

Appeal of Official Notice of Violation Digital Sign at 75 Nob Hill Rd.

Urban Design Commission - January 24, 2024





Digital Image Sign (Static) Definition

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. MGO 31.03 (2)



Digital Image Signs are Prohibited

Digital Image Signs.

Digital Image Signs, as defined in [Sec. 31.03\(2\)](#), whether static or animated, are prohibited.

MGO 31.045(3)(i)

Informational Letter to Adams about Digital Sign Rules

(and sent to all
others with
digital signs)



Department of Planning & Community & Economic Development
Building Inspection Division

Madison Municipal Building, Suite 017
215 Martin Luther King Jr. Blvd.
P.O. Box 2984
Madison, Wisconsin 53701-2984
Phone: (608) 266-4551
www.cityofmadison.com

May 1, 2023

Adams Outdoor Advertising, Inc.
Attn: Julie Johnson
102 E. Badger Rd.
Madison, WI 53713

Subject: 79 W. Beltline Highway/75 Nob Hill Rd. Advertising Sign

Dear Adams Outdoor Advertising,

Your advertising sign is located on a property that became part of the City of Madison on October 31, 2022. This means the City's rules for signs now apply.

Your sign is a Static Digital Image Sign, defined as:

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.

Digital Image Signs are prohibited in the City of Madison, by sec. 31.045(3)(i) of the Madison General Ordinances. Only non-digital advertising signs are allowed to continue.

The City will be following up to determine compliance after June 1, 2023. Please contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads 'Katie Bannon'.

Katie Bannon
Zoning Administrator
kbannon@cityofmadison.com
608-266-4569



Exhibit 1



BUILDING INSPECTION OFFICIAL NOTICE

CASE NUMBER: CB2023-271-04923 PROPERTY: 75 NOB HILL RD
INSPECTION DATE: 09/11/2023 INSPECTOR: JACOB MOSKOWITZ
12:00 PM ASSISTANT ZONING ADMINISTRATOR
MAILED DATE: 09/29/2023 (608) 266-4560
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 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.	10/31/2023

CC: LUCAS HEIAR ADAMS OUTDOOR
PO BOX 155 ADVERTISING
OREGON WI 53575 3801 CAPITAL CITY BLVD
LANSING MI 48906



Official Notice

Exhibit 2

Photo from Inspection on September 11, 2023



Exhibit 3



Responses to Adams' Arguments

There are a lot of materials and legal arguments in this appeal.

We will try to summarize and highlight what is important for UDC to decide!



Response to Adams' Appeal

- 1. Chapter 31 is not a zoning ordinance.**
- 2. Chapter 31 expresses city policy for all signs to follow digital rules**
- 3. This sign cannot be considered “legal nonconforming” because it wasn’t legal in the Town**
- 4. This is not a regulatory taking and UDC need not decide that question**

Sign Ordinance

- CODE OF ORDINANCES CITY OF MADISON, WISCONSIN VOLUME III CHAPTERS 20—31
CHAPTER 31 SIGN CONTROL ORDINANCE

CHAPTER 31 SIGN CONTROL ORDINANCE

(Chap. 31 Repealed and Recreated by ORD-13-00094)
Effective May 30, 2013

(Chap. 31 Repealed and Recreated by ORD-09-00091)
Effective August 1, 2009

(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 Wis. Stat. § 66.0103.

31.01 SHORT TITLE.

This ordinance shall be known and may be cited as the Sign Ordinance.

ADMINISTRATION, GENERAL REGULATIONS

31.02 PURPOSE AND SCOPE.

- (1) Purpose and Intent. The Common Council, by enacting this ordinance, recognizes the City has a significant and substantial governmental interest in promoting public safety and aesthetic values through the regulation of signs displayed within the City of Madison. The purpose of this ordinance is to create the legal framework for a comprehensive but balanced system of signs, and thereby to facilitate an easy and pleasant communication between people and their environment. Sign regulations, including but not limited to those which control the type, design, size, location and maintenance of signs, are hereby established to further the goals of safety and aesthetics and achieve more specifically, the following purposes:
- To enable the public to locate goods, services and facilities without difficulty or confusion;
 - To protect property values, public investment and overall neighborhood character by promoting an attractive, harmonious and aesthetically-pleasing environment and preventing conditions which have undesirable impacts on surrounding properties;
 - To promote the development of attractive and harmonious residential areas, viable commercial areas and to identify industrial and other areas;
 - To protect the public and promote safety, including but not limited to traffic and pedestrian safety; and to minimize effects of signs which may distract or obstruct visibility of official traffic signals and other safety or informational devices; and
 - To protect scenic views and the visual environment along all city streets, highways and rights-of-way and to promote overall aesthetics, avoid clutter and avoid inappropriate scale;
 - To recognize the role of appropriate and identifiable signage in helping businesses inform, direct and communicate with customers; and (Cr. by ORD-15-00118, 10-28-15)

Zoning Ordinance

- CODE OF ORDINANCES CITY OF MADISON, WISCONSIN VOLUME III CHAPTERS 20—31
CHAPTER 28 ZONING CODE ORDINANCE

CHAPTER 28 ZONING CODE ORDINANCE

Chapter 28 Amended by ORD-12-00134
Adopted 10/16/2012, Effective 1/2/2013

Chapter 28 Repealed and Recreated by ORD-11-00061
Adopted 3/29/2011, Effective 1/2/2013

SUBCHAPTER 28A: INTRODUCTORY PROVISIONS

28.001 TITLE.

This ordinance shall be known, cited and referred to as the Madison Zoning Code, or "this ordinance." For purposes of this Section, the phrase "this ordinance" refers to this Chapter of the Madison General Ordinances (MGO) or any condition imposed pursuant to this Chapter.

28.002 INTENT AND PURPOSE.

- (1) This ordinance is adopted for the following purposes:
- To promote land uses and development patterns that are consistent with the city's comprehensive plan and of adopted neighborhood, corridor or special area plans.
 - To promote and protect the public health, safety and general welfare of the City.
 - To secure safety from fire, flooding, pollution, contamination and other dangers.
 - To maintain and promote safe pedestrian and vehicular circulation.
 - To minimize congestion in the public rights-of-way through the regulation of off-street parking, maneuvering, loading and signage.
 - To ensure the provision of adequate open space for light, air, fire safety and recreation.
 - To protect environmentally sensitive areas.
 - To address and mitigate the effects of climate change.
 - To remove obstacles and provide incentives for energy conservation and renewable energy.
 - To promote and restore the conservation, protection, restoration and enhancement of historic resources.
 - To facilitate the adequate, efficient and cost-effective provision of infrastructure and other public services and facilities.
 - To preserve the natural scenic beauty of the City and to enhance the aesthetic desirability of the environment as well as the design of buildings.
 - To encourage reinvestment in established urban neighborhoods while protecting their unique characteristics.
 - To stabilize, protect, and enhance property values.





28.004 INTERPRETATION.

This ordinance applies to all land and land development within the jurisdictional limits of the City of Madison, Wisconsin.

- (1) This ordinance should be interpreted as a permissive zoning ordinance, which means that the ordinance permits only those principal and accessory uses and structures that are specifically enumerated in the ordinance. In the absence of a variance or special exception, any uses or structures not specifically permitted by the ordinance are prohibited. (Cr. by ORD-16-00026, 3-9-16)
- (2) 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, morals and general welfare.
- (3) Where the conditions imposed by any provision of this ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail, unless an exception to this provision is specifically noted.
- (4) This ordinance is not intended to abrogate any easement, covenant or other private agreement. However, this ordinance applies if it is more restrictive or imposes higher standards or requirements than an easement, covenant or other private agreement.
- (5) Any use, building, structure, or lot that is lawfully existing at the time of the adoption of this ordinance, or any subsequent amendment(s), may be continued, subject to the provisions in Subchapter 28N, Nonconformities.
- (6) A building, structure or use that was unlawful when this Chapter was adopted does not become lawful solely by reason of the adoption of this Chapter. To the extent that the unlawful building, structure or use conflicts with this Chapter, the building, structure or use remains unlawful under this Chapter.
- (7) In their interpretation and application, the provisions of this ordinance shall be liberally construed in favor of the City and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this ordinance is required by a standard in Wis. Admin. Code ch. NR 116 or NR 117, and where the ordinance provision is unclear, the provision shall be interpreted in light of the chapter NR 116 or NR 117 standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

(Sec. 28.004(1) - (6) Renum. by ORD-16-00026, 3-9-16)

Ch. 28 = Zoning



28.021 ESTABLISHMENT OF ZONING DISTRICTS.

In order to carry out the purposes and provisions of this ordinance, the following zoning districts are hereby established:

- (1) Residential Districts.*
 - (a) SR-C1 Suburban Residential - Consistent District 1
 - (b) SR-C2 Suburban Residential - Consistent District 2
 - (c) SR-C3 Suburban Residential - Consistent District 3
 - (d) SR-V1 Suburban Residential - Varied District 1
 - (e) SR-V2 Suburban Residential - Varied District 2
 - (f) TR-C1 Traditional Residential - Consistent District 1
 - (g) TR-C2 Traditional Residential - Consistent District 2
 - (h) TR-C3 Traditional Residential - Consistent District 3
 - (i) TR-C4 Traditional Residential - Consistent District 4
 - (j) TR-V1 Traditional Residential - Varied District 1
 - (k) TR-V2 Traditional Residential - Varied District 2
 - (l) TR-U1 Traditional Residential - Urban District 1
 - (m) TR-U2 Traditional Residential - Urban District 2
 - (n) TR-R Traditional Residential - Rustic District
 - (o) TR-P Traditional Residential - Planned District

* When other Chapters of the Madison General Ordinances refer to residential districts, the Downtown Residential Districts, DR1 and DR2, shall be included.

(Am. by ORD-13-00007, 1-15-13)

- (2) Mixed-Use and Commercial Districts.
 - (a) LMX Limited Mixed-Use
 - (b) NMX Neighborhood Mixed-Use District

Ch. 28 =
establishes
zoning districts
for the City

Chapter 31, Sign Control Ordinance - “non-zoning police power ordinance”



Purpose – promote traffic safety and aesthetics, assist with wayfinding.

Chapter 31 does not add up to a zoning ordinance under *Zwiefelhofer* case.

Adams other case example (mobile home parks) is not a good comparison.

Use of Groups in Ch. 31 does not make this a zoning code.

Ch. 31 was upheld as a constitutional regulation of signs in *Adams Outdoor Adv. v. City of Madison*, 56 F.4th 1111 (7th Cir. 2023)

***Federal Court upheld the City’s digital regulations and treatment of off-premise signs**



Nonconforming Signs Must Follow Digital Rules

General Rule . Any 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 under the following circumstances:

1. There is no increase in gross area, net area, illumination, increase or addition of flashing, movement, **or other features or characteristics prohibited by Sec. 31.045** and no addition of features that would violate Sec. 31.046(1) (Electronic Changeable Copy Signs). **Existing signs with features fitting the description of any sign prohibited by Sec. 31.045(3)(f), (g), (h), or (i) shall be required to conform to the requirements of those subsections.** Existing signs with features fitting the description of Electronic Changeable Copy Signs shall be required to conform to all requirements of Sec. 31.046(1) including but not limited to the applicable time limitations for changing copy or images.

MGO 31.05(1)(a)1.



Sign Not Legal When in Town of Madison

Regulated by Dane County

nance under the town billboard statute. Therefore, under the facts of this case, conclude the Town's billboard ordinance does not preempt the County's billboard ordinance. For the same reasons, we also conclude that both the County the Town share regulatory authority over billboards located on property that is the subject highway maintained by the Town.

CONCLUSION

¶26 Based on the foregoing, we conclude that a county has the authority under both WIS. STAT. §§ 59.69(1) and (4) and 59.70(22) to enact ordinances regulating billboards and other similar structures. We further conclude that where, as in this case, a town approves a county zoning ordinance that includes a billboard ordinance enacted pursuant to the procedures set out in WIS. STAT. § 59.69(5)(c), the town's billboard ordinance adopted under the town billboard statute does not preempt a county's authority to regulate billboards in that town. Consequently, the Town of Madison's billboard ordinance, enacted under § 60.23(29), does not preempt Dane County's billboard ordinance DCO §§ 10.70, *et seq.*, enacted under § 59.69(4).¹⁰ We therefore reverse the circuit court's



Adams lawsuit v. Dane County – excerpt:

**This was about another billboard in
the Town but the law is the same**

**Dane County regulates billboards in
the Town under the County Zoning
Ordinance**

6. The Dane County Board of Supervisors has enacted an ordinance pursuant to Wis. Stat. § 59.69 for the regulation of zoning within the areas within the county outside the limits of incorporated villages and cities, which is codified as Chapter 10 of the Dane County Code of Ordinances.

7. The subject sign is located on real property located in the Town of Madison, which is in Dane County but outside the limits of incorporated villages and cities.

8. [Adams] erected the subject sign without obtaining a Dane County zoning permit.

9. Jason Saari states in Para. 6 of his Affidavit that “I personally applied for the sign permits for the subject sign structure. When I did so, it was my understanding that the Town of Madison has exclusive jurisdiction over regulation of the subject sign structure at the local level. That remains my understanding.”

Adams' digital sign not legal in Dane County



DANE COUNTY PLANNING DEVELOPMENT

Room 116, City-County Building, Madison, Wisconsin 53703
Fax (608) 267-1540

*Housing &
Economic Development*
(608)266-4270, Rm. 362

Planning
(608)266-4251, Rm. 116

Records & Support
(608)266-4251, Rm. 116

Zoning
(608)266-4266, Rm. 116

February 3, 2012

Jason Saari
Adams Outdoor Advertising
102 E. Badger Road
Madison, WI 53713

RE: Construction of an off-premise advertising sign without obtaining a Dane County Zoning Permit at 75 West Beltline Highway, Town of Madison

Dear Mr Saari,

This letter is to inform you that the Dane County Zoning Division has identified that an off-premise advertising sign was constructed on Parcel 0709-361-9070-0 within the Town of Madison. Upon investigation, it was observed that a 14' x 48' electronic LED off-premise advertising sign was constructed on the property fronting West Beltline Highway.

Under Dane County Code of Ordinances (DCCO), Chapter 10, Zoning Regulations, section 10.91, a zoning permit is required to be obtained prior to the construction of a sign to ensure compliance with zoning regulations. The purpose of this regulation is to ensure public safety, preservation of scenic beauty, and the implementation of the desired overall character of the community and constituent zoning districts. Failure to obtain a permit for the construction of a sign is a violation of DCCO 10.91.

Based on a preliminary review, it appears that the sign constructed on the property has copy area of 1,344 square feet. DCCO section 10.74 (6) states the maximum copy area for an off-premise advertising sign (billboard) shall be no larger than 300 square feet. It appears that the constructed sign far exceeds the 300-square foot limit for off-premise advertising signs. The constructed sign as observed violates DCCO section 10.74 (6).

Further, the sign is of a type whose message is changed by electronic means (LED sign). This would be considered an electronic sign. Under DCCO section 10.73(15), electronic signs may only be used to advertise goods and services available on the property on which the sign is located. It was observed that the sign displays other advertisements other than A-1 Transmission. The constructed sign as observed violates DCCO section 10.73 (15).



Exhibit 5

This letter serves as notice that the construction of the billboard sign located on the property located on the property at 75 West Beltline Highway in the Town of Madison, as identified as Parcel # 0709-361-9070-0, is in violation of the Dane County Code of Ordinances, Zoning Regulation, sections 10.91, 10.74(6) and 10.73(15). You are hereby instructed to remove the sign within 30 days of the date of this letter or be subject to penalties as noted in DCCO 10.92. If the sign is not removed within the specified timeframe, compliance shall be sought through circuit court action.

Your cooperation is appreciated in this matter.

Respectfully,

Roger W. Lane III
Dane County Zoning Administrator

Cc Carlos Pabellon, Dane County Corporation Counsel
Director Todd Violante, Dane County Planning & Development
Hans Hilbert, Dane County Regional Zoning Inspector
Town Clerk Renee Schwass
Michael Duffy, 75 West Beltline Highway, Madison, WI, 53713, property owner

Enclosures

Exhibit 5

Exhibit 5



Adams' Digital Sign not legal now

The City of Madison is not obligated to honor the lawsuit settlement between Dane County and Adams.

- **City was not a party to the settlement**
- **This sign is no longer under County jurisdiction**

The sign is now located in the City, so the City of Madison's ordinances apply to this sign.

Exhibit 5

Summary



- **Chapter 31 is not a zoning ordinance, so the concept of “legal nonconforming use” does not apply.**
- **Chapter 31 requires “nonconforming” signs to follow the City’s rules for digital signs.**
- **The sign was not completely legal when it was in the Town because it lacked a County permit.**
- **This is not a regulatory taking and not ripe.**

UDC should Deny the appeal and uphold the Official Notice



- **This digital image sign was operating as digital on the date of the Official Notice.**
- **The sign violates MGO 31.045(3)(i).**
- **The Official Notice complies with the law, and there is no error in the Official Notice.**
- **Notice does not require removal of sign or reduction of size. The Notice requires Adams to stop using digital features.**