

**PLANNING DIVISION REPORT
DEPT. OF PLANNING AND COMMUNITY AND ECONOMIC DEVELOPMENT**

December 13, 2007

CAP AND REPLACE BILLBOARD ORDINANCE

Legistar I.D. 07651: An ordinance amending Sections 31.05(2)(b) and 31.11 of the Madison General Ordinances to remove the prohibition on relocating and replacing advertising street graphics.

The current City ordinances prohibit the construction of new billboards within the City of Madison, including the relocation and replacement of existing advertising street graphics (billboards).

Prepared by: Bradley J. Murphy, Planning Division Director and other staff.

BACKGROUND (from City Attorney's Office)

In 1977, the City of Madison amended the sign ordinance to require removal of all billboards 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 billboards 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 adopted an ordinance amendment extending the deadline for billboard 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 billboards were to be removed at the rate of no less than one per year, with all removed by December 1989. All other billboards were made nonconforming by the ordinance amendment.

In 1987, Adams Outdoor Advertising purchased Hanson. In 1989, the City of Madison adopted a prospective ban on all new or replacement billboards. It was expected that all existing billboards 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 billboards remained in place, however, as settlement of the litigation, Adams was allowed 16 billboard permits; 5 for new billboards and 11 for replacement billboards of existing billboards. Adams has used all 16 permits for the new and replacement billboards, with the last permit being issued in May of 2004.

Over the last couple of years Adams has requested the City to consider amending its sign ordinance to allow all of the existing billboards within the City to remain in place and to allow the removal and replacement of existing billboards to other locations within the City.

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 graphic district). Two companies own the vast majority of the billboards in the City of Madison. Adams Outdoor Advertising owns approximately 103 billboards, while Lamar Advertising owns 25-30 billboards. Since 1989, Adams indicates that approximately 63 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 billboards exist on the parcel to be developed. In many cases, the City's ordinances required the removal of the billboard as part of the approval of the development project. For example projects with residential dwelling units and Planned Unit Development zoning map amendments are not allowed on properties with billboards. 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 billboards 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 billboards 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 billboards 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 billboards. 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 billboards were removed, and Adams paid a \$10,000 forfeiture to the City.

For the last several years, the State Legislature has also been involved in adopting legislation related to regulations for billboards. These include a law restricting the ability of local units of government to condition the approval of projects on the removal of billboards, and a law prohibiting local units of government from adopting amortization ordinances requiring the removal of billboards 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 billboards within the downtown and on State Street.

CURRENT AND PROPOSED ORDINANCE PROVISIONS

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

The current ordinance allows existing billboards to remain only in the C2, C3, C3L, M1 and M2 zoning district. Within those districts, additional regulations affect the specific siting of billboards and applied to the 16 permits that Adams received in 1993. 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. Existing billboards located in such districts are non-conforming.

In general, the proposed ordinance would allow the owners of billboards, at their option, to remove and replace existing billboards at their current location or a new location. No net increase in the number of billboards within the City of Madison would be allowed. Provisions of the ordinance include the following:

1. Any existing billboards could be replaced at the same site or relocated to new sites in the C2, C3, C3L, M1 and M2 zoning districts, including sites in Urban Design Districts and lands annexed since 1987 if located in the above districts..
2. Existing billboards could be replaced or relocated for any reason, not only when impacted by redevelopment.
3. No increase in the number of advertising street graphics structures in the City would be allowed.
4. The relocated or replaced advertising street graphic shall not exceed the number of faces or total face area of the removed advertising street graphic.
5. The relocated or replaced advertising street graphic shall be constructed of materials of at least 20% greater value than the materials of the existing graphic.

ANALYSIS

The proposed ordinance has now been reviewed by the City's Economic Development Commission and the Urban Design Commission. The Economic Development Commission approved a motion at its meeting of December 5, 2007 supporting the adoption of "an ordinance to allow more flexibility to relocate billboards to allow development to occur but provide appropriate oversight to guide location and design." The Urban Design Commission recommended that the ordinance be rejected at its meeting of December 12, 2007.

The following are a series of questions that have been raised by commission members and others concerning the proposed ordinance and answers to those questions.

1. **One of the primary purposes for the proposed ordinance, as stated by Adams, is to allow the uninterrupted future development of private sector projects where existing advertising street graphics exist. Does the ordinance require the removal of billboards where the billboard conflicts with the redevelopment project?**

Answer: The ordinance allows the advertising companies to remove and replace billboards but does not require it. The ordinance does not require companies to remove billboards that conflict with proposed redevelopment projects. The companies can choose to remove a billboard if they wish, but there is no requirement. The ordinance would continue to allow the companies to maintain billboards at their current locations as long as they wish, and until a property owner/developer is able to reach a satisfactory monetary settlement with billboard owners to buy out the current lease or easement. According to Adams staff, locating a new site and negotiating a lease may take several years. staff believe that is unlikely that the companies would be willing to remove a billboard from one site until another is available.. If a new site is not found, a billboard need not be moved, regardless of its impact on redevelopment.

2. Has the existing ordinance had a significant detrimental effect on new development and redevelopment projects in the City?

Answer: Since 1987, Adams has indicated that approximately 63 billboards have been removed. It has been staff's experience that most redevelopment projects and new development projects are able to be approved and to take place even with billboards on the property as a result of negotiations between the developer and the billboard owner. While this may not always be the case, the presence of billboards has not seemed to have had a significant effect on development in the City. Adams cites three recent examples as reasons why the proposed ordinance should be adopted, Villager Mall, Union Corners and the 800 Block of East Washington Avenue. It is not clear that these developments could not move forward without an ordinance change. It is true that the billboards on the sites of Union Corners and the 800 block of East Washington Avenue would need to be removed before those projects could proceed. However, market changes have delayed Union Corners. And the 800 block project did not proceed because of issues related to the requested amount of TIF funding, which in part was related to the cost of removing the billboard. At this time the two billboards on the Villager Mall property are not holding up the first phase of the Villager redevelop. However the billboard locations do conflict with proposed buildings in the future phases. One of the consequences of the ordinance is that the billboards can be relocated to other locations where they may potentially be in conflict with future development and redevelopment projects. The ordinance will allow, for example, billboards to be relocated and reconstructed when removed as part of a highway expansion project. For example, several billboards may need to be removed as part of future West Beltline and Highway 51 corridor expansion projects. These billboards will be able to be moved to other locations in the City.

3. Will there be adequate review of the proposed new location for the relocated signs and their design?

Answer: In general, outside of urban design districts, there will be no review of the proposed location or the design of the replacement billboards other than by zoning staff to determine that the billboard is located in the allowable zoning district and that it complies with the size and height limitations and other bulk provisions of the ordinance. Billboards would be able to be located anywhere on an appropriately zoned parcel if in compliance with the requirements of the ordinance. The exception to this is in Urban Design Districts where, presumably, the Urban Design Commission would need to review and approve the design of the new billboard. However, it is not clear what standards the Urban Design Commission would use is reviewing billboards since they are currently prohibited. If policy makers decide that the existing ordinance should be changed, it may also be necessary to change the Urban Design District Criteria in each of the eight districts to ensure that the scope of the Urban Design Commission review is clear. At a minimum staff would assume that this review would include approval of appearance of the structure and frame, location on the lot, lighting, and landscaping.

4. There are many existing billboards whose faces and structures are smaller than the maximum size which would be allowed by the proposed ordinance. Will

these billboards be able to be relocated and replaced with larger billboards with larger support structures at new locations?

Answer: The proposed ordinance removes the nonconforming status of all existing billboards. This change arguably removes them from the provisions of Sec. 31.05(2)(b), and would allow any billboard structure to be enlarged, expanded, raised in height or repositioned, even if it remained at the same site. The number of sign faces and total face area cannot increase.

- 5. Adams has stated that there are over 200 cities that have similar cap and replace ordinances. How many cities have banned billboards?**

Answer Four states, Hawaii, Alaska, Maine, and Vermont have banned and removed all billboards. In addition, over 1500 communities have billboard bans.

- 6. Why did the City originally adopt an ordinance requiring the removal of billboards from State Street, the Capitol Square, the greater downtown and a perspective ban on billboards throughout the remainder of the City?**

Answer: At the time of the adoption of the ordinances, staff believe that the City's policy makers sought to remove billboards from the City in order to improve the aesthetics and visual appearance of the community. . . The desire was to remove billboards over time. Since the adoption of the 1977 and 1983 ordinance all billboards have been removed from the downtown (the No Advertising Graphic District). Since 1989, approximately 63 billboards have been removed outside of this area while approximately 130 currently owned by Lamar and Adams remain, plus one or two billboards owned by other companies.

- 7. If the current ordinance remains in effect and is not amended, will billboards eventually be eliminated within the City?**

Answer: The number of billboards will continue to be reduced over time. It is difficult to say when all billboards will be totally eliminated. In addition, policy makers should remember that the billboard industry has on several recent occasions worked through the State Legislature to have bills adopted further restricting local units of governments' ability to regulate billboards within their communities. Two recent examples include the prohibition on amortization ordinances similar to the one Madison adopted in the 1970s and 1980s, and the law prohibiting units of government from conditioning development projects on the removal of billboards. A recent bill has been introduced which would further regulate the way local units of governments' assess the value of billboards for tax purposes.

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

Answer: At the discretion of the owner of the billboard, billboards will be able to be replaced at new locations if zoned appropriately. There are hundreds, if not thousands, of parcels on Regent Street, University Avenue, Park Street, East Washington Avenue, John Nolen Drive, Atwood Avenue/Winnebago Street, Cottage Grove Road, and other commercial streets which are zoned appropriately to accommodate replacement billboards. Even though the City has prepared plans to guide the redevelopment and revitalization of many of these corridors, many of which are gateways to the City, with the understanding that new billboards would be prohibited, the proposed ordinance allows new replacement billboards to be built along these corridors.

9. Can the City further restrict the location of new billboards to eliminate the Isthmus area?

Answer: Additional language could be included into the proposed ordinance which would expand the no advertising street graphic district to include other areas including the entire isthmus. Policy makers would need to determine in which areas of the City, and on which commercial arterial and collector streets billboards would be an acceptable permanent part of the urban streetscape. Staff can draft any ordinance provision that policy makers wish drafted, but hesitate to recommend that certain areas of the City would be more acceptable to have billboards as a permanent part of the landscape than other areas of the City.

10. The proposed ordinance calls for the relocated and replaced billboards to be constructed of materials of at least twenty percent greater value than the materials of the billboards to be removed. What is the implication this provision, and is there any review of the design of the new billboards?

Answer: Staff believes that it will be difficult to monitor and regulate the increase in the value materials for the new billboards. While this is not the stated intent of the companies involved, staff are also concerned that change in materials used construct billboards may also mean that the billboards will become internally illuminated, brighter, and may in some cases include digital displays using light emitting diodes. The use of digital displays would allow changeable copy to be provided on billboards even though current ordinances limit the frequency of the message change to two minutes. Staff are also concerned that the ability to "improve the aesthetics of the billboards" may result in the billboards becoming more "attractive" as attention-getting devices along our commercial corridors, working against the goals and objectives for these same corridors as enumerated in the City's adopted plans.

11. Following the adoption of the 1989 prospective ban on billboards and the 1993 settlement, Adams was allowed to build 16 new billboards within the City. Where have those billboards been built and what do they look like?

Answer: Attached to this report is a listing of the addresses of the 16 new and replacement billboards. Also attached to this report is a packet of photographs of billboards throughout the community, including the 16 new billboards that were built following the 1983 ordinance.

CONCLUSION

Based on the staff review of the proposed ordinance, staff do not believe that the ordinance should be adopted as drafted and introduced. The issue before the Plan Commission and Common Council is a significant policy issue which involves an ordinance which has been in place for almost 20 years. The prospective ban on billboards was put in place to improve the aesthetics and visual appearance of the community by preventing new billboards from being built and by seeing the removal of billboards over time. As measured by the number of billboards which have been eliminated since 1987, and the continued growth and redevelopment of the community, the ordinance has, by and large, been successful. The ordinance has been upheld on several occasions by courts of law.

The primary argument being made by the advertising companies for the proposed ordinance involves their desire to be able to relocate billboards which are in the way of new development and redevelopment projects, such as Union Corners. The ordinance however, does not require billboards to be removed to accommodate new development. The billboard companies can still choose to keep the billboard at its current location until the developer and the billboard company arrives at a satisfactory agreement for the developer to buy out the billboard. The ordinance does not require relocation, but presumably being able to relocate a billboard could have some effect on the cost to buy out a lease and the willingness of the billboard companies to reach an agreement.

The proposal to allow billboards within Urban Design Districts runs counter to the statements of purpose for these districts. The City has established design guidelines and requirements to ensure that new development (including signage) built in these districts do not detract from the aesthetics of these corridors (many of which are gateway corridors) and to improve their appearance. Staff do not believe that the continuation of billboards in perpetuity and allowing billboards to continually be relocated and replaced within these corridors furthers these objectives. The only control on the number of billboards that could be built on appropriately zoned streets is the 300-foot directional spacing requirement for billboards.

The Plan Commission and Common Council will need to determine if they want to change the adopted City policy to accommodate the request by the advertising companies to allow billboards to be relocated and replaced. The proposed ordinance has now been acted on by two commissions. The Economic Development Commission approved a motion supporting adoption of "an ordinance to allow more flexibility to relocate billboards but provide appropriate oversight to guide location and Design." The Urban Design Commission recommended that the ordinance be rejected.

Location of 16 new & Replacement Billboards

5/20/2004

ADAMS ADVERTISING GRAPHICS STATUS REPORT							
DATE	STRUCTURE LOCATION	ISSUED			STRUCTURE REMOVAL		
		NEW PERMIT	REPLACEMENT PERMIT	# OF PANELS	# OF STRUCTURES REMOVED AND VERIFIED	EXISTENCE VERIFIED	REMOVAL VERIFIED
1/13/1994	615 FORWARD DR	1		1			
4/12/1994	1702 W BELTLINE HWY	1		3			
4/12/1994	5960 ODANA RD	1		2			
5/12/1994	4289 W BELTLINE HWY	1		2			
6/7/1994	3424 ATWOOD AVE				1	KAV6-7-94	KAV 6-07-94
9/19/1994	3528 ATWOOD AVE				1	KAV6-7-94	LEM9-19-94
8/4/1994	2661 E WASHINGTON				3	KAV6-7-94	KAV8-4-94
11/2/1994	2955 PACKERS AVE				1	LEM10-24-94	SLM10-26-94
6/26/1995	2002 W BELTLINE HWY	1		2	1	LEM 6-6-95	LEM6-26-95
12/6/1995	1001 N SHERMAN AVE				1	LEM12-6-95	LEM06-27-95
12/4/1995	4170 COMMERCIAL AV				1	KAV10-23-95	KAV12-4-95
12/20/1995	4150 E WASHINGTON				1	KAV11-3-95	KAV12-20-95
4/23/1996	630 W WASHINGTON AV				1		KAV4-23-96
11/13/1996	995 APPLGATE RD		1	2		KAV2-14-97	
2/21/1996	3950 COMMERCIAL AV		1	2		KAV4-2-98	
3/7/1997	4245 W. BELTLINE HWY		1	2		KAV8-28-97	
6/4/1997	2122 S STOUGHTON RD		1	2		KAV4-2-98	
6/1/1998	1301 S STOUGHTON RD		1	2			
8/26/1999	3220 COMMERCIAL AVE		1	2			
5/19/2000	1201 REGENT ST		1	2			
8/6/2001	405 S PARK ST		1	2			
10/24/2001	2601 S. STOUGHTON RD		1	2			
4/29/2004	4601 HAMMERSLEY RD		1	2			
5/18/2004	5960 ODANA RD		1	2			
TOTALS		5	11	32	11		
AVAILABLE		0	0	0			
Stipulated agreement provided							
5 new structures							
11 replacement structures (as tear downs occur)							
32 panels							
ADAMS.XLS							

7



REPLACEMENT PERMIT

3220 Commercial Avenue



REPLACEMENT PERMIT

3220 Commercial Avenue



REPLACEMENT PERMIT

3950 Commercial Avenue



REPLACEMENT PERMIT

3950 Commercial Avenue



REPLACEMENT PERMIT

1301 S. Stoughton Rd.



REPLACEMENT PERMIT

1301 S. Stoughton Rd.



REPLACEMENT PERMIT

2122 S. Stoughton Rd.



REPLACEMENT PERMIT

2122 S. Stoughton Rd.



REPLACEMENT PERMIT

2601 S. Stoughton Rd.



REPLACEMENT PERMIT

2601 S. Stoughton Rd.



REPLACEMENT PERMIT

405 S. Park Street



REPLACEMENT PERMIT

405 S. Park Street



REPLACEMENT PERMIT

995 Applegate Road



REPLACEMENT PERMIT

995 Applegate Road



REPLACEMENT PERMIT

1201 Regent Street



REPLACEMENT PERMIT

1201 Regent Street



NEW PERMIT

1702 W. Beltline Hwy.



NEW PERMIT

1702 W. Beltline Hwy.



NEW PERMIT

2002 W. Beltline Hwy.



NEW PERMIT

2002 W. Beltline Hwy.



REPLACEMENT PERMIT

4245 W. Beltline Hwy.



REPLACEMENT PERMIT

4245 W. Beltline Hwy.



NEW PERMIT

4289 W. Beltline Hwy.



NEW PERMIT

4289 W. Beltline Hwy.



REPLACEMENT PERMIT

4601 Hammersley Rd.



REPLACEMENT PERMIT

4601 Hammersley Rd.



NEW PERMIT

615 Forward Drive



NEW PERMIT

615 Forward Drive



NEW PERMIT

5960 Odana Road



NEW PERMIT

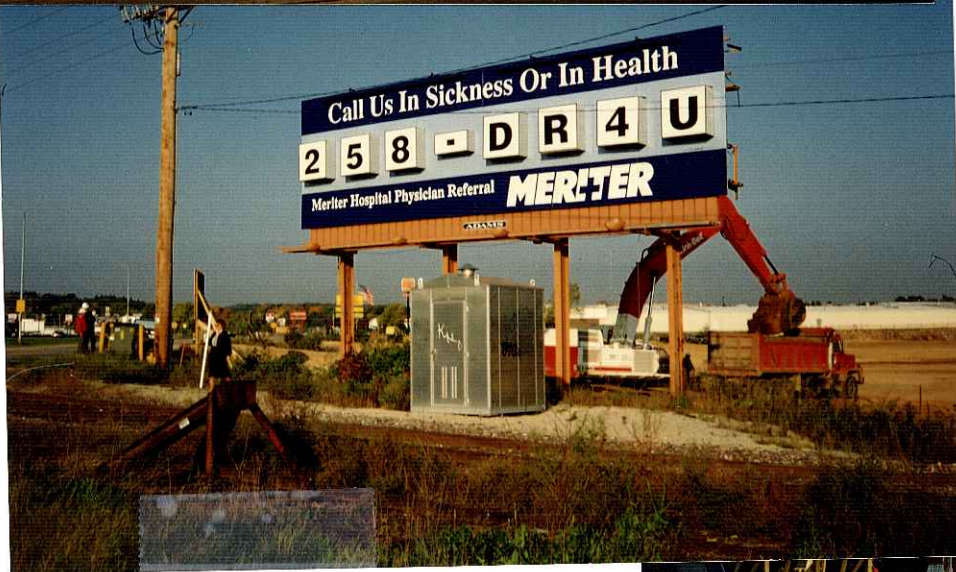
5960 Odana Road

2002 WEST BELTLINE HWY





Call Us In Sickness Or In Health
258-DR4U
Meriter Hospital Physician Referral
MERITER



Call Us In Sickness Or In Health
258-DR4U
Meriter Hospital Physician Referral
MERITER



1001 N SHERMAN AVE



12-6-94 1 structure
1 panel



removal
verified
6-27-95

4170 Commercial Av.

verified removed 12-4-95



Billboards facing Walsh Rd
is gone.

2955 PACKERS AVE



10-24-94 sign partially down LEM/SUM
10-26-94 sign down SUM

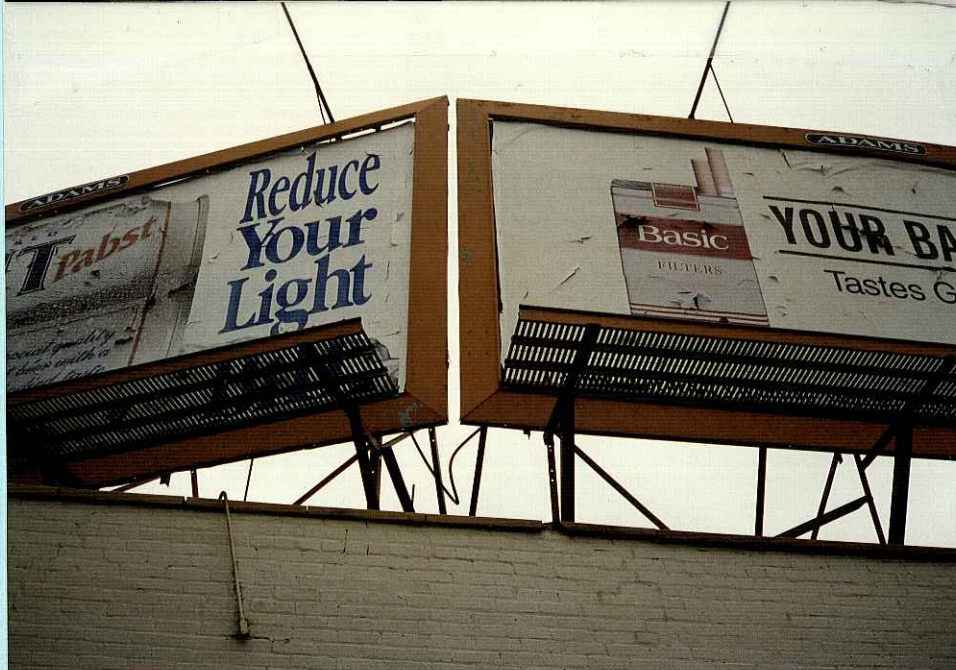
2661 E WASHINGTON AVE



Billboards removed - Verified 8-4-94 KAV

2 structures - on Roof (2 panels on west side)
1 structure on bldg (1 panel)

2661 E WASHINGTON AVE



3424 ATWOOD AVE



Picture taken 6-7-94 KAV
Removed, verified 9-19-94 LEM



6-7-94 pos

over



6-7-94

over