



City
of

Milwaukee

INTERDEPARTMENTAL CORRESPONDENCE
LEGISLATIVE REFERENCE BUREAU

MEMO

To: Ald. Michael S. D'Amato
Ald. Tony Zielinski
Zoning Code Technical Code Committee Members

From: Leslie Silletti, Legislative Research Analyst

Date: August 16, 2006

Re: **Ordinance Relating to Changeable Message Signs**

The memo serves to clarify items that were discussed at the Zoning Code Technical Committee meeting on July 13, 2006, as they relate to Common Council File Number 060300, an ordinance relating to changeable message signs. Questions raised at the committee meeting related to City/State legislative authority in the case of outdoor advertising regulations. A summary of the highway system and a discussion of the proposed ordinance is provided. Additionally, a brief summary of the safety concerns associated with the ordinance's passage is included. Further information will be provided upon request.

BACKGROUND

The federal-aid highway program was established in the 1930's as a funding mechanism for the federal government to disperse funds for state improvements. The 3 original federal-aid systems are the urban, secondary and primary systems. The federal system was re-defined with the Federal Highway Act of 1956, when the Interstate System became the fourth federal-aid roadway system. Those distinctions, however, were eliminated with the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. The ISTEA repealed the federal-aid highways and restructured the federal systems. Instead of 4 federal-aid systems, there are currently 2 systems: the National Highway System (NHS) and the Interstate system, which is a subsystem within the NHS.

The National Highway System (NHS) includes the following subsystems of roadways (there may be overlap between subsystems):¹

- The *Interstate Highway system*, which is a separate system within the NHS.
- *Other Principal Arterials*, which are highways in rural and urban areas which provide access between an arterial and a major port, airport, public transportation facility or other intermodal transportation facility.
- *Strategic Highway Network (STRAHNET)*, a network of highways which provide access for defense and emergency.
- *Major Strategic Highway Network Connectors*, highways which provide access between major military installations and highways which are part of STRAHNET.
- *Intermodal Connectors*, which provide access between major intermodal facilities and the other 4 subsystems of the NHS.

Although federal-aid highway designations are no longer used to define the systems of roadways in the U.S., or to allocate federal funding, those roadway designations are still used for the purpose of regulating outdoor advertising. Federal law requires states to regulate outdoor advertising along federal-aid primary highways (FAPs). If the State of Wisconsin ever determines to revise its statutes to reflect the most current highway definitions, i.e., replace references to federal-aid highways with NHS terms, changes would need to be made at the federal level. Please refer to Attachment 1, a map depicting the federal interstate system, the federal-aid primary (FAP) system, the federal-aid secondary system and the federal urban area for Milwaukee County.

SECTION 84.30, Wis. Stats./FEDERAL-AID PRIMARY DESIGNATIONS

The regulation of outdoor advertising applies to FAPs, the interstate system and the Great River Road, as specified in s. 84.30 (1), Wis. Stats. Because the Great River Road refers to the road that winds its way along 250 miles of Wisconsin's western border, along the Mississippi River, it is not of present concern. Present discussion is limited to understanding where FAP lines are drawn.

The most current FAP map was drawn at the time of the passage of ISTEA in 1991, and that map is used for interpretation of s. 84.30 (refer to Attachment 1). When the NHS lines were drawn in 1991, following passage of ISTEA, not all FAPs were carried over to the NHS. If the NHS map was laid on top of the FAP map, there would parts of the FAP system that extend beyond the NHS lines—those that were not rolled over into the NHS. An NHS map that has been amended to include those additional FAPs cannot be used to illustrate the FAP system, as there are additional NHS lines that were never FAPs. Locating a map depicting FAPs proved very challenging, as for most purposes FAP definitions

¹ All definitions from Wikipedia.org

are obsolete. Attachment 2 was created by the Department of Public Works, Infrastructure Services Division, to provide illustration of FAP and Interstate routes in the City, and which roadways s. 84.30, Wis. Stats., applies to².

On May 25, 2006, 2005 Wisconsin Act 464 was enacted (Attachment 3), which amended ch. 84, Wis. Stats., "Regulation of Outdoor Advertising." Section 84.30 (4)(b) was amended, and s. 84.30 (4)(bm), of the state statutes, was created.

Section 84.30 (4)(b), Wis. Stats., was amended to allow additional exceptions (as outlined in 84.30 (4)(bm)) to the prohibition against signs which contain, include or are illuminated by any flashing lights on interstates, federal-aid primary highways and the Great River Road. Refer again to Attachment 2, which illustrates the roadways within the City of Milwaukee s. 84.30 applies to. Prior to this act, only such signs giving public service information such as time, date, temperature, weather or similar information were permitted. Additional exceptions that were added with the passage of Act 464 are outlined in s. 84.30 (4)(bm), Wis. Stats. These exceptions are signs that contain multiple or variable messages on louvers that are rotated, and messages formed solely by use of lights or other electronic or digital displays, that may be changed by any electronic process, subject to the following restrictions:

1. Each change of message shall be accomplished in one second or less.
2. Each message shall remain in a fixed position for at least 6 seconds.
3. The used of traveling messages or segmented messages is prohibited.
4. The Wisconsin Department of Transportation may prohibit or establish restrictions on the illumination of messages to a degree of brightness that is greater than necessary for adequate visibility.

PROPOSED ORDINANCE

The proposed ordinance (CCFN060300) will change the current ordinance, s. 295-407-3-b of the Milwaukee Code, from 60 seconds to 6 seconds (Attachment 4).

Section 295-407-3-b of the Milwaukee Code of Ordinances states: "Automatic changeable message signs shall be permitted provided messages, other than time or temperature displays, are not changes more frequently than once every 60 seconds. The display area of changeable message signs shall be included in the calculation of the total display area of the applicable sign type."

² The Park East Freeway System is now gone, so there is an empty space, or a break, in the link between the Fond du Lac Freeway and Milwaukee Street (Transportation Division).

SAFETY CONCERNS

Among the topics that were discussed at the 7/13/06 ZCTC meeting was the concern that passage of the proposed ordinance would have substantial safety consequences in the City of Milwaukee. Bob Bryson, Traffic Control Engineer V, Department of Public Works, articulated these.

The main safety concern associated with passage of this ordinance is the increased prevalence of distracted driving, similar to distracted driving associated with using a cellular phone or eating food while driving. Distracted driving has become increasingly more dangerous in the City, as the prevalence of accidents attributed to distracted driving is ever increasing. While distracted driving is already a serious cause of concern in the City, passage of this ordinance may render it even more crucial. Following are ways that changeable message signs may contribute to greater distracted driving:

1. Changeable message signs are often red LED, which are the same color of traffic signals, and thus make traffic signals indistinguishable and oftentimes difficult to read. Drivers are unable to perceive traffic signals as such, which is of critical importance at signalized intersections.
2. More deviations from lane use as people attempt to read signs.
3. Higher density of traffic on city roadways while the traffic flow on FAPs and interstates is more regulated.
4. More pedestrians and driveways on city roadways.

Research indicates that changeable message signs attract twice the number of onlookers, and those who look at the signs look for twice as long at changeable signs then they would for a static sign. These are increased when changeable message signs are of the scrolling variety.

These, and other, safety concerns were considered in developing the 60-second provision in the current code, as well as sizes of and ability to recognize and read signs and speed of traffic on the roadways. The considerations for a 60-second ordinance on city roadways, especially urban roadways, are much different than considerations for such 6-second legislation on interstates.

CITY/STATE AUTHORITY

A question was posed by Assistant City Attorney Stuart Mukamal to the WIDOT, asking for clarification as to whether s. 84.30 or any comparable federal statute, or any federal or state regulation precludes the city from adopting stricter requirements with respect to either FAP routes or non-FAP thoroughfares throughout the City, and if so, why. In other words, is City regulation allowed or pre-empted, and if so, to what extent? Also asked was which authority has

jurisdiction in cases where outdoor advertising is visible from both State- and City-regulated roadways?

Deborah Brucaya, a WIDOT staff member in the Outdoor Advertising Program, provided answers to these questions. She stated, "No state or federal regulation precludes a local unit of government from adopting stricter limits on the size, spacing, or lighting of outdoor advertising." She goes on to say, "When the state's commercial/industrial/business [CIB] zoning requirement is more restrictive than the local unit of governments, the state's CIB requirement would prevail. For the same sign, if the local's maximum size for a sign was more restrictive than the state's, the local's size limit would prevail." Refer to Attachment 5 for the correspondence between the LRB and Deborah Brucaya. Note that her comments relating to "certification" are in response to telephone conversations, during which questions relating to certification and jurisdiction, regulation and enforcement were posed, and refer to s. 201.20 Trans, Wis. Admin. Code (Attachment 6). It is my understanding that there are only 2 non-certified municipalities in Milwaukee County: St. Francis and Wauwatosa.

ATTACHMENTS

Following is a complete list of attachments:

- **Attachment 1:** Map depicting Federal-aid system in Milwaukee County.
- **Attachment 2:** Map depicting FAP and Interstate routes in the City.
- **Attachment 3:** 2005 Wisconsin Act 464.
- **Attachment 4:** Proposed ordinance (CCFN060300) and s. 295-407-3-b of the Milwaukee Code.
- **Attachment 5:** LRB correspondence with WIDOT.
- **Attachment 6:** Section 201.20 Trans, Wis. Admin. Code.
- **Attachment 7:** Correspondences provided by Mr. Pomeroy (Clear Channel).

LRB06410
LCS

310,000'N
2,510,000'E

T-5-N

T-6-N

T-7-N

T-8-N

350,000'

400,000'

Town of Raymond

Town of Caledonia

310,000'N
2,590,000'E

T-5-N

T-6-N

T-7-N

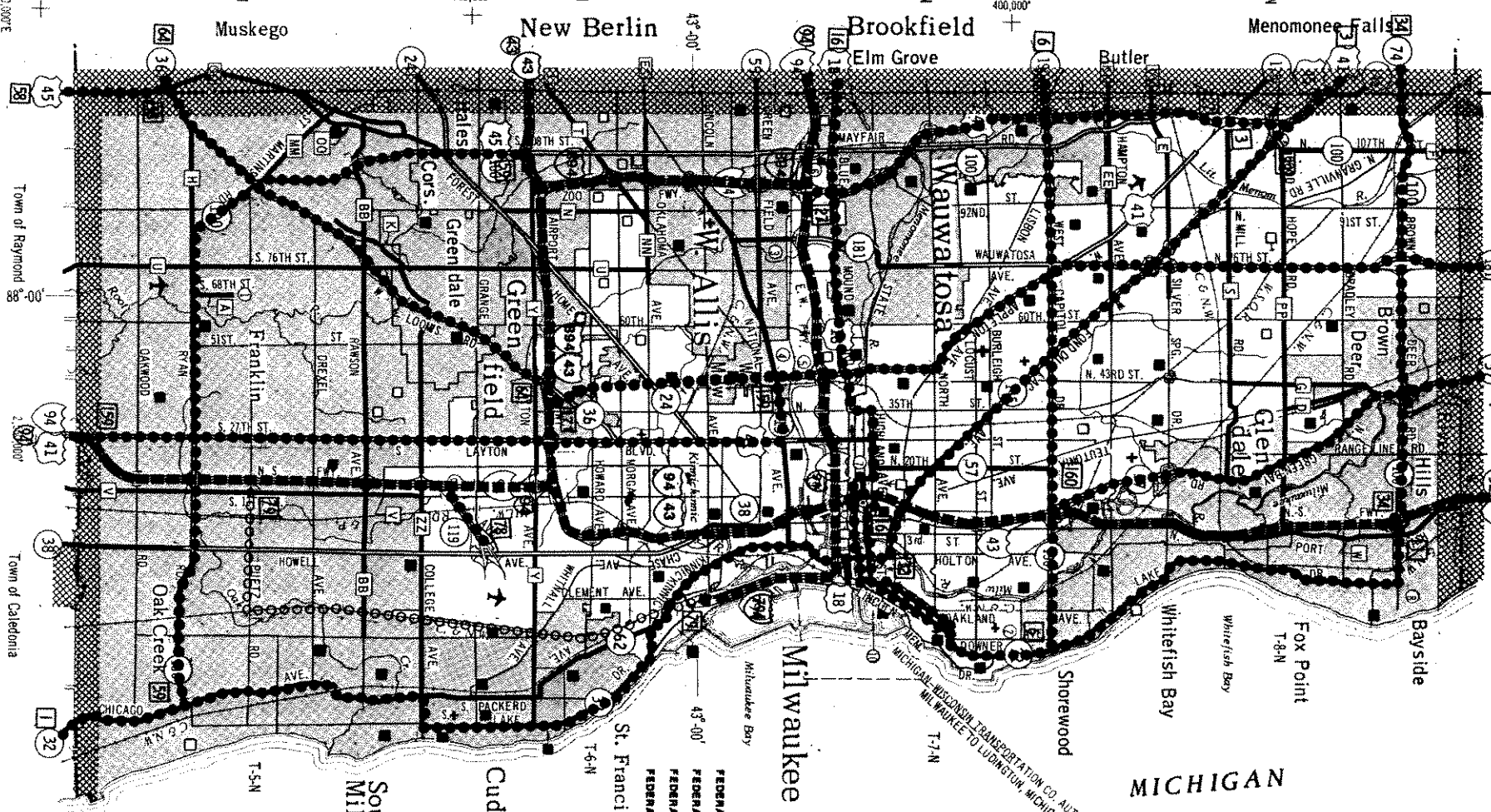
350,000'

400,000'

Town of Raymond

Town of Caledonia

Grid based on Wisconsin coordinate system, south zone

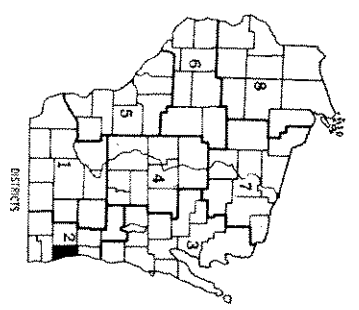


Attachment 1

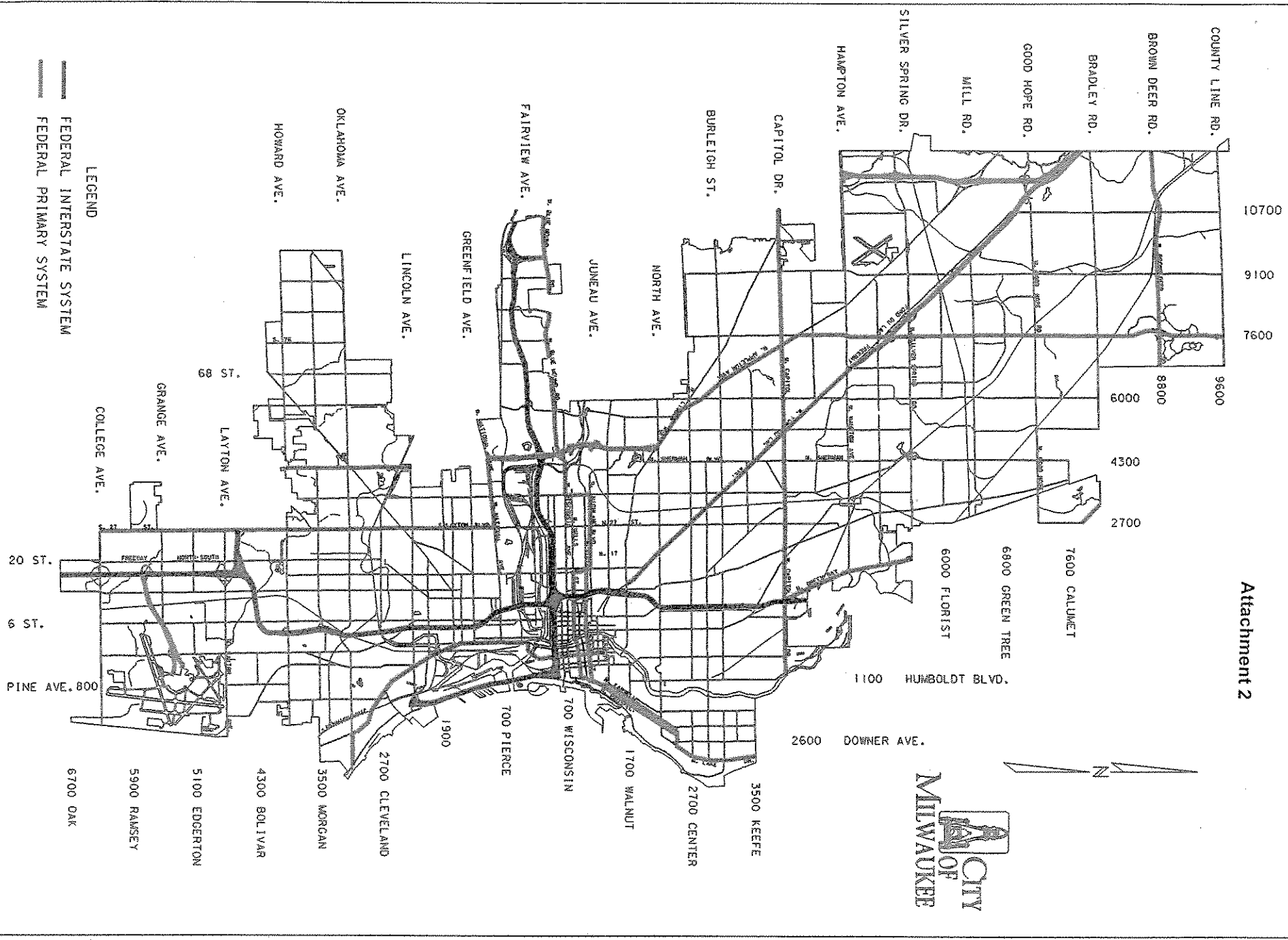
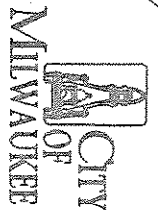
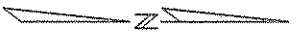
FEDERAL INTERSTATE SYSTEM
 FEDERAL PRIMARY SYSTEM
 FEDERAL SECONDARY SYSTEM
 FEDERAL URBAN AREA

EXISTING ROUTES
 PLANNED ROUTES

LEGEND



MAP OF
 FEDERAL AID SYSTEMS
 FOR
MILWAUKEE CO.
 STATE OF WISCONSIN
 PREPARED BY
 DEPARTMENT OF TRANSPORTATION
 DIVISION OF PLANNING
 IN COOPERATION WITH
 U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 SCALE 1" = 10 MILES
 CORRECTED FOR
 JANUARY 1988



LEGEND

————— FEDERAL INTERSTATE SYSTEM

————— FEDERAL PRIMARY SYSTEM

Attachment 3

2005 Senate Bill 548

Date of enactment: May 25, 2006

Date of publication*: June 9, 2006

2005 WISCONSIN ACT 464

AN ACT to amend 84.30 (4) (b) 1.; and to create 84.30 (4) (bm) of the statutes; relating to: multiple or variable messages on off-premises outdoor advertising signs along interstate and federal-aid primary highways and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 84.30 (4) (b) 1. of the statutes is amended to read:

84.30 (4) (b) 1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those specified in par. (bm) and those giving public service information such as time, date, temperature, weather, or similar information.

SECTION 2. 84.30 (4) (bm) of the statutes is created to read:

84.30 (4) (bm) Signs may contain multiple or variable messages, including messages on louvers that are

rotated and messages formed solely by use of lights or other electronic or digital displays, that may be changed by any electronic process, subject to all of the following restrictions:

1. Each change of message shall be accomplished in one second or less.

2. Each message shall remain in a fixed position for at least 6 seconds.

3. The use of traveling messages or segmented messages is prohibited.

4. The department, by rule, may prohibit or establish restrictions on the illumination of messages to a degree of brightness that is greater than necessary for adequate visibility.

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

Attachment 4

..Number
060300
..Version
ORIGINAL
..Reference

..Sponsor
ALD. D'AMATO AND ZIELINSKI
..Title

An ordinance relating to automatic changeable message signs.

..Sections
295-407-3-b am

..Analysis
Currently, automatic changeable message signs may not be changed more frequently than once every 60 seconds. Under this ordinance, such signs may not be changed more frequently than once every 6 seconds.

..Body
The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 295-407-3-b of the code is amended to read:

295-407. Signs.
3.SPECIAL SIGN TYPES.

b. Automatic Changeable Message Signs. Automatic changeable message signs shall be permitted provided messages, other than time or temperature displays, are not changed more frequently than once every ~~[[60]]~~ >>6<< seconds. The display area of changeable message signs shall be included in the calculation of the total display area of the applicable sign type.

..LRB
APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____
..Attorney

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

..Requestor

..Drafter

LRB06286-1

LCS

6/13/06

295-407-2-b-3 Zoning

- b-3. Awning Signs. b-3-a. Type A Awning Signs. A type A awning sign is one with letters or symbols applied to or integral with an opaque, non-translucent material covering an awning structure. Such sign may be illuminated from a general building lighting source above the awning.
- b-3-b. Type B Awning Signs. A type B awning sign is one with letters or symbols applied to or integral with a translucent material covering an awning-like structure. Such sign may be internally illuminated.
- b-3-c. Awnings Projecting Beyond Street Lines. Any awning which projects beyond a street line shall comply with the applicable regulations of ss. 245-6, 245-6.5 or 245-7.
- b-4. Projecting Signs. b-4-a. Type A Projecting Signs. A type A projecting sign is one with a display area that does not have a background that is designed as an integral part of the sign, except that a non-illuminated wood or metal board-type sign or a permanent banner sign shall be considered a type A projecting sign. Only individual letters or symbols may be internally illuminated. This type of sign includes, but is not limited to: letters or symbols cut from an opaque panel such as metal; pin-set letters where individual letters are back lit; non-illuminated pin-set letters. If individual letters are used on the sign, they shall be applied to or affixed to a projecting board or to a cabinet not more than 12 inches thick in order for the sign to be considered within the type A category.
- b-4-b. Type B Projecting Signs. A type B projecting sign is one with a display area that has an illuminated overall background. This type of sign is typically a plastic-panel-faced box sign. Other types of projecting signs which do not have the characteristics of a type A sign are included in this category.
- b-4-c. Maximum Projection. A projecting sign shall not project more than 4 feet from the building face to which it is attached.
- b-4-d. Minimum Clearance. A minimum clearance of 10 feet between grade and the bottom of the sign shall be provided, except in the historic third ward (the area designated by common council resolution 870501), where the minimum clearance shall be 8.5 feet.
- b-4-e. Projection into Right-of-Way. All projecting signs shall comply with the applicable provisions of s. 244-10.
- b-5. Canopy and Hood Signs. b-5-a. Type A Canopy and Hood Signs. A type A canopy or hood sign is characterized by individual letters or symbols which may be internally illuminated. It may also include a sign panel which is integral to the hood or canopy structure, except that the illuminated letters and symbols are cut from an opaque panel. In order for a canopy or hood sign consisting of individual letters affixed to a cabinet to be considered a type A sign, the cabinet shall be not more than 12 inches thick.
- b-5-b. Type B Canopy and Hood Signs. A type B canopy or hood sign is one with a display area that has an internally illuminated overall background. This type of sign is typically a plastic-panel-faced box sign which is hung from or mounted on top of a canopy or hood. It may also include a sign panel which is integral to the structure, but is faced with plastic that has a translucent background.
- b-5-c. Canopies and Hoods Projecting Beyond Street Lines. Any canopy or hood sign which projects beyond a street line shall comply with the applicable regulations of ss. 245-8, 245-9 or 245-10.
- b-6. Roof Signs. b-6-a. Type A Roof Signs. A type A roof sign is characterized by individual letters or symbols which may be internally illuminated and shall be attached to a framework that is as invisible as possible and does not create a background that could become an integral part of the sign.
- b-6-b. Type B Roof Signs. A type B roof sign is one with a display area that has a background that is designed as an integral part of the sign. This type of sign is typically a plastic-panel-faced box sign. It may also include a sign panel which is integral to the structure, but creates a background that becomes an integral part of the sign.

b-7. Permanent Window Signs. b-7-a. General Regulations. A permanent window sign is characterized by individual letters or symbols painted or placed on the glazed portion of a window such that window transparency of at least 75% is maintained. A neon sign, board-type sign or plastic-faced box sign placed in a window shall also constitute a permanent window sign. Not more than 25% of the glazed area of a window may be covered by permanent window signs. The display area of a permanent window sign shall be calculated in accordance with s. 295-205-5. In no case shall permanent window signs reduce the area of required glazing below the amount required by s. 295-605-2.

b-7-b. Opaque Backgrounds. Not more than 25% of the glazed portion of a window may be opaquely painted for the purpose of creating a sign or sign background. In no case shall such painting reduce the area of required glazing below the amount required by s. 295-605-2.

b-7-c. Permanent Window Signage in Excess of 25% of Window Area. Permanent window signs or opaque window painting may exceed 25% of the area of a window provided the area of such signs or painting is included in the calculation and regulation of wall signage on the premises.

b-7-d. Exemption from Display Area Limitation. Informational signs placed in windows, including but not limited to signs pertaining to hours of operation, the "OPEN" or "CLOSED" status of the establishment, credit cards honored or membership in civic, business or professional organizations, shall not be included when calculating the display area of permanent window signs provided the aggregate display area of all such signs does not exceed 6 square feet. If the aggregate display area of all signs of these types exceeds 6 square feet, only the portion of the display area in excess of 6 square feet shall be included in the calculation of the total display area of signs on the premises.

b-8. Temporary Window Signs. A temporary window sign is characterized by advertising on paper, cardboard or other flexible material placed inside the glazed portion of a window, said advertising typically, but not always, referring to a sale, promotion or other event that is temporary in nature. Temporary window signs shall meet the following standards:

b-8-a. The aggregate area of all temporary window signs in a window shall not exceed 25% of the area of the glazed portion of the window. This temporary window signage is in addition to any conforming permanent window signage in the same window.

b-8-b. Temporary window signs shall be located on the inside of a window, facing out.

b-8-c. Temporary window signs shall be displayed for not more than 30 days in one calendar year.

b-8-d. Temporary window signs installed prior to October 1, 2002 shall be removed within 30 days.

3. SPECIAL SIGN TYPES. a. Temporary Banner Signs. Temporary banner signs are prohibited, except the following, which shall be permitted provided such signs are attached or supported in accordance with the applicable provisions of s. 244-5:

a-1. Temporary banner signs for construction projects, provided such signs meet the size limitations for the zoning districts in which they are located.

a-2. Temporary banner signs for grand openings. Such signs shall not be displayed for more than 60 days.

a-3. Temporary banner signs advertising special events, such as but not limited to anniversary celebrations, but not including sales promotions. Not more than 2 signs of this type may be erected on a premises in one calendar year, and the cumulative display period for such signs shall not exceed 60 days.

b. Automatic Changeable Message Signs. Automatic changeable message signs shall be permitted provided messages, other than time or temperature displays, are not changed more frequently than once every 60 seconds. The display area of changeable message signs shall be included in the calculation of the total display area of the applicable sign type.

-----Original Message-----

From: Leslie SILLETTI [mailto:LSILLE@milwaukee.gov]
Sent: Tuesday, July 18, 2006 9:12 AM
To: deborah.brucaya@dot.state.wi.us
Subject: Outdoor Advertising: Section 84.30, Wis. Stats.

Attachment 5

Hello:

I am contacting you because I was informed that you might be able to provide me with some information relating to s. 84.30, Wis. Stats., and its recent amendments.

Section 84.30 relates to outdoor advertising regulations on interstate highways, the Great River Road and federal-aid primary highways (FAPs); however, FAP designations were eliminated with the National Highway System (NHS), and not all FAP routes were included in the NHS. I have spoken with other individuals at the WisDOT but they were unable to provide me with a map, etc., of the original FAP routes that are, presumably, the routes that s. 84.30 applies to. If you refer to s. 84.30 (1), you will see that it applies to the interstate system, the Great River Road and the federal-aid primary highways.

On May 25, 2006, 2005 Wisconsin Act 464 was enacted, which amended s. 84.30 (4)(b), and created s. 84.30 (4)(bm). The Act related to multiple or variable messages on off-premises outdoor advertising signs along interstate and federal-aid primary highways. This is often referred to as "The Billboard Bill."

Section 84.30 applies to FAPs, as do its recent amendments, but I am unable to discern where the boundaries of these are. I would like to know which roadways s. 84.30 applies to in the City of Milwaukee and Milwaukee County. On speculation, one might presume that it applies to the non-interstate NHS routes, but it is likely that not all FAPs were included in the NHS routes and as a result, there are some FAPs outside of the NHS routes in the City/County that would be subject to s. 84.30.

Additionally, I would appreciate it if you might be able to explain whether s. 84.30 or any comparable Federal statute, or any Federal or State regulations preclude the City from adopting stricter requirements with respect to either FAP routes or non-FAP thoroughfares throughout the City, and if so, why. In other words, is City regulation allowed or pre-empted, if so, to what extent, and what is the reasoning behind that conclusion? Also, related, which authority has jurisdiction in cases where outdoor advertising is visible from both State- and City-regulated roadways?

Any insight that you are able to provide will be greatly appreciated. Also, I would appreciate it if you would point me in the right direction, if you know of an individual or organization that this inquiry would be better directed to.

Thank you.

Leslie Silletti
City of Milwaukee
Legislative Research Analyst
Legislative Reference Bureau
City Hall, Room B-11 - 200 East Wells Street, Milwaukee 53202
414-286-2253 (phone)
414-286-3004 (fax)
lsille@milwaukee.gov

Brucaya, Deborah

From: Brucaya, Deborah
Sent: Wednesday, July 19, 2006 9:49 AM
To: 'Leslie SILLETT'
Cc: Brucaya, Deborah
Subject: City of Milw. s. 84.30, Wis. Stats. OA Sign Control Questions

In answer to the questions you posed:

Please refer to the maps mailed to you today. Most FAP routes, as they existed on June 1, 1991, were rolled into the NHS. Wisconsin is obligated to provide sign control along NHS routes, even NHS routes under local jurisdiction, as well as along FAP routes that were not incorporated into the NHS on June 1, 1991. You may notice that the FAP maps carry a January 1, 1991 date while the effective date of the shift from FAP to NHS is June 1, 1991. WisDOT's planning section assures me that there were no changes to the FAP system between those two dates so use of the earlier dated maps is acceptable.

Certification refers to the state's acceptance of a city's regulation of sign size, lighting, and spacing in the zoned commercial or industrial areas of the city in lieu of the state's controls, along non-interstate routes. This means that WisDOT did not completely relinquish sign regulation authority in certified cities. An example would be that the department still would have an interest in a proposal to erect a directional sign [Trans 201.05] on, say, residential land in a certified city.

No state or federal regulation precludes a local unit of government from adopting stricter limits on the size, spacing, or lighting of outdoor advertising signs.** In non-certified locales where a local unit of government exerts sign control under an ordinance, anyone wishing to erect a sign must meet both WisDOT's requirements and the local requirements, with the more restrictive portions of each set of controls being in effect. If the local unit of government requires a permit application, then the applicant must obtain a permit from both the local unit of government and from WisDOT. When the state's commercial/industrial/business [CIB] zoning requirement is more restrictive than the local unit of government's, the state's CIB requirement would prevail. For the same sign, if the local's maximum size for a sign was more restrictive than the state's, the local's size limit would prevail. All told, certification seems to provide a service of sorts for sign applicants in that only one permit application is required, making the permit process easier for them to navigate.

**Notice that I wrote that a local's sign size, spacing, and lighting criteria may be more restrictive. Even so, there are some areas of sign regulation where the federal government and the Wisconsin legislature have limited and even pre-empted local controls by requiring, for example, that the federal government's definition of just compensation be followed when removing nonconforming signs and by limiting a local government's ability to eliminate nonconforming uses. Along WisDOT sign controlled routes, the federal definition of just compensation, which excludes amortization, has been in effect since 1976.

With Governor Doyle's signing of SB155 into law as Act 81 in 2006, that same definition of just compensation now applies to local governments and prevents their use of amortization as a means of discontinuing nonconforming uses. In essence, the act prohibits the use of a specified time period. <http://www.lakelandtimes.com/news.php?story=889>

In that same vein, the Wisconsin legislature enacted SB253 [Act 112]. Under this law, a city, whether certified or not, now cannot prevent re-erection of a destroyed nonconforming sign under their ordinances unless the sign is located along a state controlled route. Along a state controlled route, the requirement under 84.30 to eliminate the nonconforming use remains in effect. It is likely that the outdoor advertising industry will promote legislation to close this door by changing 84.30, where the last remaining prohibition against reconstruction of a nonconforming sign can be found.

Sec. 84.30 and Trans. 201, as well as WisDOT's sign permit application form, can be accessed from the Outdoor Advertising Program's webpage on the department's website: <http://www.dot.wisconsin.gov/business/rules/property-advertising.htm>

Deborah A. Brucaya
WisDOT - Bureau of Highway Operations
Outdoor Advertising Program
4802 Sheboygan Avenue - Room 501
Madison WI 53702
608-266-3813 Phone 608-267-7856 FAX
deborah.brucaya@dot.state.wi.us

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(e) The sign is not erected until the property is actually offered for sale or lease, and is removed within 7 days after the property has been sold or leased.

Note: The term "controlled highway" as used in sub. (3) has the meaning set forth in s. Trans 201.01.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

Trans 201.18 Farm and agricultural test plot signs.

(1) DEFINITIONS. (a) "Agricultural test plot sign" means a sign used to mark test plot areas on a farm and includes a sign identifying the manufacturer of the seed being tested.

(b) "Farm sign" means a sign located on farm property which identifies the farm or advertises a farm product produced on that farm.

(2) FARM SIGN EXEMPTION. A farm sign that would otherwise be subject to the permit requirement of s. Trans 201.07 is exempted if all of the following conditions are satisfied:

(a) The sign conforms with the on-property sign criteria contained in s. 84.30 (3) (c), Stats.

(b) The sign does not contain flashing lights, moving parts, or in any other way fail to conform to s. 84.30 (4) (b), Stats.

(c) The sign is not erected in a location where it constitutes a traffic hazard.

(3) AGRICULTURAL TEST PLOT SIGNS. Agricultural test plot signs displays are subject to the permit requirement of s. Trans 201.07, and the following provisions:

(a) One permit shall cover all the signs in an agricultural test plot sign display. Permit fees shall be based on the total surface areas of all signs in the display.

(b) There may be no more than one sign facing traffic in each direction that identifies the test plot and the seed manufacturer. Such a sign must be located within 50 feet of the test plot that it identifies.

(c) Signs shall be permitted only during the growing season and shall be removed within 7 days after harvest of the test plot crop is completed and in any event shall be removed prior to November 1 of each year.

(d) Row markers and variety markers may not contain identification of the seed manufacturer.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

Trans 201.19 On-property signs. (1) PURPOSE. The purpose of this section is to interpret the provisions of s. 84.30 (3) (c), Stats., relating to on-property signs.

(2) OFF PREMISES ADVERTISING NOT PERMITTED. An on-property sign may advertise only activities conducted on the property on which it is located, the name of the establishment and the establishment's principal product or service offered on the premises. A permit for an off-property sign is required for any sign violating the content restrictions of this subsection.

(3) NARROW STRIPS. Where the sign site is located at or near the end of a narrow strip contiguous to the advertised activity, the sign site shall not be considered part of the premises on which the activity being advertised is conducted. A narrow strip shall include any configuration of land which is such that it cannot be put to any reasonable use related to the activity other than for signing purposes.

(4) PROPERTIES FLANKED BY 2 CONTROLLED HIGHWAYS. (a) When a property may contain signs visible from 2 controlled highways, the department interprets s. 84.30 (3) (c) 1., Stats., to allow up to 4 single-faced or 2 double-faced signs on the property, with one sign exposure visible and designed to be read from each of 4 different directions of travel.

(b) Whether or not a property may contain signs visible from 2 controlled highways, the department interprets s. 84.30 (3) (c) 2, Stats., to allow only one extra on-property sign exposure.

(5) ON-PREMISES SIGNS PROHIBITED. No on-property sign may be erected in an area across a street or road from the area

where the business is conducted or in any area developed for the purpose of erecting a sign.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83, am. (2), cr. (5), Register, April, 2001, No. 544, eff. 5-1-01.

Trans 201.20 Local certification. (1) PURPOSE. The purpose of this section is to set out the standards employed by the department in making determinations of customary use under s. 84.30 (4) (intro.), Stats., which are used for certifying local sign control ordinances to the federal highway administration under 23 USC 131 (d).

(2) APPLICABILITY. This section applies to local certification applications filed by counties, cities, villages or towns after August 1, 1983, and to applications for the re-certification of previously certified ordinances filed after that date.

(3) DEFINITION. "Local certification" means the department's acceptance, under s. 84.30 (4) (intro.), Stats., of a local zoning authority's determination of customary use as to the size, lighting and spacing of outdoor advertising signs in the zoned commercial or industrial areas of the locality.

(4) INVENTORY. An application for local certification must include a copy of the local zoning ordinance and an inventory of all existing signs within the area to be certified.

(5) ORDINANCE. The local determination of customary use shall be in the form of an ordinance. The department shall accept for certification an ordinance that meets the other requirements of this section, that includes provisions ensuring effective enforcement and that conforms to and complies with the following:

(a) The local zoning authority's controls shall include the regulation of size, of lighting and of spacing of signs, in all commercial and industrial zones.

(b) Unless a Wisconsin statute or administrative rule requires otherwise, the local zoning authority's controls may be either more or less restrictive than the appropriate controls set forth in the agreement in effect between the department and the secretary of transportation of the United States entered pursuant to s. 84.30 (12), Stats.

(c) If a local zoning authority has extraterritorial zoning jurisdiction under s. 62.23 (7a), Stats., and exercises control of signs in commercial and in industrial zones within this extraterritorial zoning jurisdiction, sign control by that local zoning authority may be accepted in lieu of the otherwise applicable control within the extraterritorial zoning jurisdiction.

(d) The department shall notify the federal highway administration in writing of those zoning jurisdictions wherein a local zoning authority's controls apply and shall periodically assure itself that the size, lighting and spacing control provisions of each applicable local zoning ordinance certified under this section are actually being enforced by the appropriate local zoning authority.

(e) Nothing in this section shall diminish the department's authority or relieve the department from responsibility to limit signs within controlled areas of commercial and industrial zones.

Note: Each of the provisions in sub. (5) (a) to (e) are based upon the provisions of 23 CFR 750.706 (c).

(6) NONCONFORMING SIGNS. The ordinance shall commit the local government to pay the full costs of removing any signs erected after local certification is granted which acquire nonconforming status under state law. This shall include any liability of the state or federal government under s. 84.30 (6), Stats., or 23 USC 131 (g). The department shall require a bond or insurance policy to cover this commitment as a condition of local certification.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

Trans 201.21 Local acquisition of signs. (1) PURPOSE. The purpose of this section is to interpret s. 84.30 (6) and

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(15). Stats., as these provisions affect the removal of signs along controlled highways under local ordinances.

(2) **COMPENSATION.** (a) This section applies to local government sign acquisitions in which s. 84.30 (6), Stats., requires compensation for the removal of a lawful nonconforming sign under a local ordinance. This section does not attempt to address the validity of local sign amortization ordinances adopted before the enactment of the "just compensation" amendments to the state and federal sign control laws (s. 84.30 (6), Stats., as amended by chapter 253, laws of 1979, effective May 10, 1980; 23 USC 131 (g) as amended by P.L. 95-599, section 122, effective November 6, 1978) or the validity of the application of such local ordinances after the enactment of these amendments.

(b) A local government may not remove a lawful nonconforming sign for which compensation is required under s. 84.30 (6), Stats., unless at the time of removal the department certifies that sufficient funds are available to pay just compensation for the sign. If sufficient funds are not available from state or federal sources, or both, the department may certify that availability of sufficient funds upon deposit of the required amount with the department from any source. The department shall determine the availability of state and federal funds by evaluating overall state obligations under the sign control program and the priority requirements of s. Trans 201.14. The department shall determine the required amount for deposit by evaluating the local government appraisal and conducting any further appraisal or investigation that appears to be necessary to ensure that the estimated compensation requirement is accurate.

(3) **REVIEW.** The department may periodically review a deposit required under sub. (2) and for good cause may raise or

lower the amount required.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

Trans 201.22 Effect of rule. Nothing in s. Trans 201.20 or 201.21 creates any new obligations upon any local unit of government to pay compensation for the removal of a lawful nonconforming sign beyond any obligations to compensate that may already be in effect under other state or federal laws.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.

Trans 201.23 Scenic byways. (1) In this section:

(a) "All-American Road" has the meaning provided in s. Trans 202.02 (2).

(b) "Great River Road" has the meaning provided in s. 84.107, Stats.

(c) "National Scenic Byway" has the meaning provided in s. Trans 202.02 (9).

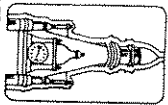
(d) "Scenic byway" means the Great River Road and any other public highway or portion of a public highway designated as a Wisconsin scenic byway pursuant to s. 84.106, Stats., or designated as a National Scenic Byway or an All-American Road pursuant to 23 USC 162.

(2) After March 1, 2005, no sign visible from the main-traveled way of a highway that is a scenic byway may be created except the following:

(a) Directional and other official sign authorized by s. 84.30 (3) (a), Stats.

(b) Signs advertising the sale or lease of property upon which they are located authorized by s. 84.30 (3) (b), Stats.

(c) Signs advertising activities conducted on the property on which they are located authorized by s. 84.30 (3) (c), Stats.
History: CR 04-057; cr. Register February 2005 No. 596, eff. 3-1-05.



City
of
Milwaukee

Attachment 7

Department of Building Inspection

Lee C. Jensen
Commissioner

Martin G. Collins
Deputy Commissioner

April 14, 1998

Daniel G. Pomeroy
Eller Media Company
N11 W24600 Silvernail Road
Pewaukee, Wisconsin 53072-5599

Re: Changeable Message Boards

Dear Mr. Pomeroy:

In your letter of April 3, 1998 you have asked for confirmation that your proposed electronic displays over rotating faces embodied in a sign face is in compliance with 244-15(d).

Your description indicates a sign that is in compliance with this section of the code. It does not appear to be an electric message center displaying a traveling message. Accordingly, please accept this as written verification that the proposed sign is in compliance with local code, Section 244-15.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin G. Collins".

Martin G. Collins
Deputy Commissioner

er

c Gregg Blando

DOC:IBBS.1



April 3, 1998

Mr. Martin G. Collins
Deputy Commissioner
Department of Building Inspection
841 N. Broadway, 10th Fl.
Milwaukee, WI 53202-3613

Re: Changeable Message Boards

Dear Mr. Collins,

This letter is in response to our conversation on Friday, April 03, 1998 at which time you requested that I put my inquiry in writing. Eller Media Company has a number of billboards in the Milwaukee area with electronic displays, or rotating faces embodied in the sign face. In the past, we have been allowed to change the message on these boards in accordance with section 244-15d. (copy enclosed). The copy is changed every 6 seconds, and the change itself occurs in less than 1 second; this is not a reader board in which the copy scrolls, but a single action in which the old message is replaced by the new message.

On May 1, 1998 the Wisconsin Dept. of Transportation will allow this activity on freeway signs. This is an adoption of recent new rules published by the Federal Dept. of Transportation. We would like to utilize the new WISDOT rules on our freeway signs in Milwaukee.

Our interpretation of the Milwaukee Code is that this is an allowed practice, but to be on the safe side, I would appreciate it if you would verify that to me in writing.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Pomeroy", written in a cursive style.

Daniel G. Pomeroy
Real Estate / Public Affairs Manager

Enc.

ELLER MEDIA COMPANY

N11 W24600 SILVERNAIL ROAD, PEWAUKEE, WI 53072-5599
(414) 506-9000 FAX (414) 506-9039

244-15 Outdoor Advertising

2. LETTERS AND DECORATIONS. The area of the display surface or facing occupied or covered by plastic letters or decorations shall not exceed a total area calculated on the following basis:

Area of Facing or Display Surface	Area Occupied by or Covered by Plastics
100 sq. ft. or less	100% of display surface area
Over 100 sq. ft. but not over 2000 sq. ft.	100 sq. ft. plus 25% of the difference between 100 sq. ft. and the area of the display surface
Over 2000 sq. ft.	Not more than 575 sq. ft.

244-15. Illuminated Signs and Billboards. 1. Illuminated signs and billboards shall be permitted subject to the following regulations:

- a. All such illumination shall be in accordance with the regulations in ch. 222.
- b. Illumination shall be confined to the facing of the sign or billboard and shall not cause glare onto abutting properties.
- c. Illuminated signs or billboards shall bear an Underwriters Laboratories, Inc. label of approval or that of any other certified agency.
- d. Billboards which contain, include or are illuminated by any flashing, intermittent or moving light or lights are prohibited. However any sign or billboard may be, or may include as an individual component, a changeable message sign except that electric message centers displaying a traveling message are prohibited.
- e. No sign or billboard shall be of such character or shall include such inscription or marking which may be mistaken for a traffic signal, railroad warning sign, or any street traffic mark or sign per s. 346.41 of Wis. Stats.
- 2. Illuminated billboards are permitted only in those zoning districts specified in subch. 7 of ch. 295.

244-16. Clock Signs. 1. All clock signs erected on or after August 11, 1977, shall be attached to and supported by the exterior wall of a building or structure. Such signs shall be either wall signs or projecting signs and shall conform to the applicable regulations of this chapter.

2. Existing clock signs erected prior to August 11, 1977, shall comply with the regulations of s. 244-01-4 and 5.

244-17. Barber Poles. Barber poles may be placed not to exceed 10 inches beyond the street line and in all cases such poles shall be attached to and supported by the building or structure in an approved manner, and shall be not less than 8 feet above the established grade immediately below.

244-18. Snipe Advertising; Banners and Other Nonrigid Signs. 1. PROHIBITED. It shall be unlawful for any person, except a public officer or a government employee in the performance of a public duty, to maintain, place, erect, paint, paste, print, nail, tack, or otherwise fasten any card, banner, picture, handbill, sign, poster, advertising, or notice of any kind, or cause the same to be done, on any curb, streetwalk, or public thoroughfare surface, fence, board, barrel, box, case, railing, pole, post, tree, barricade, material, bridge, bridge fender, dock, pile, building or structure of any kind on public ground, or public waterway, within the city, except as may be permitted by this chapter or any provision of the Milwaukee code, the Milwaukee charter, Wis. Stats., or federal laws.

2. SNIPE ADVERTISING PROHIBITED. It shall be unlawful to place, erect, paint, paste, print, nail, tack, or otherwise fasten or maintain any snipe advertising or deface any exterior wall or surface of any building, board, barrel, box, case, railing, pole, post, tree, barricade, material, dock, pile, or structure of any kind with advertising or notice of any kind.

3. BANNERS, PAPER, DEBRIS PROHIBITED. Except as permitted by this chapter, it shall be unlawful to place, erect, tack, or otherwise fasten, use, or maintain any outdoor advertising such as banners, decorative displays or other advertising devices of cloth, paper, or other nonrigid materials.

4. RESPONSIBILITY. a. Any person, partnership, corporation or officer of any group or association who authorizes or pays for any form of advertising or who directly benefits financially therefrom and any candidate, person, or officer of any group or association who

authorizes or directs the placing or erecting or maintaining of any such sign or structure shall be held liable for the same. Any person, partnership, corporation or officer of any group or association who authorizes or pays for any form of advertising or who directly benefits financially therefrom and any candidate, person, or officer of any group or association who

Pomeroy, Dan

From: Pomeroy, Dan
Sent: Wednesday, March 29, 2006 10:55 AM
To: 'Martha Brown'
Cc: Greenstreet, Bob; 'Kurt Weis - #258'; Jasenski, David
Subject: Ordinance error

Martha,

There is a section of the ordinance (295-407-5-b-2) that says changeable message signs can only have the message changed every 60 seconds. I remember talking to John Hyslop about this a couple of years ago and was told it was a typo that would be fixed - it hasn't been.

The background on this matter is as follows:

The Federal Highway Administration has set (in 1996) 6 seconds as the standard for changeable message changes, this was subsequently adopted by the Wisconsin Department of Transportation in March of 1998. On April 14, 1998 I corresponded with then Deputy Commissioner of Building Inspection, Martin Collins requesting clarification that the use of changeable message signs which changed each 6 seconds would be in compliance with the code. Mr. Collins responded in writing that such changes would be in compliance as long as there was no movement of copy such as traveling or scrolling messages.

Subsequent to that letter, Clear Channel Outdoor installed several electronic changeable message signs and a number of mechanical changeable message signs that rotate copy each 6 seconds. These signs have been in use for nearly a decade without issue.

In May of 2003, the City of Milwaukee amended the sign code for off premise signs and a new standard of 60 seconds appeared. I believe this is inconsistent with the changes approved by the Plan Commission and ultimately the Common Council. It might require actually checking John's records or contacting John in retirement for his input if that is feasible.

I noted that a member of our industry, Lamar Outdoor, is scheduled to go before the Board of Zoning Appeals on this matter shortly. I believe this referral to BOZA is in error. Please have your staff investigate this as soon as possible and let me know what they find.

Dan Pomeroy
Real Estate/Public Affairs Manager
Clear Channel Outdoor, Milwaukee Division
(262) 506-9030

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3/29/2006

Pomeroy, Dan

From: Brown, Martha [Martha.Brown@mkcedd.org]
Sent: Wednesday, May 03, 2006 7:55 AM
To: Pomeroy, Dan
Subject: Re: Changeable messages

Hi, Dan - I met with Greg and Vanessa yesterday on this. The 60 second period is intentional. Greg indicated that originally the group working on the code revision a few years ago actually wanted to ban changeable message signs altogether. The 60 second requirement was the compromise.

Martha

Sent from my BlackBerry Wireless Handheld

Martha Brown
Deputy Commissioner
Dept. of City Development
(414) 286-5810

-----Original Message-----
From: Pomeroy, Dan <DanPomeroy@clearchanneloutdoor.com>
To: Brown, Martha <Martha.Brown@mkcedd.org>
CC: Jasenski, David <DavidJasenski@clearchannel.com>
Sent: Tue May 02 10:16:34 2006
Subject: Changeable messages

Martha,
I guess we're not met to talk between our busy schedules. Can you give me an update on the issue of how fast messages can change in the ordinance? I believe it should be 6 seconds, but 60 is typed into the code.

I did leave a copy of various correspondence with Federal Highways and the City of Milwaukee with Vanessa Koster a couple of weeks ago.

Dan Pomeroy
Real Estate/Public Affairs Manager
Clear Channel Outdoor, Milwaukee Division
(262) 506-9030

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Federal Highway Administration
Office of Real Estate Services

Memorandum

>>>> ELECTRONIC COPY <<<<

Issued Date:

June 12, 1998

INFORMATION: Off-premise Changeable
Message Sign (CMS) George, Washington
(Agfarmation Association)

Chief, Program Services Division
Office of Real Estate Services
HRE-20

Mr. Carl S. Arnbricker
Director, Program Development (HPPD-10)
Portland, OR

On April 20, 1998, the Division office asked for advice from Region 10 and sought guidance on what changes would be permitted relating to changeable message signs. The request involved a recently erected sign that employs a fixed display plus an electronic message board. The Region forwarded the information on May 7 and requested guidance in dealing with the States request to modify existing criteria and rules relating to CMS, so as to accommodate electronic message technology.

In 1996, based on positions taken by several States regarding tri-vision signs we acknowledged that technological changes could require the State/Federal agreement to be reinterpreted. Latitude to accommodate new technology and accept use of changeable message signs in off premise locations was dependant on a reasoned interpretation of the State/Federal agreement. Any type of technology could be used provided the signs did not contain flashing, intermittent, or moving lights. Only conforming signs were eligible to use updated technology.

The Agfarmation electronic sign uses technology that has been allowed under Sec. 131(c) for on-premise signs. The changeable message display, however, provides recognition to sponsors and others which is beyond what would be permissible by law for such signs. For off-premise signs no parallel provision allowing electronic message is included in the law. Scrolling or animated ads that are dependant on use of flashing, intermittent, or moving lights do not conform to either the existing Washington State/Federal agreement or the wording in our July 17, 1996, Memorandum.

After careful consideration, we have concluded that such signs using flashing, intermittent or moving lights to display animated, or scrolling advertising raises significant highway safety questions because of their potential to be extremely bright, large, rapidly changing, and distracting to motorists. We are therefore reaffirming our policy that off-premise signs using animated or scrolling displays are not conforming. Existing off-premise signs of this nature must be removed or operationally changed to conform with existing State law and regulation.

In addition, we are not in favor of creating a new sign classification that is not recognized by Congress in the HBA to accommodate this particular type of sign. Not only is it not a recognized exception but other associations would seek similar concessions. They might be individually meritorious, but collectively would erode the safety, efficiency, and aesthetic purposes of the HBA.

/s/ Robert A. Johnson

FHWA:HRE-20:RAJohnson:gs:62020:6/11/98
cc: Reader Chron HRE-20
g:\hba\1965\cevm\karns_wa.wpd

**Federal Highway Administration
Office of Real Estate Services**

**>>>> ELECTRONIC COPY <<<<
Issued Date: July 6, 1998**

**Mr. Alfred W. Speer
Clerk, Louisiana House
of Representatives
P. O. Box 44281
Baton Rouge, LA 70804-4281**

Dear Mr. Speer:

Thank you for your June 1 letter to Secretary of Transportation Rodney E. Slater regarding House Concurrent Resolution No. 31. Since the subject concerns outdoor advertising sign controls under the Highway Beautification Act of 1965 (HBA) your letter was forwarded to this office for reply.

Under the HBA, as amended, signs located "on premise," that is, signs advertising a business located on the same property, are expressly permitted to display changeable messages. However, along the National and Primary Highway Systems, off-premise signs are limited to standard display of static messages. Off-premise signs are not to incorporate flashing, intermittent, or moving lights. Signs using electronic systems and/or lighting raise significant highway safety concerns especially when the display utilizes animation or motion, because of the potential such signs have to be extremely bright, large, rapidly changing, and distracting to motorists. These concerns were reflected in State/FTWA agreements executed in the early 1970's.

In 1996, based on positions taken by several States regarding tri-vision signs we acknowledged that technological changes could require the State/Federal agreement to be reinterpreted. Latitude to accommodate new technology and accept use of changeable message signs in off-premise locations was dependant on a reasoned interpretation of the State/Federal agreement. Any type of technology could be used provided the signs did not contain flashing, intermittent, or moving lights. Only conforming signs were eligible to use updated technology. A copy of our policy memorandum is attached.

We believe, going beyond our 1996 position and permitting modification of existing agreements to remove the prohibition regarding flashing, intermittent, or moving lights, especially when such use involves the display of animated or moving images would not be consistent with the protections expected under the HBA.

We understand, through our Louisiana Division Office, the Louisiana Department of Transportation and Development (LDOTD) is working on a proposal to provide for updated signing regulations allowing more advanced sign displays within the limits outlined in our 1996 memo. If members of the Louisiana House of Representatives have questions about these

ongoing discussions, they can contact Mr. Mitchell A. Lopez, Traffic Planning Supervisor of the LADOTD (telephone number: 504 935-0128). Or they can contact Mr. William Sussmann, Division Administrator (telephone number: 504-389-0244), located in the Federal Building, Room 255, 750 Florida Street, Baton Rouge, Louisiana 70821 (mailing address: P. O. Box 3929),

Sincerely yours,

/s/ Robert A. Johnson

Robert A. Johnson, Chief
Program Services Division
Office of Real Estate Services