

CITY OF MADISON, WISCONSIN

REPORT OF THE CITY ATTORNEY

AUTHOR: Lara M. Mainella, Assistant City Attorney

DATED: May 13, 2009

TO THE MAYOR AND COMMON COUNCIL:

RE: **Drafter's Analysis for I.D. No. 04167 – Substitute Ordinance**

This Substitute Ordinance (Exhibit X) repeals and creates Chapter 31, the City's Street Graphics Control Ordinance, which controls the display of outdoor signs and advertising. Chapter 31 will be renamed the "Sign Control" Ordinance. The word "street graphics" will be replaced with the word "Sign" as appropriate throughout Chapter 31, Chapter 28, Section 33.24, and other necessary ordinances. Certain sign regulations in Chapter 28 (the Zoning Ordinance) have been moved to Chapter 31 or appropriate cross-references have been established. Section 1.08(3) has been updated to reflect new ordinance numbers for violations of Chapter 31 but the bail deposit for citations not increasing. Companion changes are made to Chapter 33.24, the Urban Design Commission ordinance, to coincide with substantive and procedural changes to Chapter 31 and clarify current UDC procedure with respect to sign reviews. This memo serves as the Drafter's Analysis, summarizing the major changes.

I. SUBSTANTIVE CHANGES TO CHAPTER 31:

- New definitions for "gross area" and "net area," which affects measurement and permit fees for ground signs, and new definitions for "pole sign" and "monument sign." "Gross Area" will be used to measure the size of a ground sign, for permit fee purposes only. The maximum allowable size for a ground sign will be determined by measuring the "net area." The "gross area" method fee captures both sides of a pole sign and the entire structure for monument-style signs, but only the sign copy will be measured for purposes of maximum signage allowed. This will result in a higher initial permit fee for both pole and monument signs, but more flexibility in design. Arguments over what part of a sign should be measured for fees and maximum "net area" will become nonexistent. 31.03(2), see also 31.08 and Table 1.
- Solved a long-standing problem with the "zoning lot" and "planned commercial site" definitions and the current limit of two ground signs per zoning lot. This was solved by narrowing the definition of zoning lot within ch. 31, so that only those Planned Commercial Sites created under sec. 28.04(24) will be considered a

single zoning lot for ground sign purposes. All other planned commercial sites will be evaluated and interpreted under the existing ch. 28 definition of "zoning lot." See sec. 31.08(2)(a).

- Solved various "wall sign" issues:
 - solving problems related to wall signs on "large buildings," allowing signage above the 2nd story and signs for all tenants in multi-tenant and multi-story buildings. 31.07(2)(a) and (6).
 - Clarifying and limiting the use of extra wall signs adjacent to parking areas 31.07(5)(d).
 - Limiting wall signs to no more than four signable areas per building. One signable area is allowed for each facade facing a street. 31.07(2)(a).
 - New changes from UDC regarding large buildings (see next section).
- Added an "Applicability" section (31.051) and clarifying the applicability of 31.14.
- Relocated sign criteria for the RPSM and RDC districts from Ch. 28 to Ch. 31 (See 31.07, 31.08 and Table 1).
- Updated MGO 1.08(3)(a), the bail deposits for violations and improving the enforcement scheme for violations of 33.25 (the UDC ordinance).
- Created catch-all sections that will provide sign regulation for newly-created zoning districts, in the event that Z-TAST forgets to add new districts into Ch. 31.(See intro to Table 1, for example.)
- Changes throughout the chapter to clarify that banners cannot be displayed in UDC districts except with UDC approval (see for example, sec. 31.09(3)).
- Projecting sign section was modified to allow projection of 24 inches into the right-of-way. 31.09(2)(a).
- Integrated recommendations from the "Dark Sky Subcommittee" of the Commission on the Environment, regarding illumination of signs. 31.04(5)(k).
- New rules for portable signs (sandwich boards), allowed on private property only, 31.046(2). Created size restrictions for sandwich boards on private property and addressed enforceability problems. The status quo is maintained, in that signs continue to be prohibited in the public right-of-way (see 31.045(3)(c)) and off-premise advertisements (billboards) continue to be prohibited (31.11). Hand-carried portable signs (i.e. pickets) continue to be allowed on the sidewalk and other pedestrian areas, 31.046(2)(b)4.
- New rules for "flashing" signs. Signs cannot change message more than one time per hour, 31.045(3), 31.046(1). See section 3 of this memo.

2. MAJOR HOUSEKEEPING CHANGES TO CHAPTER 31:

- Change the terminology from "Street Graphics" to "Signs."
- Reword the purpose section to ensure the constitutionality of the ordinance.
- Reword and clarify several definitions, removing text ambiguities and omissions
- Remove language regarding an obsolete electrical license.
- Clarify the applicability of sec. 31.14 (for signs in residential, agricultural and conservancy districts).
- Reformatted the administrative rules on licensing, permits, exemptions, enforcement, and the function of the UDC, by dividing existing sec. 31.04 into individual sections that are easier to find and read. See 31.041- 31.045. Sec.

31.043 was created specifically for the UDC and Comprehensive Design Reviews. Previously this was buried in 31.04.

- Reorganize and upgrade of the "Tables of Permitted Graphics" (currently sec. 31.15), deleting Table 3 and replacing it with text requirements, and correcting inconsistencies in the remaining Tables.
- Where feasible, sections have been renumbered to make ch. 31 more user-friendly.

3. CHANGES MADE IN THE SUBSTITUTE ORDINANCE:

The following changes are the recommendations of the UDC and are reflected in the Substitute Ordinance:

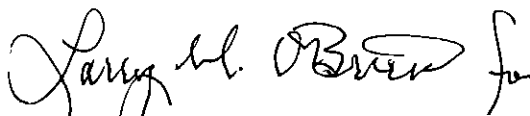
- ✓ New electronic message board (31.046(1)) and flashing sign (31.045) regulations. Flashing signs may not change message more than 1 time per hour (time and temperature excluded.) Message Boards may not scroll, race, pixelate, etc.
- ✓ "Digital Image Signs" including LED video or static images, are defined and will continue to be prohibited. 31.03(2) and 31.045.
- ✓ Reduce the amount of wall signage available for buildings over 25,000 sq. feet or more. The maximum net area for wall signs on these buildings will be 30% of the signable area instead of 40%, and the "2-linear foot" measurement option will not be available for buildings of that size. 31.07(4).
- ✓ Refine how ground signs are defined and categorized - new definitions for "pole signs" and "monument signs." 31.03(2), 31.08, Table 1.
- ✓ create a new category of "miscellaneous" canopy signs and UDC authority to approve them. 31.074(3) and (4).
- ✓ Relocate sign criteria for the new RDC district from Ch. 28. 31.07(4), 31.08, Table 1.
- ✓ Clarify definition & regulation of "Projecting Sign" for internal consistency. 31.09(1)(a.)
- ✓ Replace references to Inspection Unit Director with Zoning Administrator; transfer decision-making authority for sign permits and sign erectors' licenses to the ZA.
- ✓ Improvements to the window sign section (31.10)
- ✓ Improvements to the Nonconforming Signs section (31.05). These improvements make it clear when a sign can remain "nonconforming" or out of compliance with amendments to the ordinance (including this amendment). Because signs are not regulated under the zoning powers of the city, but rather under the city's general police powers, signs are *not* entitled to any statutory nonconforming status other than what the city chooses to give them, via this ordinance. (31.05)
- ✓ Separated the Advertising Sign (Billboard) section (31.11) from the Off-Premise Directional Sign section (new 31.115.)
- ✓ Added other "Miscellaneous" signs to Table 2. (31.15(2).)
- ✓ Added the option of a 64 square foot Real Estate Sign in C, M, and Office districts in response to request from sign industry / developers (31.044(1)(o).)
- ✓ Clarified the requirement for light copy on dark background for illuminated signs and in Urban Design districts, in response to sign industry concerns

4. AMENDMENTS TO SECTION 33.24, URBAN DESIGN COMMISSION (UDC) ORDINANCE:

- * create appropriate cross-references to the UDC's duties with respect to signage in the revised sign code. Those duties are to:
 - o consider Comprehensive Design Reviews under sec. 31.043(4). This is not a change in procedure or power of the UDC. The procedure for Comprehensive Design Review was amended in June of 2008. This ordinance does not change or expand Comprehensive Design.
 - o hear requests for alterations to previously-approved Comprehensive Sign Plans
 - o hear requests for modification in height, area, setback of signs, per 31.043(2)
 - o hear requests for "additional sign code approvals" per 31.043(3). This is the laundry list of signs that UDC has been authorized to approve, such as above-roof signs in commercial districts, above-canopy signs that cross architectural detail closer than 3' to the building face, etc.
 - o hear appeals of decisions of the Zoning Administrator relating to signs
 - o NONE OF THESE DUTIES ARE NEW. THEY HAVE BEEN REORGANIZED IN CHAPTER 31 AND MUST BE ADEQUATELY CROSS-REFERENCED IN 33.24

- * expand the section for "Duties of the Secretary" to describe those duties more clearly: administrative sign permit approvals if meeting the criteria for the district, certain "minor alterations" to approved plans, approvals of sign permits & minor façade changes in the C4; and certain administrative approvals unrelated to signs. See 33.24(4)(g).
- * clarify the public hearing procedures under 33.02(4)(e)3., and make it clear these are the procedures to be followed for CDR and other sign review hearings. Make this hearing procedure easier to find and to read in the ordinance.
- * Make UDC the final administrative decision maker for sign approvals and sign appeals. Further appeals are taken to circuit court. UDC is currently the final decision maker for CDR (Comprehensive Design.)
- * Add missing references to sign review in various districts.
- * Insert references to the new "dark sky" provisions for sign illumination in 31.04(5) (k), which must be compared to the current UDC illumination criteria and 10.085. Proposed solution = most strict regulation applies.
- * Create a general section to clarify which signage criteria the UDC must apply in various situations. (See 33.24(7) (b).)
- * Update terminology throughout 33.24 to match new Ch. 31 terminology ("sign" replaces street graphic, "net area" replaced "effective area," etc.).

Respectfully submitted,


Michael P. May
City Attorney