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LITIGATION ASSISTANT
Patricia V. Gehler

TO: Members of the Urban Design Commission via email
CC: Janine Glaeser, Secretary
DATE: August 7, 2019
RE: Request for Reconsideration of ID # 56387, Appeal of Zoning Administrator's Denial for Signage Located at 3737 E. Washington Ave.

Dear members:

I am writing to request that a motion to reconsider item # 56387 be made at the August 14, 2019 Urban Design Commission meeting, as permitted by MGO 33.01(9)(b) and MGO 2.21, Reconsideration of Question.

A motion for reconsideration can be made by any member who voted in the affirmative, or any member who was absent with an excused absence. It must be done at <u>the next regular meeting</u>. The procedure for reconsideration is found in MGO 2.21, copy enclosed.

As required by MGO 33.01(9)(b), no action has been carried out by City staff as a result of last week's UDC action on this matter.

We believe reconsideration is appropriate because the UDC failed to follow the procedures for an appeal of the Zoning Administrator under ch. 31, which requires a determination of an "error" by the Zoning Administrator. In this case, the UDC should have specifically identified (a) what <u>error</u> was made in denying Adams' application to bank the square footage from the advertising sign at 3737 E. Washington Avenue, and (b) <u>why</u> it was an error. The UDC failed to make any findings in support of its decision.

> "(1) Zoning Administrator Appeals. The UDC shall hear and decide appeals of decisions of the Zoning Administrator where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator..."

Additionally, the effect of the two motions was not clear. The UDC did not explain what outcome they expect for this sign. It was not clear the UDC understood the process for Advertising Sign "banking" nor the impact of reversing the zoning decision.

I am enclosing another copy of our letter to the UDC from July 31, in the event the UDC does decide to reconsider this matter, and another copy of the sign banking ordinance.

Sincerely,

Lara M. Mainella,
Assistant City Attorney-City of Madison

Encl.

cc: Matt Tucker, Zoning Administrator
Brian Potts, Attorney for Adams Outdoor Advertising
John Strange, Assistant City Attorney, Attorney for UDC

(d) If an Alder assumes the Chair, the Alder may vote on the matter before the Council. Relinquishment of the Chair by the Mayor does not change the Mayor's right to vote.

(e) The procedure set forth in this subsection applies to any Alder who is in the role of Chair of the Common Council.

(Am. by Ord. 8156, 11-14-83; ORD-06-00022, 3-24-06)

2.205 PRESIDENT AND VICE PRESIDENT.

The Common Council shall at its organizational meeting on the third Tuesday of April of each year, elect one member of the Council to act as President of the Council and another member to act as Vice President of the Common Council, pursuant to the provision of Wis. Stat. § 62.09(8)(e). The Vice President of the Common Council shall act during the absence, inability or disability of the president. Among other duties of the Council President and the Vice President, are those set forth in Secs. 2.04 (Order of Business), 3.35(10)(b) (Ethics Board), 4.02(4) (Finance Committee), and 33.13 (Common Council Executive Committee), MGO. (Am. by ORD-07-00194, 12-20-07)

The Common Council President may, with the consent of the Common Council Executive Committee, appoint ad hoc subcommittees of the Common Council, to consist of 2-3 Council members, to address issues of a temporary nature. The subcommittees shall be subject to the rules for all ad hoc bodies set out in Sec. 33.01, MGO. (Am. by ORD-09-00117, 8-11-09; ORD-16-00079, ORD-16-00080 & ORD-16-00081, Pub. 9-15-16, Eff. 4-18-17)

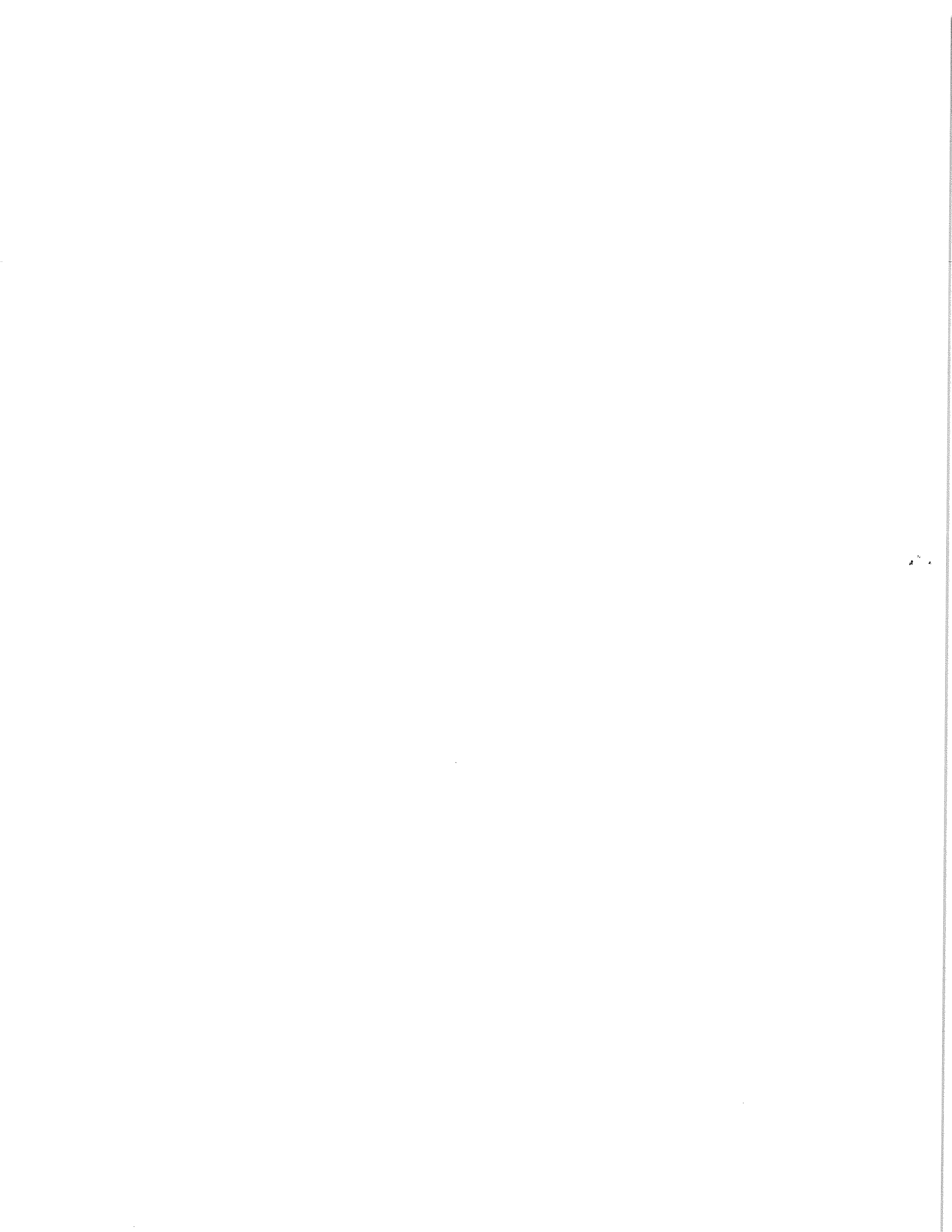
2.21 RECONSIDERATION OF QUESTION.

(1) It shall be in order for any member who voted in the affirmative on any question which was adopted, or for any member who voted in the negative when the number of affirmative votes was insufficient for adoption to move a reconsideration of such vote, at the same or next succeeding regular meeting of the Council. It shall be in order for any member who was, due to an excused absence, not present at the time the question was considered to move reconsideration of such vote at the next succeeding regular meeting of the Council. A motion to reconsider having been lost shall not be again in order. A motion to reconsider shall not be in order when the same result can be obtained by another motion. (Am. by Ord. 5188, 10-20-75; ORD-15-00088, 9-11-15)

(2) A vote by the Common Council on overriding a mayoral veto (whether the vote failed or succeeded) is subject to a motion for reconsideration. Any such motion for reconsideration must be made and acted upon no later than the next regular meeting of the Council or it is out of order. Any such motion for reconsideration may not be referred to any committee or to a subsequent meeting of the Council. The Council's initial consideration of overriding a mayoral veto is not subject to a motion to refer but must be acted upon initially at the meeting at which it is presented. (Cr. by ORD-15-00088, 9-11-15; Am. by ORD-18-00027, 3-9-18)

(3) Whenever objection is raised to a motion to reconsider on the grounds that a person's position has changed in reliance on the Council action, or something has been done that cannot be undone, clear and sufficient evidence of the change in position or other action shall be presented to the Common Council. The information or evidence shall be submitted by the person claiming such a change to the City Attorney, who shall provide it to the Common Council. (Cr. by ORD-17-00064, 6-28-17)

2.22 MEMBERS MAY FILE PROTESTS AGAINST COUNCIL ACTION. Any member in the minority on any vote shall have the right to have the reasons for his or her dissent from or protest against, any action of the Common Council entered on the proceedings. Such reasons may be either stated orally after the result of the vote is announced or filed in writing with the Clerk and entered in the record of the Common Council. (Am. by Ord. 8161, 11-14-83; ORD-07-00194, 12-20-07)



(d) An advertising sign that is a wall sign 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. Advertising signs displayed as a wall sign may be illuminated subject to Sec. 31.04(5)(k).

(e) No advertising sign that is a ground sign shall exceed three hundred (300) square feet in area, except that any advertising sign 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 sign conforms to all other provisions of this chapter, may be as large as seven hundred and fifty (750) square feet in area. Advertising signs displayed as a ground sign may be illuminated subject to Sec. 31.04(5)(k).

(f) No advertising sign 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 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 sign exceed eight (8) feet in height even where the height of the main or principle portion of the outdoor advertising sign 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.

(g) The following setbacks for advertising signs are required, except for advertising signs realigned under Sec. 31.05(2)(c):

1. An advertising sign situated parallel to the right-of-way line must be set back a distance equal to its height.
2. An advertising sign 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 signs shall not be permitted.

(i) No advertising signs are permitted in districts of special control.

(j) No advertising signs 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 signs.

(k) No advertising signs shall be permitted on the front facade of any building.

(l) No advertising sign shall be located in any required front yard or in the last ten (10) feet of any required rear yard, except for advertising signs realigned under Sec. 31.05(2)(c).

(m) No advertising sign shall be located on any zoning lot occupied by a nonconforming use.

(n) Any design extension that causes an advertising sign to exceed its total permitted square footage of area is strictly prohibited.

(o) Replacement Advertising Signs. As defined in Sec. 31.112, a "Replacement Advertising Sign" is a temporary permitted sign distinct from an Advertising sign. Sec. 31.11 controls Advertising Signs and Sec. 31.112 controls Replacement Advertising Signs. The requirements of Sec. 31.11 shall apply to any Replacement Advertising Sign erected pursuant to Sec. 31.112, except where expressly stated otherwise in that section. (Cr. by ORD-15-00069, 6-24-15)

31.112 ADVERTISING SIGN BANK AND REPLACEMENT ADVERTISING SIGNS.

(1) If the owner of an existing advertising sign permanently removes a lawfully existing advertising sign eligible for replacement under sub. (2) below, the net area of each sign face

removed may, at the owner's request, be added to an "Advertising Sign Bank" for that owner. The net area banked by the owner will be available to construct a Replacement Advertising Sign ("RAS") that may be displayed for up to fifty (50) years, as set forth in this section.

(2) Eligibility. The following criteria must be met for an existing advertising sign to be eligible for banking under this section:

(a) The advertising sign must have been in existence within the boundaries of the City of Madison on February 2, 2015 or earlier. Signs that come into the City by annexation or attachment after February 2, 2015 are not eligible to be banked.

(b) Redevelopment. The process established in this ordinance is only available for an advertising sign to be removed from a property that is scheduled for redevelopment, if the redevelopment includes all of the following:

1. Removal of improvement(s) other than the existing advertising sign;
2. Construction of new improvement(s) other than an advertising sign, as evidenced by the issuance of a building permit or zoning certificate for the new improvement(s); and
3. The advertising sign must be removed because the sign is located in the same physical space where a new improvement (other than another advertising sign) will be constructed, or adjacent to a new improvement such that proximity of the existing sign would result in a building code violation.

(c) Advertising Sign Replacement not Considered Redevelopment. Removal of an existing advertising sign and construction of a replacement advertising sign on the same site shall not be considered "redevelopment" under this subsection and is prohibited.

(d) Redevelopment projects that have been approved for a demolition permit by the Plan Commission prior to the effective date of this Sec. 31.112 are not eligible to have existing advertising signs banked.

(3) Definitions. For purposes of this section:

"Owner" means the lawful owner of the existing advertising sign to be removed as of the date of actual removal of the existing advertising sign.

"Remove" means the complete removal of the entire "sign" as defined in Sec. 31.03(2).

"Replacement Advertising Sign" or "RAS" means a new, lawfully-permitted temporary sign meeting the definition of "Advertising Sign" in Sec. 31.03(2), but modified by and authorized under the requirements of this section. Replacement Advertising Signs are permitted for a maximum of fifty (50) years. This section shall in no way modify the requirements for an Advertising Sign under Sec. 31.11.

(4) Advertising Sign Bank.

(a) One-hundred percent (100%) of the net area of each sign face removed from a lawfully pre-existing advertising sign may be banked.

(b) Procedure. An owner wishing to bank square footage under this ordinance shall file written notification of intent to remove an existing advertising sign with the Zoning Administrator not less than ten (10) business days prior to the intended date of removal. The written notification shall include the address of the zoning lot where the existing sign is located, information regarding the intended redevelopment and approximate date for commencement of construction, and description of the existing sign. The Zoning Administrator shall measure the net area of the existing sign prior to removal. The owner shall notify the Zoning Administrator when the existing sign has been removed so the Zoning Administrator can verify its removal and when a building permit has been applied for on the property in question. Square footage may not be banked until a building permit or zoning

certificate for new improvement(s) on the property in question has been issued, the Zoning Administrator gives his or her written approval to bank the square footage.

(c) The Zoning Administrator shall maintain an Advertising Sign Bank for each owner so requesting and who meets the requirements herein. The Advertising Sign Bank will include information about the removed sign including the zoning district, whether the sign was in an Urban Design District and any other information the city deems pertinent. The Zoning Administrator shall draw down an Owner's Advertising Sign Bank when a Replacement Advertising Sign permit is issued.

(d) Failure to complete the installation of a Replacement Advertising Sign within six (6) months of issuance of the sign permit shall cause the permit to expire, per Sec. 31.041(4), and the owner will lose the banked square footage associated with that permit.

(e) Banked square footage expires on the sunset date in sub. (7) herein.

(f) Banked square footage may be banked only by the owner of the lawfully-existing removed sign and is not transferrable under any circumstances including but not limited to a transfer by assignment, merger, acquisition, etc.

(g) If a Replacement Advertising Sign is installed in violation of any requirement of the permit for such sign, said permit shall become null and void, the sign shall be immediately and permanently removed, and the banked square footage for that sign permanently forfeited.

(5) Procedure to Install a Replacement Advertising Sign.

(a) The owner must have accumulated the corresponding amount of unexpired banked square footage in the Owner's Advertising Sign Bank to construct the RAS in question, before applying for an RAS permit.

(b) A complete application and permit fee meeting all the requirements for an advertising sign permit under this chapter shall be filed by the owner and reviewed for compliance with this ordinance and according to applicable procedures for the issuance of sign permits established in this chapter. The application shall also include a written agreement to remove the RAS within fifty (50) years of its installation date as required by sub. (6)(f) herein.

(c) Common Council Review. Prior to approving and issuing a permit for an RAS, the Zoning Administrator or designee shall provide written notice to the alderperson of the district where the RAS is proposed to be placed. That alderperson may request a review by the Common Council within fourteen (14) calendar days of the date of the written notice by notifying the City Clerk in writing of the request for review. The Clerk shall place the matter on the next available Council agenda for review, wherein the Council shall consider whether the proposed RAS will substantially impair or diminish the established uses, values or enjoyment of the property in question or any immediately adjacent property. A two-thirds (⅔) vote of the Common Council shall be required to prevent the issuance of an RAS permit, based upon a finding of the foregoing criteria. Any person aggrieved by the decision of the Common Council may, within thirty (30) days after the decision is published in the proceedings of the Common Council, commence an action seeking the remedy available by certiorari. This Sec. 31.112(5)(c), "Common Council Review," shall be ineffective as of a date two (2) years from the effective date of this ordinance.

(6) Replacement Advertising Sign Criteria. A Replacement Advertising Sign shall conform to the requirements for Advertising Signs in Sec. 31.11(2), "General Regulations for Advertising Signs" except:

(a) Permitted Zoning Districts. Replacement Advertising Signs are permitted only in the CC-T, CC, TE, SE, IL, and IG zoning districts and only such districts or portions of such districts that are not located in a Prohibited Location listed in

sub. (5)(b), below. A Replacement Advertising Sign may be located in "Annexed Lands" as described in Sec. 31.13(8), if the annexed land is in a zoning district listed in this paragraph and not a Prohibited Location under Sec. 31.112(5)(b) herein.

(b) Prohibited Locations. No RAS shall be constructed in an Historic District or on a Landmark building or Landmark site, as defined in Chapter 41, an Urban Design District listed in Sec. 33.24, in the geographic area described in Sec. 31.05(2)(a) or in the No Advertising Sign District described in Sec. 31.13(6). (Am. by ORD-15-00072, 7-29-15)

(c) Height. The height of a Replacement Advertising Sign displayed on the ground shall not exceed thirty (30) feet, measured using one of the following two methods:

1. From the top of the sign to the approved grade at the base of the supporting structure, or

2. If the base of the sign's supporting structure sits below the elevation of the adjacent roadway, the height may be measured from the top of the sign to the highest elevation of any roadway surface within the highway right-of-way directly adjacent to the zoning lot where the RAS is to be located, except an on-ramp, off-ramp, overpass or pedestrian bridge is not eligible for this measurement. The point at which the elevation of the eligible roadway is measured shall be determined by drawing a line from the base of the sign to the roadway that bisects the roadway at a right angle.

(d) Setback, Residence Districts.

1. Replacement Advertising Signs shall be set back not less than three (3) feet and not more than one hundred (100) feet from any property line.

2. No RAS shall be erected within one hundred (100) feet of any property line of a residential zoning district or the lot line of any property containing a residential use.

(e) Net Area. For a Replacement Advertising Sign displayed as a ground sign, the maximum net area of the sign face shall be as set forth in Sec. 31.11(2)(e), with a maximum of two (2) sign faces per structure. If displayed as a wall sign, the maximum net area shall be as set forth in Sec. 31.11(2)(d).

(f) Fifty-year Permit. All RAS permits shall expire fifty (50) years from the date of issuance by the City. Any RAS installed under this section shall be removed within fifty (50) years of the date the permit is issued and the permit holder shall agree to do so, in writing, as a condition of the permit. This obligation to remove the sign shall continue with any change of ownership of the sign or the property where the sign is located. No person shall allow a Replacement Advertising Sign to remain erected for more than fifty (50) years from its installation date.

(7) Sunset Clause. Section 31.112(5)(c), "Common Council Review," shall be ineffective as of a date two (2) years from the effective date of this ordinance. The remainder of this ordinance, Sec. 31.112, MGO, and all related cross references as determined by the City Attorney, shall be ineffective as of a date eight (8) years from its effective date and any unused, unexpired banked square footage in an Advertising Sign Bank shall expire as of the eight-year sunset date. Notwithstanding the foregoing, sub. (4)(g), all of sub. (6), "Replacement Advertising Sign Criteria," and any other provision establishing criteria for a Replacement Advertising Sign shall survive the sunsetting of this ordinance for purposes of enforcement.

(Sec. 31.112 Cr. by ORD-15-00069, 6-24-15)

COPY

Office of the City Attorney

Michael P. May, City Attorney **Patricia A. Lauten, Deputy City Attorney**

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LITIGATION ASSISTANT
Patricia V. Gehler

July 31, 2019

TO: Members of the Urban Design Commission
RE: ID # 56387, Appeal of Zoning Administrator's Denial for Signage Located at 3737 E. Washington Ave.

This letter provides the Zoning Administrator's response to arguments in the June 14, 2019 letter from attorneys for Adams Outdoor Advertising in the above appeal.

The Zoning Administrator denied Adams' application to "bank" the square footage from a billboard at 3737 E. Washington because the sign is unlawful and not eligible for sign banking. The reasons are given in Matt Tucker's letter of May 17, 2019 (Saari Exhibit D.) Sec. 31.112 of the Madison General Ordinances allows lawful billboards that are in the way of new development to "bank" the square footage and be replaced elsewhere. This ordinance is a compromise to the otherwise complete ban on all new billboards in the City.

Under this ordinance, only a "lawful" sign is eligible to bank and replace. This is noted in 3 different places, MGO 31.112(1), 31.112(4)(a), and 31.112(4)(f).

The Zoning Administrator (ZA) must apply this ordinance as written. As written, "lawfulness" is a clear eligibility requirement. The ZA denied this application because the billboard was built, or modified, to be much larger than what the permit allows. The original and only permit on-file is for a **10 x 20' sign** (200 sq.ft) but the actual sign is 12' x 25' or 300 square feet.

MGO 31.041(1) is the ordinance that makes this unlawful:

(1) Permit Required.
(a) Signs may be erected, moved, enlarged, or reconstructed within the City of Madison as allowed in this Ordinance only when a permit therefor shall have been issued by the Zoning Administrator or designee, except when specifically exempt from permit under Sec. 31.044 or elsewhere in this Ordinance.

(b) 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 sign as defined in this ordinance without first obtaining a permit from the Zoning Administrator and making payment of the fee(s) required by this ordinance, unless a permit is not required under Sec. 31.044 or unless otherwise exempt from obtaining a permit or paying a fee under the provisions of this ordinance....

The version of this ordinance in 1968 when the permit was applied for had the same requirement. (See 31.05 from 1966, attached.) It was unlawful then, and now, to build or maintain a sign without a proper, approved permit for the sign in question.

Why does it matter if the size matches the permit?

- City ordinances require a permit to construct, alter, or enlarge a sign. Constructing or altering a structure beyond what was authorized in the permit is a classic type of code violation. If there were no consequences for building a sign that is different or larger than permitted, the entire permit process would be meaningless.
- The City issues sign permits in order to enforce construction, safety and aesthetic requirements of the sign code. Signs have a maximum size to promote traffic safety and the visual appearance of the City.
- The dimensions of a sign form the basis for the permit fees. Deliberately under-reporting the size defrauds the City and results in a lower permit fee.

How do we know there wasn't a permit to change it to 12' x 25'?

- Matt Tucker can testify to the records he searched. Neither the City nor Adams can find a permit for a 12 x 25 sign at that location. The fact that good records *do* exist for the 1968 permit suggests that the City would also have good records for applications and permits since that time. In this case, there are no new records to demonstrate a change to this permit. The ZA is confident that this likely means no permit to alter or enlarge this sign was ever applied for. This is corroborated by Adams' lack of records.

Does it matter WHO created the unlawful situation?

- No. It doesn't matter who created the unlawful situation. Adams has submitted evidence to suggest this sign has been this size since at least the 1980's (as noted in the Judd affidavit) and possibly since the 1969 lease between Hansen and Vernon Ziegler. (Assuming that lease proves anything regarding size. The full dimensions are not provided) Whether it was Vivid, Hansen or Adams that allowed the sign to be built larger than permitted, the sign remains unlawful today.

What if it was typo?

- Adams argues the 10 x 20 that someone wrote must have must be a "clerical error." Error or no, there is no exception for typos in the sign banking ordinance. There is no evidence that anyone made a clerical error. 10 x 20 does not look like 12 x 25. As the images of the permit show, both faces are clearly described as 10 x 20' for a total of 200 square feet.
- To assume that an error was made, and decide the sign is lawful despite it, would discredit the careful record keeping of the City, render the permitting process pointless, and would ignore the ordinance.

Hasn't too much time passed?

- No. It doesn't matter that the sign has been unlawfully oversized for a long time. Adams makes a few legal arguments about this, see the next page for the ZA's response.

Zoning Administrator's response to Adams' arguments:

1. **The Statute of Limitations is immaterial:**

The statute of limitations for municipal ordinance violations is 2 years, not 10, but this doesn't matter. Wis. Stat. 893.93(2)(b). Adams suggests that if the time has run out to prosecute, the sign is no longer unlawful. This is wrong for many reasons:

a. Whether the statute of limitations has run does not change whether something is considered *unlawful.* At worst, it just means the City could not prosecute, i.e. write a ticket or proceed in municipal court.
b. The statute of limitations has not expired on this case. It does not work this way for ongoing code violations. Unlike a speeding ticket or disorderly conduct, where the illegal activity happens at a single moment in time, every day is a continuing violation. MGO 31.19. Village of Sister Bay v. Hockers is the leading Wisconsin case on this concept and also happens to involve a structure (porch) that was not authorized by the approved building permit. 106 Wis. 2d 474, 479, 317 N.W.2d 505, 507 (Ct. App. 1982). Like the porch in that case, this sign has been unlawful since it was constructed to be 12' x 25', and still is today. This means the City could prosecute for this right now. See also Maiman Real Estate, LLC v. Waupaca County, 16-CV-1025, 2017 WL 4838309 (E.D. Wis. Oct. 24, 2017). Whether to *prosecute* this violation is discretionary.
c. Declining to prosecute does not change its status as "unlawful."
d. Cases on selective enforcement also support this. Zoning staff cannot be everywhere at all times, the City simply doesn't have the resources. Zoning may not catch every permit problem, until it comes to their attention. Here, it did not come to their attention until very recently.

2. **No estoppel.**

Adams argues that because the sign has been 12' x 25' for a long time, the City cannot take action now. This is a concept known as "equitable estoppel." This concept does not apply for several reasons:

a. Equitable estoppel does not apply to city government in this context. A city must be able to enforce ordinances enacted for the "health, safety and welfare" despite the passage of time, or failure to notice or act on it sooner. See Milwaukee v. Leavitt, 31 Wis.2d 72, 76, 142 N.W.2d 169 (1966), Westgate Hotel, Inc. v. Krumbiegel, 39 Wis. 2d 108, 114, 158 N.W.2d 362 (1968).
b. Even if it were an outright mistake (clerical error) by city staff, past or present, an error of an enforcement official does not "estop" the City from enforcing a code violation at a later date. Snyder v. Waukesha Co. ZBA, 74 Wis. 2d 468, 476–77, 247 N.W.2d 98. (1976). There are many cases that hold this, for obvious and practical reasons.
c. As with their statute of limitations argument, even if the legal concept of estoppel were found to apply, this does not mean the sign is "lawful."

3. **UDC does not have discretion to fashion a compromise.**

The Village of Sister Bay case also supports this concept - in that case, the City sought

778 days' worth of penalties at $10/day for the ongoing violation of adding a porch to a building without modifying the building permit. The judge tried to fashion a compromise by imposing only 100 days' worth of fines, thinking this was fair. However the Court of Appeals said it was all or nothing – the trial court did not have the option to fashion an alternative or compromise outcome. The judge had to enforce the law as written, and the law as written required a penalty for each continuing day of violation.

Likewise, in this appeal, the only choice of the UDC is to enforce the ordinance as written. If the sign is unlawful then no amount of square footage can be banked. Neither the Zoning Administrator nor the UDC has the discretion to make up an alternative outcome that is not provided for in the ordinance.

The public, property owners and the sign industry benefit from consistent ordinance enforcement and interpretation. Overlooking the "lawfulness" requirement would chip away at consistency and place the Zoning Administrator in a tenuous legal position where he is asked to do a favor for one party. This is the sort of "unbridled discretion" that Adams argues against when challenging the sign code's constitutionality. Adams cannot have it both ways. The ordinance as written is clear, and it should be enforced as written.

Because this sign is unlawful, the Zoning Administrator properly denied Adams' request to bank the square footage and the UDC must uphold this decision.

Sincerely,

Lara M. Mainella
Assistant City Attorney-City of Madison

Encl.

cc: Matt Tucker, Zoning Administrator
Brian Potts, Attorney for Adams Outdoor Advertising