved by Parks Comm. or Dir. of Planning and Develop.	As approved by Parks Commission or Director of Planning and Community and Economic Development	Yes	As approved by Parks Commission or Director of Planning and Community and Economic Development
Merchandise Graphics in Commercial and Manufacturing District	9*****	8'	---	No	2
Promotional Banners*****	As approved by Director of Transp.	As approved by Dir. of Transp.	As approved by Dir. of Transp.	---	As approved by Dir. of Transp.

Table 3 - Continued

*In all Residential Districts, illumination of these two graphics is not permitted.

**32 in Special, Commercial or Manufacturing Districts.

***As approved by City Board, Commission or Common Council.

****Scoreboards at athletic fields which include flashing street graphics shall be screened from views from abutting streets as approved by the Director of Planning and Community and Economic Development and the Traffic Engineer.

*****9 square feet or within the outside boundaries of the merchandise to which the graphic is attached, whichever is less.

*****Promotional banners in public right-of-way when approved by the Director of Transportation.

(Sec. 31.15(3) Am. by Ord. 10,809, Adopted 1-4-94; Ord. 12,648, 7-28-00)

(4) Table 4.

PERMITTED GRAPHICS
RESIDENTIAL DISTRICTS

For Agricultural and Conservancy Districts, Noncommercial - graphics shall be classified and permitted in accordance with the requirements under the R1 District; provided, however, for any commercial use allowed as a conditional use in the Conservancy or Agricultural District, the regulations governing graphics in the C1 District shall apply.

For R1, R2, R3, R4, R4L, R5, R6, R6H, RS, and OR Zoning Districts - all street graphics permitted are either wall or ground graphics only and limited to one graphic per street frontage, unless otherwise indicated in the chart below.

Type of Street Graphic	Area Sq. Ft.	Height		Minimum Setback	Wall	Ground	Illuminated	Number per Street Frontage
		Min.	Max.					
Identification-R1,R2,R3,R4, R4A,R4L	1	---	12'	---	Yes	No	No	1
Identification-R5,R6,R6H, RS and OR	6	---	12'	---	Yes	No	No	1
Building Entrance Identification	12	---	---	---	Yes	No	Yes	1 per entrance
Identification-Nonresidential Building	12	---	15'	---	Yes	Yes*	No	1
Church, Hospital, School and PRD Identification	12 to 32	1'	12'	10'	Yes	Yes	Yes	1 Wall, 1 Ground Max. of 2 per zoning lot**
Project	32	1'	8'	10'	Yes	Yes	No	1
Existing Nonconforming Commercial Uses	32	1'	15'	---	Yes	Yes Existing Only	Yes	1
Business Opening	---	---	30'	---	Yes	Yes	Yes	1
Condominium Identification	12 or 13 to 32 with UDC Approval	1'	12'	10'	Yes	Yes	Yes	1 Wall, 1 Ground Max. of 2 per condominium

Table 4 - Continued

*Maximum Height 4 feet, graphic and landscape approval of Director of Department of Planning and Community and Economic Development required.

**Additional wall or ground identification street graphics for wayfinding purposes may be approved by the Urban Design Commission. See Secs. 31.14(2)(b)4.a. and 31.04(2)(b)2.b.viii.

EXEMPT GRAPHICS (NO PERMIT) - Refer to Sec. 31.15(3) - Table 3.

SPECIAL SITUATIONS

Neighborhood and Subdivision Identification Graphics - Subject to approval of Director of Planning and Community and Economic Development or her/his designee after notification to Neighborhood Association and Alderperson.

Murals on Private Property - Conditional Use Approval Required

Pennants, Flags, Decorative and Promotional Banners on Private Property - Director of Department of Planning and Community and Economic Development Approval Required.

Advertising Street Graphics - Not Permitted

Identification Street Graphics, for properties designated Landmarks, shall be permitted as approved by the Plan Commission and the Landmarks Commission when approving the use. Graphics for existing uses may be approved by the Landmarks Commission and the Director of Planning and Community and Economic Development.

(Am. by Ord. 10,614, 3-31-93; Ord. 13,144, 9-24-02; Ord. 13,338, 6-7-03)

31.16 - 31.18 RESERVED FOR FUTURE USE.**31.19 PENALTIES AND VIOLATIONS.**

Any person violating any provisions of this chapter shall be subject to a forfeiture of not less than thirty dollars (\$30) and not more than five hundred dollars (\$500) and every such person, firm or corporation shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this code is committed, continued, or permitted. (Am. by Ord. 9640, 12-14-88; Ord. 13,725, 11-9-04)

31.20 SEVERABILITY.

In the event that any section of this ordinance shall be declared or judged by a court of competent jurisdiction to be invalid or unconstitutional, such adjudication shall in no manner affect the other sections of this ordinance, which shall be in full force and effect as if the said section or said sections were not originally a part thereof.

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