

Replacement Advertising Sign “Cap & Replace” Ordinance Background and FAQ

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With Leg Id #[77467](#), the Common Council will consider amendments to MGO 31.112, *Advertising Sign Bank and Replacement Advertising Signs*, to extend the sunset date for 8 years and make minor procedural clarifications to the sign bank process for Advertising Signs.

The Replacement Advertising Sign ordinance is scheduled to “sunset” or end, in June of 2023. This ordinance extends the sunset date for 8 years to 2031.

WHAT THE REPLACEMENT ADVERTISING ORDINANCE ALLOWS:

This ordinance allows removal of an existing Advertising Sign (“billboard”) from a property to be redeveloped, and construction of a replacement Advertising Sign on another site. The ordinance was adopted in June 2015 and will expire in June of this year. 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 the same as billboards and are typically owned by outdoor advertising companies. The City has prohibited new Advertising Signs since the 1980’s. The ordinance in question allows sign owners to “bank” the square footage from the sign faces of a billboard removed to make way for new development, if the billboard is located in the footprint of the proposed development. The sign company can then use the banked square footage to construct a Replacement Advertising Sign in certain zoning districts. MGO 31.112 establishes procedure to approve this process, and that ordinance was the result of discussion and compromise in 2015.

HISTORY OF MADISON’S BILLBOARD REGULATION

In 1977, the City of Madison amended the sign ordinance (Chapter 31) to require removal of all Advertising Signs on State Street and the inner and outer loops of the Capitol Square by July 1979. All other Advertising Signs had to be brought into compliance or removed by December 1982. Following a lawsuit in 1979 from Hanson Advertising (precursor to Adams), the City extended the deadline for State Street and the square to December 1983. The city also created a “No Advertising Sign District,” from Livingston Street west to Park Street, from lake to lake, where all Advertising Signs must be removed at the rate of no less than one per year, and all removed by December 1989. All other Advertising Signs were allowed to remain but could not be enlarged, moved, etc. and no new Advertising Signs have been allowed since then.

In 1987, Adams Outdoor Advertising purchased Hanson. In 1989, the City adopted a ban on all new or replacement 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. This could take decades or much longer. In 1990, Adams sued the City to stop the ban. That case was settled in 1993. The 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 signs. Adams has used all of these permits as of May of 2004. Adams also received more permits for new billboards as part of a settlement of a property tax case.

But the advertising sign industry has continued to request various ways to put up more billboards despite the City's ordinance that clearly prohibits new billboards.

In 2007, a few alders worked with Adams to introduce an ordinance that would allow them to remove an existing Advertising Signs and replace it elsewhere in the City, what the industry calls "cap and replace." This went through committees but did not return to Council for a vote.

In 2015, Adams again asked City policymakers to adopt a "cap and replace" style ordinance. After much back and forth, compromise, and policymaker input, the existing Replacement Advertising Sign ordinance was adopted. One feature of the current ordinance is that it would eventually sunset or expire. The sign industry is asking for an extension of this end date.

The pending amendment would extend that sunset date for another 8 years. A future Common Council can consider extending the ordinance at that time.

WHAT HAS HAPPENED WITH BILLBOARDS SINCE 1977

Status of billboards in Madison. Since the adoption of the original ordinance in 1977 and 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 most or all of the billboards in the City: Adams Outdoor Advertising owns approximately 100 billboards, Lamar Advertising owns 25-30 billboards. Adams has said that since 1989, approximately 65 of their billboards have been removed as a result of the City's ordinance because of redevelopment projects or other reasons. In 2015 the present ordinance was adopted to address the concerns about redevelopment – namely, if an existing billboard is within the footprint of an approved redevelopment plan, the sign owner can remove the sign and "bank" the square footage to use on a replacement sign elsewhere in the City.

Billboard-related litigation. In 1999, Adams and Tellurian UCAN sued the City over a notice to remove Advertising Signs on Williamson Street. Tellurian had applied for a Conditional Use permit for expanded residential use on the property. The request was approved, with a condition that two Advertising Signs existing on the site be removed at the end of the current lease period. 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. The City prevailed in the lawsuit, the Advertising Signs were removed, and Adams paid a \$10,000 forfeiture to the City.

Property tax litigation – Adams and Lamar both sued the City over tax valuation of billboards. Those cases were settled, and the settlement resolved some other conflicts and granted each of them credits for new advertising signs to be installed and some existing signs to be modified. To date, 6 of these permits have been used, with 2 permits (Lamar only) remaining.

In 2017 Adams applied for permits to increase the height of some billboards and convert some to digital, despite city ordinances prohibiting those things. The Zoning Administrator denied the permits as violating the ordinance. Adams appealed the ZA decision to the UDC, the UDC upheld the denials, and Adams filed suit in state and federal court, alleging the City’s entire sign code to be unconstitutional.

In 2023, the City won the federal case, and the state court case was dismissed. The 7th Circuit Court of Appeals upheld the City’s sign ordinance, and the ability to prohibit billboards and regulate / prohibit digital signs.

State of Wisconsin policy impacting billboards and local government:

- State law restricts the ability of local government to condition project approval on removal of Advertising Signs, and now prohibits local government from requiring the removal of Advertising Signs over a specified period of time.
- Realignment - Wis. Stat. § 84.30(5r) requires the City to pay the state’s cost of condemning an Advertising Sign that has to be removed for a state highway project, unless the City allows the sign to be relocated (“realigned”) on the same site. If the City does not allow the sign to be moved, the City must petition the state to condemn the sign and pay the state the condemnation award, less relocation costs that would have been paid by the state if the City has allowed the sign to be moved rather than removed. If the City doesn’t pay, the State can reduce the City’s general transportation aid.

This brings us to the present.

THE EXISTING ADVERTISING SIGN REPLACEMENT ORDINANCE

The RAS ordinance allows owners of Advertising Signs to “bank” the square footage of the sign faces if an existing Advertising Signs is in the footprint of approved redevelopment. Banked

square footage may be used to construct a Replacement Advertising Sign (RAS) following these rules:

1. Banked square footage for new advertising sign may only be used in the CC-T, CC, TE, TSS, NMX, AP, SE, IL, IG Districts. Also, no new signs may be erected in Historic Districts and Urban Design districts. RAS signs could be erected in lands annexed since 1987, if located in the above districts.
2. Existing Advertising Signs may only be banked if the site is being redeveloped and the sign is within the footprint of the approved development /structure.
3. A new way of calculating height measurement is employed for RAS, using the road height adjacent to the sign rather than the grade height where the sign is placed.

FAQ

The following are a series of questions that were raised in 2015 and worth repeating here:

Q: How are Advertising Signs currently regulated?

A: All Advertising Signs are prohibited, so any existing Advertising Signs do not conform to the sign code and cannot be replaced, enlarged, removed, etc. per 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 City Historic Districts, Urban Design Districts, or are not appropriately zoned.

Q: Why the sunset date?

A: A sunset was put in the 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 properties in the Town of Madison that have Advertising Signs that attach to the City?

A. Any Advertising sign that comes into the City through annexation or attachment after February 2, 2015 are not eligible for cap & replace.

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

A. Yes, if annexed or attached land is zoned as one of the zoning districts listed above where Replacement Advertising Signs are allowed. New advertising signs continue to be prohibited.

Q. Is it possible there could be more Advertising Signs 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 signs could be constructed from the square footage of one removed billboard. Typically, new Advertising Signs have been on the larger size, but there is no reason why smaller faces could not be approved.

Q. Will this amendment allow for digital Advertising Signs or full-video signs? A. No.

Q. Will these new Replacement Advertising Signs be up forever?

A. No, these are 50 year permits, after which the sign must be taken down.