

TO: Legal & Finance Committee  
CC: Public Works Committee, Mayor Shaw, Ted Vore, Jim Preston  
FROM: Jason E. Green, Acting City Attorney  
RE: Options regarding condemned signs

As directed by the Common Council, I am presenting this memo to you for the purpose of discussing options for addressing condemned signs. I have identified three general courses of action the Council could take. In addition, another issue has presented itself that I believe warrants some discussion. The three possible options I have identified are as follows: 1) proceed under the current ordinance; 2) create an exemption that would allow the replacement of a condemned sign; or 3) revisit the sign ordinance and the City's policies on signs in their entirety. The other matter that I believe warrants some attention is the appeal process. I will address each of these issues in more detail.

At the outset, I think it is important to keep in mind that the issue that has prompted this discussion is the replacement of off-premise signs. Generally, the replacement of a condemned on-premise sign is not problematic. However, with off-premise signs, there are a number of additional barriers that must be overcome before a condemned sign can be replaced. The two most common are the spacing requirements for off-premise signs and the off-premise sign credit requirement. Both of these provisions of the sign code are designed to cause a reduction in the density of off-premise signs within the City. At the time these two provisions were proposed, the goal of reducing the number and density of off-premise signs within the City drove the adoption of this policy.

### **Option 1 - Proceed under the current ordinance.**

Under the current ordinance, when a sign is condemned and removed as the result of the construction of a public improvement, there is no guarantee that the sign can be replaced. Often, the sign can not be replaced. The primary reason is the inability of the owner of the condemned sign to find a location that meets the spacing requirements. However, an equally important reason is the failure of the owner of the removed sign to follow the procedure for obtaining the off-premise sign credits that are necessary before a new off-premise sign permit can be issued. Under the current ordinance, the goal of reducing the number and density of off-premise signs is being achieved.

### **Option 2 - Create an exception in the ordinance to allow replacement of condemned signs.**

This option has several potential legal pitfalls. First, in virtually all cases, the replacement of signs results in a sign that is immediately non-conforming with the ordinance. Second, and more importantly, bypassing the existing off-premise sign credit system de-values those credits that have already been issued by the City. The current ordinance sets up a system whereby the off-premise sign credits have value in and of themselves. Action by the City that de-values those credits could be found to be a partial taking of private property by the City. Such a finding by a court will result in the City being forced to pay compensation to the holders of off-premise sign credits. The third legal pitfall is the unequal treatment of off-premise signs that this option creates. Only signs that are condemned will be eligible for this treatment. Signs that are destroyed (and thus required to be removed) by natural disasters, vandals, or other involuntary methods do not qualify for special treatment. Granting special exceptions for one class of off-premise signs is an invitation to litigation.

### **Option 3 - Re-evaluate the entire sign ordinance.**

Whether to re-evaluate the sign ordinance entirely is a policy decision for the Council to make. However, keep in mind the legal ramifications of de-valuing or eliminating the off-premise sign credit system previously created by the Council.

### **Recommendation**

It is my opinion that the off-premise sign regulations are working exactly as designed. It is my opinion that the Council should not create an exception within the current ordinance for the replacement of condemned off-premise signs. My opinion is based upon the potential costs of compensating the owners of off-premise sign credits. Whether or not the entire ordinance should be re-written is a policy question and I express no opinion. However, any re-write must take into account currently existing off-premise sign credits.

### **Appeal Procedure**

It is my opinion that the appeal procedure should be completely re-drafted. The primary problem is that it is very unclear what provisions of the code can be varied by the Sign Code Board of Appeals and the Council. The lack of specifics creates a serious potential legal problem. The current ordinance effectively grants the Council complete and unfettered discretion to allow any sign, regardless of the number of provision of the ordinance that are violated. While this might sound like a good idea, from a legal standpoint it is very troubling. Effectively, the ordinance sets up a system where all signs must meet all the requirements of the code except those the Council exempts from the ordinance. This problem becomes clearer in the context of traffic regulation. The Council would not dream of allowing someone to be exempted from stopping at stop lights and stop signs. However, that is exactly what happens when a sign is allowed that is otherwise prohibited.

To remedy this problem, I suggest drafting an ordinance to specifically set out those requirements that are subject to variance and those that are not. Clearer criteria will help the Sign Code Board and Council make good decisions that are legally defensible. It will also give guidance to applicants who are considering seeking a variance. I would be happy to prepare a draft ordinance to accomplish these procedural changes if directed to do so.