

Advertising Sign “Cap & Replace” Ordinance Background and FAQ for Common Council
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This ordinance establishes a “cap and replace” program to allow removal of an existing Advertising Sign (“billboard”) from a property to be redeveloped and construction of a replacement sign on another site. An Advertising Sign is a sign directing 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 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. Advertising signs are typically owned by outdoor advertising companies. New advertising signs are prohibited by ordinance. This ordinance would allow for the banking of advertising sign square footage and the construction of a replacement advertising sign under some circumstances.

LEGAL BACKGROUND

In 1977, the City of Madison amended the sign ordinance to require removal of all Advertising Signs located on State Street and the inner and outer rings of the Capitol Square at no cost to the City by July 1979. The ordinance required all other Advertising Signs to be brought into compliance with the sign ordinance, or to be removed by December 1982. Following a lawsuit in 1979 from Hanson Advertising (precursor to Adams), the City amended the sign ordinance to extend the deadline for Advertising Signs removal on State Street and the inner and outer rings of the Capitol Square to December 1983. The ordinance also established a “no advertising district”, generally extending from Livingston Street westerly to Park Street from lake to lake, in which all Advertising Signs were to be removed at the rate of no less than one per year, with all removed by December 1989. All other Advertising Signs were made “nonconforming” as that term is used in the sign ordinance, sec. 31.05(2), meaning they could remain in place but could not be “relocated, replaced, expanded, enlarged, repositioned or raised in height, and also may not be restored or reconstructed,” except if damaged by fire or natural disaster, and only if the total cost of restoration does not exceed fifty percent (50%) of its assessed value or the cost to replace with a new structure of equal quality, whichever is lower. Sec. 31.05(2)(b).

In 1987, Adams Outdoor Advertising purchased Hanson. In 1989, the City adopted a prospective ban on all new Advertising Signs. It was expected that all existing Advertising Signs eventually would be removed due to redevelopment, highway expansion projects, age and/or the market obsolescence of the existing structures, etc. In 1990, Adams sued the City to prevent the prospective ban. The litigation was settled in 1993. The prospective ban on all new or replacement Advertising Signs remained in place, however, as settlement of the litigation, Adams was allowed 16 billboard permits; 5 for new billboards and 11 to replace existing

Advertising Signs. Adams has used all 16 permits for the new and replacement Advertising Signs, with the last permit being issued in May of 2004.

In 2007, A few alders worked with Adams to introduce a cap and replace ordinance. An ordinance was introduced and referred to committees, but ultimately did not return to the Council for a final vote. That effort did not move forward.

Over the last couple of years Adams has requested the City to consider amending its sign ordinance to allow all of the existing Advertising Signs within the City to remain in place and to allow the removal and replacement of existing Advertising Signs to other locations within the City (“cap and replace”). Most recently, a cap and replace ordinance to allow replacement of existing Advertising signs was approved, then vetoed by the Mayor, with final action that failed to override the veto on January 20 2015.

WHAT HAS HAPPENED SINCE 1977

Since the adoption of the original ordinance in 1977 and the subsequent ordinances in 1983 and 1989, all billboards have been removed from State Street, the Capitol Square and within the greater downtown (no advertising sign district). Two companies own the vast majority of the billboards in the City of Madison. Adams Outdoor Advertising owns approximately 100 billboards, and Lamar Advertising owns 25-30 billboards. Since 1989, Adams indicates that approximately 65 of their billboards have been removed as a result of the City’s ordinance because of redevelopment projects or other reasons.

The City has been involved in the approval of development projects where Advertising Signs exist on the parcel to be developed. In many cases, the City’s ordinances required the removal of the Advertising Signs as part of the approval of the development project. For example, projects with residential dwelling units and Planned Development zoning map amendments are not allowed on properties with Advertising Signs. Only one of these projects has led to litigation. In 1999, Adams and Tellurian UCAN sued the City of Madison over an official notice to remove Advertising Signs on Williamson Street. This lawsuit arose from Tellurian’s request in 1994 for a Conditional Use for expanded residential use on the property. The request was approved, with a condition that the two non-conforming Advertising Signs existing on the site be removed at the end of the current lease period, which was October 1998. The removal was required because the sign ordinance prohibits Advertising Signs on lots with dwelling units and the zoning ordinances require a lot to meet current ordinance standards when a change in use occurs. In December 1998, the City sent an official notice to remove the Advertising Signs. Refusal to remove them led to prosecution by the City and suit filed by Adams and Tellurian challenging the ordinance on which the condition of removal was based. The City prevailed in the lawsuit, the Advertising Signs were removed, and Adams paid a \$10,000 forfeiture to the City.

Adams and Lamar have also sued the City over tax disputes. As part of the 2011-2013 settlements to the advertising sign personal property taxation lawsuit brought by Adams and Lamar, the City allowed some new advertising signs to be installed and some existing advertising signs to be modified. To date, four new permits have been issued, with four permits remaining to be issued, as a result of that settlement.

For the last several years, the State Legislature has adopted legislation limiting local control of billboards. These include:

- a law restricting the ability of local units of government to condition the approval of projects on the removal of Advertising Signs, and a law prohibiting local units of government from adopting amortization ordinances requiring the removal of Advertising Signs over a specified period of time. Essentially, this legislation would now prohibit the type of ordinance the City adopted in 1977 which required the removal of Advertising Signs within the downtown and on State Street.
- In 2011 the State of Wisconsin created Wis. Stat. § 84.30(5r) which requires the City to pay the state's cost of condemning an Advertising Sign within its jurisdiction if the sign has to be removed for a state highway project, unless the City allows the sign to be relocated on the same site. If the City does not allow the sign to be "realigned," the City must petition the state to condemn the sign and then pay the state an amount equal to the condemnation award less relocation costs that would have been paid by the state if the sign had been "realigned" rather than removed. If the City doesn't pay, the state can reduce the City's general transportation aid in the same amount. This new law required the City to amend its sign code to allow Advertising Signs to be realigned, or face the burden of paying the cost of the acquisition of the Advertising Sign.

CURRENT AND PROPOSED ORDINANCE PROVISIONS

The current ordinance prohibits any new Advertising Signs from being placed in the City, and prevents the replacement or relocation of existing Advertising Signs either at their current location or at new locations. Existing Advertising Signs can remain in place but cannot be expanded, enlarged, repositioned or increased in height. Any Advertising Signs that are removed or destroyed cannot be replaced.

The current ordinance allows existing Advertising Signs only in the CC-T, CC, TE, SE, IL, and IG zoning districts. Within those districts, additional regulations affect the specific siting of any new Advertising Signs that could be constructed with any permits remaining of the 16 permits that Adams received in 1993 or as part of the taxation lawsuit settlement from 2011. These include size, height, setback, and whether or not the lot is in a district of special control, e.g., an Urban Design District, lands annexed after 1987, Historic

Districts, etc. The proposed ordinance introduced on June 16, 2015 would allow the owners of Advertising Signs to bank the square footage of existing advertising signs at sites of redevelopment. Banked square footage may be used to construct Replacement Advertising Signs (RAS). Provisions of the ordinance include the following:

1. Banked square footage for new advertising sign may only be used in the CC-T, CC, TE, SE, IL, and IG Districts. Also, no new signs may be erected in Historic Districts, Urban Design districts, on a Landmark building or Landmark site, in the No Advertising Sign District, or the area described in sec. 31.05(2)(a). A map of allowable areas for new RAS is attached to this memo.
2. This ordinance allows for RAS square footage to be used in lands annexed since 1987 if located in the above districts (current code does not allow Advertising Signs in lands annexed to the city after 1987).
3. Existing advertising signs may only be banked if the site is being redeveloped.
4. A second alternative way of calculating the maximum height measurement for RAS, using the road height adjacent to the sign rather than the grade height where the sign is placed.
5. A RAS has a lifespan of no more than 50 years.
6. The Alder of the district in which the new RAS will be located has the ability to ask for Council review of the permit, and the standard for review is outlined.
7. No RAS can be placed within 100 feet of any property line of a residential zoning district or the lot line of any property containing a residential use.

The ordinance amendment also includes a general provision applying to the illumination of all signs. This language changes the way light is regulated, from fixture wattage (a measurement of electricity used) to illumination in foot-candles (amount of light generated).

O & A

The following are questions that have been raised by interested parties relative to this issue:

Q: How are Advertising Signs currently regulated?

A: The City's sign code establishes regulations for advertising signs. All Advertising Signs are prohibited, so any existing Advertising Signs are allowed to remain subject to Sec 31.05 of the City's sign code.

Q: Concerns have been expressed about possible new Advertising Signs being located on certain commercial streets within the greater Isthmus area. Will Advertising Signs be allowed, under the proposed ordinance, to be relocated to Regent Street, University Avenue, Park Street, East Washington Avenue, and on other commercial streets?

A: RAS square footage may only be used in areas that comply with RAS placement requirements. Most of these areas do not allow such signs, because they are located within historic districts, Urban Design Districts, or are not appropriately zoned.

Q: Why is there a sunset?

A: An 8 year sunset date was included in the proposed ordinance to allow the new procedure for a limited period of time and to study the effects of allowing cap & replace of Advertising Signs.

Q. What happens to the Advertising Signs on properties in the Town of Madison or other townships that are planned to annex or attach to the City in the future?

A: Any advertising sign that comes into the City through annexation or attachment after February 2 2015 is not eligible for cap & replace. The Advertising Signs on those properties, if originally legally approved in the township, may remain, but their square footage may not be banked.

Q. Can Replacement Advertising signs be placed in annexed lands?

A: Yes, if the annexed or attached land is zoned CC-T, CC, TE, SE, IL, or IG when it comes into the City.

Q. Is it possible there could be more Advertising Signs faces in the City as the result of this ordinance?

A. Yes. The ordinance allows 1 for 1 square footage replacement and there is no minimum size for a billboard, so theoretically 2 or more replacement signs could be constructed from the square footage of one removed Advertising Sign. Typically, new Advertising Signs have been of larger size, but there is no reason why smaller faces could not be approved. Conversely, smaller faces could be combined into one or more larger faces, reducing the net number of sign faces while maintaining the total square footage.

Q. Will this amendment allow for digital Advertising Signs or full-video signs?

A. No.

Q. Will these new signs be up forever?

A. No, a Replacement Advertising Sign must be removed after 50 years. The RAS permit expires after 50 years.