UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP,
a Minnesota limited partnership,

Plaintiff,

Case No. 17-cv-576

v.

CITY OF MADISON, a Wisconsin city of the second class and
MATTHEW TUCKER, Zoning Administrator for the City of Madison

Defendants.

COMPLAINT

Plaintiff ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP, by and through its attorneys, Perkins Coie, LLP, for its complaint against Defendants CITY OF MADISON and MATTHEW TUCKER, Zoning Administrator for the City of Madison, says:

INTRODUCTION

1. The City of Madison's ("City") Sign Control Ordinance ("Ordinance") is facially unconstitutional because it, among other things, bans all new "Advertising Signs" (such as commercial billboards) and imposes numerous onerous restrictions on all of the existing "Advertising Signs" in the City without banning or imposing the same restrictions on other types of signs within the City (such as real estate, political, and various non-commercial signs). The City imposes disparate treatment on Advertising Signs versus other signs because it favors the content of those other signs, and it does so in a manner that is not narrowly tailored to advance a compelling governmental interest. This is a violation of Article 1, Section 3 of the Wisconsin

Constitution, the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. §1983. *See Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2231-32 (2015).

2. As such, Plaintiff Adams Outdoor Advertising Limited Partnership ("Adams") brings several facial constitutional challenges to the City's Ordinance, a true and correct copy of which is attached hereto in its current form as Exhibit A. Adams also (and separately) challenges the manner in which the Defendants have applied the Ordinance.

3. Adams seeks, among other things, declaratory relief, injunctive relief, and money damages based on the City's deprivation, under color of state law, of rights guaranteed to Adams by the Wisconsin Constitution, the United States Constitution, and 42 U.S.C. §1983.

PARTIES, JURISDICTION, AND VENUE

4. Adams is a limited partnership formed under the laws of the State of Minnesota, with local offices in Madison and Kenosha, Wisconsin. Adams' principal place of business is located in Georgia. None of the general or limited partners of Adams is a citizen of Wisconsin.

5. Upon information and belief, Defendant City of Madison ("City") is a municipal, political subdivision of the State of Wisconsin, duly organized and operating under the laws of Wisconsin as a city of the second class, with its municipal governmental offices located at 210 Martin Luther King Junior Boulevard, Madison, Wisconsin 53703.

6. Upon information and belief, Defendant Matthew Tucker is an individual who resides in the City, is the City's authorized representative (the "Zoning Administrator"), and acted in concert with the City and/or City officials with respect to the allegations contained herein (where appropriate, the City and the Zoning Administrator shall be referred to collectively as "Defendants").

7. Any and all actions taken by the City and/or the Zoning Administrator, as detailed herein, were taken under the color of state law for purposes of 42 U.S.C. §1983.

8. This Court has jurisdiction over Plaintiff's constitutional claims and civil rights claims pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1343(3) and (4).

9. This Court also has jurisdiction over this matter pursuant to 28 U.S.C. §1332 because the matter in controversy exceeds $75,000.00, exclusive of interest and costs. Diversity jurisdiction exists because Plaintiff and Defendants are citizens of different states.

10. This Court also has jurisdiction pursuant to 28 U.S.C. §2201 and 2202 to declare the parties' rights and to grant all further relief found necessary and proper.

11. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because, *inter alia*, one or more Defendants reside in this judicial district and the property in question is located in this judicial district.

12. Adams has standing to bring the claims asserted in this Complaint—including but not limited to—claims that the Ordinance (as defined herein), or sections thereof, is unconstitutional on its face, that the Defendants are applying the Ordinance, or sections thereof, in an unconstitutional or improper manner, and that the Ordinance's permitting scheme acts as an unlawful prior restraint.

GENERAL ALLEGATIONS

ADAMS' INTERESTS WITHIN THE CITY

13. At all relevant times, Adams has been engaged in all aspects of the outdoor advertising business, including but not limited to the sale/lease of billboard space, and the securing of real property and property rights (through outright ownership and/or leases of said

property) for use as locations for outdoor advertising, both within and outside the City and the State of Wisconsin.

14. Adams and third-parties who wish to convey messages to others through the use of billboard space enjoy the right to engage in, attempt to engage in, and actually engage in, speech that is protected by Article 1, §3 of the Wisconsin Constitution and the First and Fourteenth Amendments of the United States Constitution, including but not limited to political speech, social speech, public service speech, other forms of noncommercial speech, and commercial speech, both within and outside the City and the State of Wisconsin.

15. The City regulates signs within the City—including billboards owned or operated by Adams—through Chapter 31, Sign Control Ordinance (the "Ordinance") of the Madison General Ordinances. The most current version of the Ordinance was effective May 30, 2013, and the Ordinance was most recently revised December 15, 2015. *See* Exhibit A.

16. Adams owns two parcels of real property within the City on which Adams has erected and maintains billboards and engages in its outdoor advertising business: (1) real property located at 4511 W Beltline Hwy, Madison, WI, and (2) real property located at 2002 W Beltline Hwy, Madison, WI. By owning these parcels of real property, Adams and third parties are able to engage in political speech, social speech, public service speech, other forms of noncommercial speech, or commercial speech through the use, sale, or lease of billboard space.

17. Adams owns easements over nine parcels of real property within the City on which Adams has erected and maintains billboards and engages in its outdoor advertising business: (1) an easement located at US 51 0.36 mi S/O US 151 ES, Madison WI; (2) an easement located at US 51 0.33 mi N/O US 12/18 ES, Madison WI; (3) an easement located at 71 US 51 557 ft S/O Milwaukee St ES, Madison WI; (4) an easement located at 5202 US 12/18

0.57 mi W/O I-90 NS, Madison WI; (5) an easement located at 4313 US 12/18 0.28 mi W/O Seminole Hwy SS, Madison WI; (6) an easement located at 4207 US 12/18 198 ft W/O Seminole Hwy SS, Madison WI; (7) an easement located at 3111 E Washington Ave & 3115 E Washington Ave, Madison WI; (8) an easement located at 2809 US 12/18 0.23 mi W/O South Towne Dr SS, Madison WI; and (9) an easement located at 2318 US 51 700 ft N/O Pflaum Rd WS, Madison WI. By owning these easements, Adams and third parties are able to engage in political speech, social speech, public service speech, other forms of noncommercial speech, or commercial speech through the use, sale, or lease of billboard space.

18. Pursuant to other real property rights or property interests Adams has within the City in the form of permits and vested non-conforming rights, Adams routinely enters into contractual agreements with third parties in the form of real property leases or property licenses for the right to engage in the business of outdoor advertising on such property; through such contractual agreements, Adams and third parties are able to engage in political speech, social speech, public service speech, other forms of noncommercial speech, or commercial speech through the use, sale, or lease of billboard space.

19. In total, Adams owns or operates 111 billboard structures within the City, with a total of 220 billboard faces. All such billboards and faces are subject to the regulations and restrictions in the Ordinance and are deemed to be an existing non-conforming use pursuant thereto.

20. The majority of these billboards were built with (and currently contain) traditional static display faces. However, through the use of digital technology, billboard signs are now capable of providing a sequence of messages electronically.

21. Effective June 2006, the State of Wisconsin amended the law to authorize billboards to contain digital multiple-message technology. *See* 2005 Wis. Act 464. Wisconsin law only allows still, non-moving, images on digital displays and flashing, blinking, and/or scrolling effects are prohibited.

22. Since digital billboards became legal, Adams has obtained state and local permits to install digital billboards in several Wisconsin jurisdictions, such as the Cities of Kenosha, Sun Prairie, and Middleton; the Villages of DeForest and Waunakee; and the Town of Madison. Adams complies with all State and local regulations in operating its digital billboards.

23. Digital billboards are the only type of sign technology that allow Amber Alerts and other time-sensitive emergency messages to be communicated to the traveling public at a moment's notice. Therefore, they provide an extremely critical means of First Amendment communication.

24. As an example, and not by way of limitation, on April 10, 2017, the Federal Bureau of Investigation ("FBI") provided an update to the Outdoor Advertising Association of America ("OAAA") regarding the capture of fugitive Demeko Wells using digital billboards. The FBI stated the following in its update: "Fugitive Demeko Wells was featured on digital billboards in the Tampa, FL, area. The pressure created by the billboards influenced Wells to turn himself in the day after the billboards were posted. . . . After turning himself in, Wells admitted to the agents that he had seen himself on the billboards. He was arrested on March 23, 2017. The fugitive was charged with the following: Identity theft; access device fraud; and conspiracy. . . . **Due to the current addition of Demeko Wells, 57 fugitives from multiple cities across the country have been apprehended as a direct result of tips received from digital billboards**." (emphasis added). Adams partners with the FBI in providing digital

billboard space at no charge to the FBI on an immediate, and as-requested and as-needed basis, for messages regarding public safety and wanted fugitives.

25. Indeed, Adams has tied all of its digital billboards throughout the country into a network that allows public safety and informational messages to be shown on the signs at the push of a button.

26. Adams routinely uses its digital billboards located in Wisconsin and throughout the country to communicate information such as (i) Amber Alerts; (ii) the photographs of wanted fugitives and the contact information of police, (iii) emergency messages, such as weather alerts; (iv) information of great public interest (such as election results and messages furthering the mission of certain non-profit organizations); and (v) notification of community events.

27. As a further example, and not by way of limitation, on May 19, 2017, also known as Endangered Species Day, the National Geographic Society and the OAAA launched a groundbreaking traditional and digital billboard campaign aimed at saving animal species at risk in the wild. The campaign features stunning images from the National Geographic Photo Ark and sounds the alarm for the conservation of wildlife and wildlife habitat. Founded by National Geographic photographer Joel Sartore, the Photo Ark aims to document every species currently living in the world's zoos and wildlife sanctuaries, inspire action through education, and help save wildlife by supporting on-the-ground conservation efforts. More than 25 animals from the Photo Ark are featured in the campaign, including the Florida panther, the Saint Vincent Amazon parrot, the Golden Snub-nosed monkey, and the Malayan tiger, of which there are only an estimated 340 left in the wild. After May 19, the campaign expanded throughout the United States, where Photo Ark animals are featured on printed and digital billboards, bus shelters, airport dioramas, mall kiosks, and other billboard formats throughout the summer. Across the

county, more than 43,000 digital billboard screens will feature Photo Ark images. Adams is participating in the Photo Ark campaign by donating its traditional and digital billboard space to the campaign in all states in which Adams operates.

THE DEFENDANTS' HISTORICAL BIAS AGAINST AND HOSTILITY TOWARDS ADAMS AND BILLBOARDS

28. Based on its dealings with Adams over the years, including numerous conversations between Adams' personnel and the City of Madison Mayor's office, the City has a strong bias against and hostility towards Adams and its billboards.

29. The current City Mayor, Paul Soglin, and members of his staff, want to eliminate all of Adams' billboards in the City.

30. Over the years, various City Councilmembers have also made similar claims and exhibited similar bias against and hostility towards Adams and its billboards.

31. As described in more detail below, the City's Ordinance, among other things, unconstitutionally prohibits Adams from erecting new billboards, from erecting digital billboards, and from replacing or refurbishing existing billboards throughout the City. In other words, the City's Ordinance is designed to eventually completely eliminate an important and protected form of speech based on the content of such speech.

32. In 2005, Assistant City Planner Tim Parks told Jason Saari of Adams that the City has "a super tax" on billboards, and Mr. Saari testified about this conversation at a trial in Dane County Circuit Court.

33. In 2006, the City purchased real property on Highway 151 on the northeast side of Madison that contained a billboard owned and maintained by Adams pursuant to a lease agreement with the prior owner of the property. After purchasing the property, the City waited

for the term of the lease agreement to expire and then terminated the lease agreement by refusing to negotiate an extension or renewal of the lease agreement with Adams.

34. In 2008, the City purchased the land formerly owned by Union Pacific Railroad (where the current Cannonball Bridge is located). As part of the City's purchase, the City required Union Pacific Railroad to terminate a license agreement it (the Railroad) had with Adams, which allowed Adams to maintain and operate a billboard on the property. As a result of the City's actions, Adams had to remove and permanently lose a 14' x 48' back-to-back billboard within the City.

35. In 2010, former City Alderman Tim Breuer met with Ed Schulz and Jason Saari of Adams and told Mr. Schulz and Mr. Saari that if Adams did not remove its four billboards at the Villager Mall for a City redevelopment project, he was going to make sure that Dane County did not renew Adams' lease agreement with the Dane County Regional Airport for three of Adams' billboards located on airport property. Mr. Breuer also told Mr. Schulz and Mr. Saari that if Adams did not remove its billboards at the Villager Mall for a City redevelopment project, he would also approach landowners who had lease agreements with Adams and recommend that those landowners not renew their lease agreements with Adams. In 2012, as part of a settlement with the City, Adams removed its four billboards at the Villager Mall; but then in 2016, the Dane County Board rejected Dane County Regional Airport's request to renew its lease agreement with Adams for the three Adams' billboards located on airport property.

36. The City has entered into boundary agreements with surrounding municipalities that impose the City's existing billboard restrictions and prohibitions on those areas that will eventually become City property. *See, e.g.*, City of Madison and Town of Middleton Cooperative Plan dated September 29, 2003, Section 13.02(b) ("All new or replacement signs,

billboards or street graphics shall comply with the restrictions of the Madison Street Graphics Control Ordinance, Chapter 31, Madison General Ordinances and with the applicable Dane County sign regulations. In the event of a conflict between the Madison and Dane County sign regulations, the more restrictive regulatory provision shall apply."); Town of Burke, Village of DeForest, City of Sun Prairie and City of Madison Cooperative Plan dated January 5, 2007, Section 11.B.2. ("In the BAA-M territory which will eventually be attached to Madison, all new or replacement signs, billboards or street graphics ("signs") not part of any development shall comply with the restrictions of the Madison Street Graphics Control Ordinance, Chapter 31, Madison General Ordinances and with the applicable Dane County sign regulations. In the event of a conflict between the Madison and Dane County sign regulations, the more restrictive regulatory provision shall apply."); and Town of Blooming Grove and City of Madison Cooperative Plan dated April 20, 2006, Section 11.B.2. ("All new or replacement signs, billboards or street graphics ("signs") not part of any development shall comply with the restrictions of the Madison Street Graphics Control Ordinance, Chapter 31, Madison General Ordinances and with the applicable Dane County sign regulations. In the event of a conflict between the Madison and Dane County sign regulations, the more restrictive regulatory provision shall apply.").

37. When the City built the Cannonball Bridge in 2013, the new bridge obstructed the view of Adams' billboard located on real property owned by Adams at 2002 West Beltline Highway, Madison, WI. Adams sued the City to obtain relief from the obstruction that the Cannonball Bridge caused to its billboard. As part of that lawsuit, Adams requested that it be allowed to raise the height of its billboard at 2002 West Beltline Highway, Madison, WI, in part because the nearby Culver's restaurant was allowed to raise the height of its sign located at 2102

West Beltline Highway, Madison, WI, which was also obstructed by the Cannonball Bridge. As part of that lawsuit, the Zoning Administrator signed an affidavit dated October 9, 2015, wherein he detailed the ways in which the Ordinance favors on-premises signs over off-premises (*i.e.*, billboards) signs, and specifically stated that Culver's received a variance to raise its on-premises sign through an Urban Design Commission review, **but that the City's Ordinance does not contain a process by which the owner of a billboard can obtain a variance**. A true and correct copy of Mr. Tucker's affidavit is attached hereto as Exhibit B.

38. City redevelopment plans/studies specifically call for the elimination of billboards. For example, the Stoughton Road Revitalization Project, dated March 14, 2008, was prepared by Cuningham Group Architecture, PA for the City, and contains the following direct mandate: "Encourage property owners to voluntarily remove billboards."

39. At the public meeting of the Madison Common Council held on January 6, 2015 (which was videotaped), Mayor Soglin, the highest ranking City official, made the following statements:

- There are "fewer billboards in Madison than comparable cities in regards to size and population, and there is fewer for a reason – we don't want em!'"
- "If we are very cautious and restrictive in our approach to billboards the property owners will have to rethink the leases, who knows, in some instances we may find in a period of years four or five leases are not renewed."
- "Maybe in 200 years, our legacy will be no billboards."
- "There is another way of doing it [removal of billboards]. Chainsaw. Doesn't work on metal though."

40. In the summer of 2015, the owner of the property at 1313 Regent Street (where Adams owns and maintains three billboards on the roof of a building on the property) was proposing to redevelop the property. On information and belief, in connection with that proposed redevelopment, City Alderwoman Sarah Eskrich told the property owner that the City would "like to see the roof signs go away," and she encouraged the property owner not to renew his leases with Adams for the billboards.

41. Section 31.112(2)(b)3. of the Ordinance provides that the owner of an "Advertising Sign" can remove the advertising sign and receive credits to rebuild a relocation sign when, "[t]he advertising sign must be removed because the sign is located in the same physical space where a new improvement (other than another advertising sign) will be constructed, or adjacent to a new improvement such that proximity of the existing sign would result in a building code violation." On November 17, 2016, Adams submitted a request to the City to receive credits under Section 31.112(2)(b)3. of the Ordinance because Adams' billboard located at 615 Forward Drive, Madison, WI, was in incredibly close proximity to, and almost completely blocked by, a new improvement (new building) erected by the property owner (NBC 15). Nonetheless, the Zoning Administrator (and thus the City) denied Adams' request on December 1, 2016.

42. The foregoing actions are not meant to be an exhaustive list of the City's treatment of Adams and its billboards; rather, they are merely a small representative sample of the City's biased treatment against and hostility towards Adams and its billboards over the years.

ADAMS' PERMIT APPLICATIONS

43. On or about April 24, 2017, Adams submitted 26 permit applications to the City of Madison to perform the following actions with respect to some of its billboards in the City:

Structure	Requested Actions
1909 Aberg Ave	Install External Lighting
995 Applegate Rd	Raise Structure
1702 W Beltline Hwy	Raise Structure & Install a Digital Face
2002 W Beltline Hwy	Raise Structure & Install a Digital Face
4203 W Beltline Hwy	Raise Structure
4245 W Beltline Hwy	Raise Structure
4277 W Beltline Hwy	Raise Structure
3102 Commercial Ave	Raise Structure & Install a Digital Face
3220 Commercial Ave	Raise Structure & Install a Digital Face on West Face
4601 Hammersley Rd	Raise Structure & Install a Digital Face
6017 Odana Rd	Raise Structure & Install a Digital Face
405 S Park St	Install Two Digital Faces
1305 S Park St	Remove One Face, Raise Structure & Install a Digital Face
1901 S Park St	Install a Digital Face
1201 Regent St	Install Two Digital Faces
1330 Regent St	Install a Digital Face
2122 S Stoughton Rd	Raise Structure
1022 N Sherman	Raise Structure and Add Second Face
2733 University Ave	Remove Southern Structure, Raise Remaining Structure & Install a Digital Face
5003 University	Install a Digital Face
5227 University Ave	Install a Digital Face
2620 E Washington Ave	Install a Digital Face
3205 E Washington Ave	Install a Digital Face on South Face
3575 E Washington Ave	Install a Digital Face
3737 E Washington	Raise Structure and Install a Digital Face
7333 West Town Way	Raise Structure

44. On June 26, 2017, the Zoning Administrator (and thus the City) denied every one of Adams' permit applications (with the exception of 1909 Aberg Ave., Madison, WI), citing various sections of the Ordinance as the basis for denial—including but not limited to—Section 31.045(3)(i), which purports to prohibit/ban "digital image" signs. True and correct copies of all of the Zoning Administrator's denial letters are attached hereto as Exhibit C. Where appropriate herein, the Zoning Administrator's denial letters shall be referred to collectively as the "Denials."

45. The First Amendment does not authorize such an onerous regulation on a critical means of communication. *See e.g., E & J Equities, LLC v. Board of Adjustment of the Township of Franklin*, 146 A.3d 623, 643-44 (N.J. 2016) (onerous regulations on digital signs failed intermediate scrutiny because they were based solely on "unsupported suppositions, fears, and concerns").

46. It took the Zoning Administrator (and thus the City) 63 days to process Adams' permit applications and issue the Denials.

47. Although any further appeal of the Denials by Adams within the regulatory framework provided by the Ordinance is futile, Adams nonetheless will file the appropriate appeals within the appropriate timelines.

48. Regardless, Adams is not required to administratively appeal the Denials prior to bringing this action because, at a minimum: (a) pursuing such remedies is futile; and (b) a plaintiff such as Adams is not required to administratively appeal prior to bringing facial constitutional challenges to an Ordinance.

COUNT I
FACIAL CHALLENGE TO THE CONSTITUTIONALITY OF THE ORDINANCE AS A CONTENT-BASED RESTRICTION ON SPEECH

49. Adams incorporates by reference Paragraphs 1 through 48 of this Complaint as if each Paragraph was set forth herein in its entirety.

50. The Ordinance, on its face, defines "Advertising Sign" according to the content of the message and/or what type of information the message conveys.

51. The Ordinance, on its face, also regulates "Advertising Signs" based on the content of the message and the intent of the speaker because, among other things, all such signs are deemed to be nonconforming under the Ordinance and are also subject to extremely strict

size, height, location, setback, and spacing regulations. The City has even gone so far to create "areas of special control" in the Ordinance, including an entire area of the City labeled as the "No Advertising Sign District." No other types of signs or messages are similarly restricted in the Ordinance; therefore, "Advertising Signs" are discriminated against and treated differently than other types of signs or messages under the Ordinance based on the content of the message and/or what type of information the message conveys.

52. Section 31.04(1)(b) of the Ordinance, on its face, defines and regulates signs containing commercial messages according to the content of the message and/or what the message is intended to convey, and treats such signs differently by imposing the following restriction on such signs: "Where the conditions imposed by any provision of this ordinance upon the erection or maintenance of signs containing commercial messages are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this ordinance or of any other law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive or which impose the higher standards or requirements shall govern." No other types of signs or messages are similarly restricted in the Ordinance; indeed, Section 31.04(1)(a) mandates the following for all signs except for signs containing commercial messages: "In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements and least intrusive means for the promotion and protection of the public health, safety, and general welfare." Therefore, signs containing commercial messages are discriminated against and treated differently than other types of signs or messages under the Ordinance based on the content of the message and/or what type of information the message conveys.

53. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Accessory Sign" according to the content of the message and/or what type of information the message conveys.

54. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Banner, Promotional" according to the content of the message and/or what type of information the message conveys.

55. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Building Entrance Identification Sign" according to the content of the message and/or what type of information the message conveys.

56. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Business Sign" according to the content of the message and/or what type of information the message conveys.

57. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Commercial Message" according to the content of the message and/or what type of information the message conveys.

58. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Condominium Identification Sign" according to the content of the message and/or what type of information the message conveys.

59. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Identification Sign" according to the content of the message and/or what type of information the message conveys.

60. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Logo" according to the content of the message and/or what type of information the message conveys.

61. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Menu or Merchandise Board" according to the content of the message and/or what type of information the message conveys.

62. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Merchandise Sign" according to the content of the message and/or what type of information the message conveys.

63. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Mural" according to the content of the message and/or what type of information the message conveys.

64. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Neighborhood Identification Sign" according to the content of the message and/or what type of information the message conveys.

65. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Noncommercial Message" according to the content of the message and/or what type of information the message conveys.

66. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Off-Premise Directional" according to the content of the message and/or what type of information the message conveys.

67. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Political Sign" according to the content of the message and/or what type of information the message conveys.

68. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Project Sign" according to the content of the message and/or what type of information the message conveys.

69. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Real Estate Sign" according to the content of the message and/or what type of information the message conveys.

70. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Scoreboard" according to the content of the message and/or what type of information the message conveys.

71. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Sign" according to the content of the message and/or what type of information the message conveys.

72. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Street Occupancy Sign" according to the content of the message and/or what type of information the message conveys.

73. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Subdivision Identification Sign" according to the content of the message and/or what type of information the message conveys.

74. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Project Sign" according to the content of the message and/or what type of information the message conveys.

75. Section 31.03(2) of the Ordinance, on its face, defines and regulates "Time and/or Temperature Sign" according to the content of the message and/or what type of information the message conveys.

76. Section 31.044 of the Ordinance, on its face, defines and regulates "Signs Exempt from Permit" according to the content of the message and/or what type of information the message conveys.

77. On its face, the Ordinance renders all existing "Advertising Signs" within the City nonconforming and completely prohibits any new "Advertising Signs" from being erected within the City. No other types of signs are similarly deemed nonconforming or completely prohibited. These restrictions of "Advertising Signs" in the Ordinance are content-based and not narrowly tailored to serve a recognized and identified government interest, and reasonable alternative channels of communication do not exist to disseminate the information that Adams (and those similarly situated to Adams) seeks to distribute. As such, the Ordinance, as it relates to these restrictions of "Advertising Signs," is unconstitutional on its face.

78. On its face, the Ordinance creates an Advertising Sign Bank and corresponding procedure for claiming Advertising Sign Bank credits. No other types of signs are similarly subjected to such a bank or procedure. These restrictions of "Advertising Signs" in the Ordinance are content-based and not narrowly tailored to serve a recognized and identified government interest, and reasonable alternative channels of communication do not exist to disseminate the information that Adams (and those similarly situated to Adams) seeks to distribute. As such, the Ordinance as it relates to these restrictions of "Advertising Signs" is unconstitutional on its face.

79. On its face, the Ordinance creates a No Advertising Sign District within the City and completely prohibits "Advertising Signs" in that District. No other types of signs are similarly restricted in that District. These restrictions of "Advertising Signs" in the Ordinance are content-based and not narrowly tailored to serve a recognized and identified government interest, and reasonable alternative channels of communication do not exist to disseminate the information that Adams (and those similarly situated to Adams) seeks to distribute. As such, the Ordinance as it relates to these restrictions of "Advertising Signs" is unconstitutional on its face.

80. On its face, the Ordinance prohibits "Advertising Signs" within Districts of Special Control in the City. No other types of signs are similarly restricted in Districts of Special Control. These restrictions of "Advertising Signs" in the Ordinance are content-based and not narrowly tailored to serve a recognized and identified government interest, and reasonable alternative channels of communication do not exist to disseminate the information that Adams (and those similarly situated to Adams) seeks to distribute. As such, the Ordinance as it relates to these restrictions of "Advertising Signs" is unconstitutional on its face.

81. On its face, the Ordinance creates Group 1, Group 2, and Group 3 zoning districts and regulates and prohibits "Advertising Signs" in those Groups based on content and based on a number of restrictive regulations as to size, setbacks, height, location, and spacing that are not imposed on other types of signs. These restrictions of "Advertising Signs" in the Ordinance are content-based and not narrowly tailored to serve a recognized and identified government interest, and reasonable alternative channels of communication do not exist to disseminate the information that Adams (and those similarly situated to Adams) seeks to distribute. As such, the Ordinance as it relates to these restrictions of "Advertising Signs" is unconstitutional on its face.

82. On its face, the Ordinance allows variances from a strict application of the Ordinance for certain types of signs, but does not provide an avenue by which an "Advertising Sign" may obtain a variance from a strict application of the Ordinance. These restrictions of "Advertising Signs" in the Ordinance are content-based and not narrowly tailored to serve a recognized and identified government interest, and reasonable alternative channels of communication do not exist to disseminate the information that Adams (and those similarly situated to Adams) seeks to distribute. As such, the Ordinance as it relates to these restrictions of "Advertising Signs" is unconstitutional on its face.

83. There is no stated or justifiable reason in the Ordinance for the City's content-based disparate treatment, severe restriction, or strict regulation of "Advertising Signs."

84. There is no stated or justifiable reason in the Ordinance for the City's content-based disparate treatment, severe restriction, or strict regulation of "signs containing commercial messages."

85. There is no stated or justifiable reason in the Ordinance for the City's content-based preferential treatment or relaxed regulation of the types of signs identified in Paragraphs 53 through 76 (inclusive) of this Complaint.

86. Content-based distinctions, restrictions, and/or regulations on speech, such as the distinctions, restrictions, and/or regulations regarding "Advertising Signs," "signs containing commercial messages," and the types of signs identified in Paragraphs 53 through 76 (inclusive) of this Complaint, are presumptively unconstitutional, subject to strict scrutiny, and may only be upheld if narrowly tailored to serve a compelling government interest.

87. On their face, the content-based distinctions, restrictions, and/or regulations regarding "Advertising Signs," "signs containing commercial messages," and the types of signs identified in Paragraphs 53 through 76 (inclusive) of this Complaint are not narrowly tailored to serve a compelling government interest.

88. On its face, the Ordinance as it relates to "Advertising Signs" and "signs containing commercial messages" is not a valid time, place, or manner regulation of constitutionally protected speech.

89. By making content-based distinctions, restrictions, and/or regulations on speech throughout the Ordinance, the City has violated the Wisconsin Constitution, including but not limited to Article 1, §3.

90. By making content-based distinctions, restrictions, and/or regulations on speech throughout the Ordinance, the City has violated the United States Constitution, including but not limited to the First and Fourteenth Amendments.

COUNT II
FACIAL VAGUENESS/PROCEDURAL DUE PROCESS AND OVERBREADTH CHALLENGE TO THE CONSTITUTIONALITY OF THE ORDINANCE

91. Adams incorporates by reference Paragraphs 1 through 90 of this Complaint as if each Paragraph was set forth herein in its entirety.

92. Section 31.03(2) of the Ordinance defines "Alteration" as: "Any **major change** made to an existing sign, other than **routine maintenance**, painting or change of copy of an existing sign." Neither "**major change**" nor "**routine maintenance**" are defined in the Ordinance; thus, by definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding what constitutes a "**major change**" or "**routine maintenance**" to determine whether there has been an "Alteration" to an existing sign.

93. Section 31.03(2) of the Ordinance defines "Commercial Message" as: "A message that **directs attention to** a business, commodity, service or entertainment enterprise **which is intended to produce** a monetary profit or earnings which may lawfully inure to the benefit of any private shareholder or individual and the income of which is taxable under the Internal Revenue Code." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether a message "**directs attention to**" the items listed, or regarding what the message "**is intended to produce**" for the speaker to determine whether a message qualifies as a "Commercial Message".

94. Section 31.03(2) of the Ordinance defines "Noncommercial Message" as: "A message **intended to direct attention to** a political, social, community or public service issue, event or cause, **not intended to produce** a monetary profit or earnings which may lawfully inure to the benefit of any private shareholder or individual, and any income generated from which is exempt from taxation under the Internal Revenue Code." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether a message is "**intended to direct attention to**" the items listed, or regarding whether the message is "**not intended to produce**" a monetary profit for the speaker to determine whether a message qualifies as a "Noncommercial Message".

95. Section 31.03(2) of the Ordinance defines "Off-Premise Directional" as: "A sign displayed on the ground, **designed to** guide or direct the public to a business, service or entertainment activity." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether a message was "**designed to**" guide or direct the reader to the items listed to determine whether a message qualifies as an "Off-Premise Directional" sign.

96. Section 31.03(2) of the Ordinance defines "Project Sign" as: "A **temporary sign** on private property, describing a construction or improvement project including the names of contractors, architects, engineers, investors, owners or occupants." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether a message is a "**temporary sign**" to determine whether a message qualifies as a "Project Sign".

97. Section 31.03(2) of the Ordinance defines "Sign" as: "Any device, structure, fixture, or placard, including its supporting base, frame, electrical and all other accessory components, using text, graphics, symbols and/or other written copy **for the primary purpose of** identifying, providing directions, or advertising any establishment, product, goods, or services; located outside of a building or within three (3) feet of the interior of a window and which is visible from the exterior." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether a message is "**for the primary purpose of**" the items listed to determine whether a message qualifies as a "Sign".

98. Section 31.03(2) of the Ordinance defines "Symbol" as: "Something that **stands for or suggests something else** by reason of relationship, association, convention or resemblance placed or erected for public view as a sign or as a part of a sign." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether a message "**stands for or suggests something else**" to determine whether a message qualifies as a "Symbol".

99. Section 31.04(1)(a) of the Ordinance provides: "In their interpretation and application, the provisions of this ordinance shall be held to be **the minimum requirements and least intrusive means for the promotion and protection of the public health, safety, and general welfare**." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding "**the minimum requirements and least intrusive means for the promotion and protection of the public health, safety, and general welfare**" to interpret and apply this provision of the Ordinance.

100. Section 31.04(4)(a) of the Ordinance provides, in relevant part: "If the Zoning Administrator (or designee) shall find that any sign regulated herein is **unsafe or insecure** . . . . In addition, the Zoning Administrator **may cause any sign that is a hazard to person or property** to be removed summarily and without notice. The Zoning Administrator **may** refuse to issue a sign permit to any permittee or owner who has failed to pay costs assessed for removal of a hazardous sign under this paragraph." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether a sign is "**unsafe or insecure**" to interpret and apply this provision of the Ordinance. In addition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether a sign is "**is a hazard to person or property**" to interpret and apply these provisions of the Ordinance. Finally, use of the word "**may**" in this section of the Ordinance is an impermissible grant of discretion to the Zoning Administrator; indeed, ordinances that utilize the word "may" have routinely been invalidated as unconstitutional. *See e.g.*, *The Lamar Co. v. City of Marietta*, 538 F. Supp. 2d 1366, 1372-72 (N.D. Ga. 2008) (holding that the use of the word "may" afforded local officials total control over a sign permit, such discretion created the potential for local officials to arbitrarily suppress undesirable speech, and that this single deficiency caused the entire code to be invalid).

101. Section 31.04(5)(k) of the Ordinance provides, in relevant part: "1. Any illumination shall be so shielded that no direct illumination from it is visible elsewhere than on the sign and **in the immediate proximity thereof**. 2. All external lighting fixtures, as defined in Sec. 31.03(2) shall be steady, stationary, fully shielded light sources directed solely onto the sign, and shall use **lighting designed to minimize light spill and glare**. 3. Lighting sources (as

defined in Sec. 10.085(2)) shall not be directly visible **or cause glare** to adjacent public right-of-ways or adjacent private property boundaries. . . . 5. . . . Internally illuminated signs displaying illuminated copy shall be **designed in such a way so that when illuminated, the sign appears to have light-colored copy on a dark or non-illuminated background**." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding all of the following: whether direct illumination from a sign is visible "**in the immediate proximity**" of the sign; whether a sign owner has used "**lighting designed to minimize light spill and glare**"; whether a lighting source "**causes glare**"; and whether an internally illuminated sign displaying illuminated copy was "**designed in such a way so that when illuminated, the sign appears to have light-colored copy on a dark or non-illuminated background**" to interpret and apply these provisions of the Ordinance.

102. Section 31.041(2) of the Ordinance provides, in relevant part: "When all of the provisions of this ordinance or other ordinances relating to such sign shall have been complied with and when the applicant has paid the required fee for every such application, the permit **may** be granted. **The Zoning Administrator shall determine, consistent with the provisions of this ordinance, the form and contents of all applications for permits herein required**." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether an application for a permit is in the correct **form** or contains the correct or adequate **content** to interpret and apply these provisions of the Ordinance. *See e.g., Nittany Outdoor Advertising, LLC v. College Township*, 22 F. Supp. 3d 392, 412 (M.D. Pa. 2014) (the township's "power to hold a permit hostage for ransom" in the form of demands for information not specified in the

Code "'effectively vests . . . officials with unbridled discretion'"); *Public Citizen, Inc. v. Pinellas County*, 321 F. Supp. 2d 1275, 1292-93 (M.D. Fla. 2004) (holding that an "ordinance that grants the decisionmaker authority to request 'any additional information' confers 'unconstitutional discretion because it presumes that the decisionmaker will use her blanket authority to request additional information only in good faith and consistent with implicit standards.'"). In addition, ordinances that utilize the word "may" have routinely been invalidated as unconstitutional.

103. Section 31.041(4) of the Ordinance provides, in relevant part: "It shall be the duty of the Zoning Administrator upon the filing of an application for permit to **promptly examine** such plans and specifications and other data and, **if deemed necessary** by the Zoning Administrator, to inspect the premises upon which the proposed sign is to be erected, and if the proposed sign is in compliance with all the requirements of this Ordinance and any other applicable laws, he/she shall **promptly issue** the appropriate permit upon payment of the appropriate permit fee(s) herein." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding what it means to "**promptly examine**" plans and specifications and other data; whether he/she **deems it necessary** to inspect the premises upon which the proposed sign is to be erected; and what it means to "**promptly issue**" the appropriate permit to interpret and apply these provisions of the Ordinance. *See e.g., FW/PBS, Inc. v. Dallas*, 495 U.S. 215, 226 (1990) ("a licensing scheme failing to provide for definite limitations on the time within which the licensor must issue the license [is] constitutionally unsound[.]").

104. Section 31.041(5) of the Ordinance provides, in relevant part: "The Zoning Administrator **may** refuse to issue a sign permit to any permittee or owner who has failed to pay costs assessed for removal of a hazardous sign under Sec. 31.041(1), or failed to comply with a

court order to pay a forfeiture for a violation of this Ordinance, or failure to pay other unpaid civil judgment arising out of a violation of this Ordinance." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether he/she **may** refuse to issue a sign permit for the reasons listed to interpret and apply these provisions of the Ordinance. In addition, ordinances that utilize the word "may" have routinely been invalidated as unconstitutional.

105. Section 31.041(6) of the Ordinance provides, in relevant part: "All rights and privileges acquired under the provisions of this ordinance or any amendment thereto, are mere permits, **revocable at any time by the Zoning Administrator**, and all such applications shall contain this provision." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether when and under what circumstances he/she may **revoke** a sign permit to interpret and apply these provisions of the Ordinance.

106. Section 31.045(2)(a) of the Ordinance provides, in relevant part: "All signs and structures shall be **properly maintained and kept in an overall clean, neat state of appearance**." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether a particular sign or structure is "**properly maintained and kept in an overall clean, neat state of appearance**" to interpret and apply these provisions of the Ordinance.

107. Section 31.045(2)(b) of the Ordinance provides, in relevant part: "Signs that no longer serve **the purpose for which they are intended, or are not maintained, or which have been abandoned**, shall be removed by the most recent permit holder[.]" By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise

perform a **subjective** or **ad hoc** determination regarding whether a particular sign no longer serves "**the purpose for which [it is] intended, or [is] not maintained, or . . . ha[s] been abandoned**" to interpret and apply these provisions of the Ordinance.

108. Section 31.045(3)(b) of the Ordinance provides, in relevant part: "No sign regulated by this ordinance shall be erected at the intersection of any streets in such a manner as to obstruct free and clear vision as further delineated in other sections of this ordinance; or at any location where, by reason of the position, shape or color, it **may interfere with, obstruct the view of or be confused with** any authorized traffic sign, signal or device; . . . or any other word, phrase, symbol, or character in such manner as to interfere with, mislead or confuse traffic." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether a particular sign "**may interfere with, obstruct the view of or be confused with**" the items listed to interpret and apply these provisions of the Ordinance. In addition, ordinances that utilize the word "may" have routinely been invalidated as unconstitutional.

109. Section 31.05(2)(b) of the Ordinance, which affects the ability of an owner of an advertising sign to restore or reconstruct the sign, provides, in relevant part: "Such existing advertising signs may not be restored or reconstructed for any reason, except if damaged or destroyed by fire or other casualty or act of God, and only if the total cost of restoration to the condition in which it was before the occurrence does not exceed fifty percent (50%) of its assessed value **or the cost to replace with a new structure of equal quality**, whichever amount is lower. The determination of eligibility for restoration or reconstruction in the preceding sentence shall be made by the Urban Design Commission." By definition, the Urban Design Commission must form a **subjective** personal opinion, exercise judgment, or otherwise perform

a **subjective** or **ad hoc** determination regarding whether the total cost of restoration for a particular sign that is damaged or destroyed by fire exceeds fifty percent (50%) of **"the cost to replace with a new structure of equal quality**" to interpret and apply these provisions of the Ordinance.

110. Section 31.05(2)(c) of the Ordinance, which affects the ability of an owner of an advertising sign or other nonconforming sign to realign the sign, provides, in relevant part: "A sign realigned under this provision shall not be subject to applicable setback requirements found elsewhere in this ordinance, if **in the Zoning Administrator's opinion a shorter setback is necessary to accomplish the realignment**." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether, in his/her "**opinion a shorter setback is necessary to accomplish the realignment**" to interpret and apply these provisions of the Ordinance.

111. Section 31.112(4)(b) of the Ordinance, which affects the ability of an owner of an advertising sign to bank sign credits on the removal of an advertising sign, provides, in relevant part: "Square footage may not be banked until a building permit or zoning certificate for new improvement(s) on the property in question has been issued, **the Zoning Administrator gives his or her written approval to bank the square footage**." By definition, the Zoning Administrator must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether he/she "**gives his or her written approval to bank the square footage**" to interpret and apply these provisions of the Ordinance.

112. To the extent the City is still utilizing Section 31.112(5)(c) of the Ordinance, that section of the Ordinance, which affects the ability of an owner of an advertising sign to install a replacement advertising sign ("RAS"), provides, in relevant part: "Prior to approving and

issuing a permit for an RAS, the Zoning Administrator or designee shall provide written notice to the alderperson of the district where the RAS is proposed to be placed. That alderperson **may** request a review by the Common Council within fourteen (14) calendar days of the date of the written notice by notifying the City Clerk in writing of the request for review. The Clerk shall place the matter on the next available Council agenda for review, wherein the Council shall consider whether the proposed RAS **will substantially impair or diminish the established uses, values or enjoyment of the property in question or any immediately adjacent property**." By definition, the Common Council must form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether a proposed replacement advertising sign "**will substantially impair or diminish the established uses, values or enjoyment of the property in question or any immediately adjacent property**" to interpret and apply these provisions of the Ordinance. In addition, ordinances that utilize the word "may" have routinely been invalidated as unconstitutional.

113. There is a conflict/overlap between the definition of "Changeable Copy Sign (Electric)" in Section 31.03(2) of the Ordinance and a "Digital Image Sign" in Section 31.03(2) of the Ordinance, such that it is vague and ambiguous as to what digital sign technology is prohibited and allowed within the City and on what type of sign. In any event, by permitting Changeable Copy Signs (Electric) in some instances (*see* Section 31.046(1) of the Ordinance), but completely prohibiting Digital Image Signs (*see* Section 31.045(3)(i) of the Ordinance), the City is also allowing the Zoning Administrator to form a **subjective** personal opinion, exercise judgment, or otherwise perform a **subjective** or **ad hoc** determination regarding whether a particular sign is a permitted "Changeable Copy Sign (Electric)" or a prohibited "Digital Image Sign" in interpreting and applying these provisions of the Ordinance.

114. On its face, the Ordinance, as it relates to any one, more, or all of the matters detailed in Paragraphs 91 through 113 (inclusive) of this Complaint is vague, ambiguous, and/or overbroad, and does not provide fair notice to Adams (and those similarly situated to Adams) of the conduct proscribed by the Ordinance.

115. On its face, the Ordinance, as it relates to any one, more, or all of the matters detailed in Paragraphs 91 through 113 (inclusive) of this Complaint confers on the City and/or the Zoning Administrator the sole, unstructured, unlimited, and/or unbridled discretion to determine matters such as whether an offense has been committed, whether a condition has been satisfied, and/or whether to permit or deny constitutionally protected speech.

116. On its face, the Ordinance, as it relates to any one, more, or all of the matters detailed in Paragraphs 91 through 113 (inclusive) of this Complaint is vague, ambiguous, and/or overbroad, and does not provide fair notice to Adams (and those similarly situated to Adams) of when a permit may be necessary to engage in constitutionally protected speech.

117. On its face, the Ordinance, as it relates to any one, more, or all of the matters detailed in Paragraphs 91 through 113 (inclusive) of this Complaint confers on the City and/or the Zoning Administrator unstructured, unlimited, and/or unbridled discretion to determine when a permit is necessary to engage in constitutionally protected speech.

118. On its face, the sections of the Ordinance that lack any time period under which the City and/or Zoning Administrator must act on a permit application confer on the City and/or the Zoning Administrator unstructured, unlimited, and/or unbridled discretion to determine when to so act.

119. On its face, Section 31.045(3)(i) contains a complete prohibition of "Digital Image Signs", yet the Ordinance, on its face, allows "Changeable Copy Sign (Electric)", subject

to certain conditions. There is no stated or justifiable reason in the Ordinance for the complete prohibition of "Digital Image Signs", with an exemption for "Changeable Copy Sign (Electric)." The complete prohibition of "Digital Image Signs" in the Ordinance is thus not narrowly tailored to serve a recognized and identified government interest, and reasonable alternative channels of communication do not exist to disseminate the information that Adams (and those similarly situated to Adams) seeks to distribute. As such, the Ordinance, as it relates to the complete prohibition of "Digital Image Signs", is overbroad and unconstitutional on its face.

120. On its face, the Ordinance renders all existing "Advertising Signs" within the City nonconforming and completely prohibits any new "Advertising Signs" from being erected within the City. No other types of signs are similarly deemed nonconforming or completely prohibited. These restrictions of "Advertising Signs" in the Ordinance are thus not narrowly tailored to serve a recognized and identified government interest, and reasonable alternative channels of communication do not exist to disseminate the information that Adams (and those similarly situated to Adams) seeks to distribute. As such, the Ordinance as it relates to these restrictions of "Advertising Signs" is overbroad and unconstitutional on its face.

121. On its face, the Ordinance creates an Advertising Sign Bank and corresponding procedure for claiming Advertising Sign Bank credits. No other types of signs are similarly subjected to such a bank or procedure. These restrictions of "Advertising Signs" in the Ordinance are thus not narrowly tailored to serve a recognized and identified government interest, and reasonable alternative channels of communication do not exist to disseminate the information that Adams (and those similarly situated to Adams) seeks to distribute. As such, the Ordinance, as it relates to these restrictions of "Advertising Signs", is overbroad and unconstitutional on its face.

122. On its face, the Ordinance creates a No Advertising Sign District within the City and completely prohibits "Advertising Signs" in that District. No other types of signs are similarly restricted in that District. These restrictions of "Advertising Signs" in the Ordinance are thus not narrowly tailored to serve a recognized and identified government interest, and reasonable alternative channels of communication do not exist to disseminate the information that Adams (and those similarly situated to Adams) seeks to distribute. As such, the Ordinance as it relates to these restrictions of "Advertising Signs" is overbroad and unconstitutional on its face.

123. On its face, the Ordinance prohibits "Advertising Signs" within Districts of Special Control in the City. No other types of signs are similarly restricted in Districts of Special Control. These restrictions of "Advertising Signs" in the Ordinance are thus not narrowly tailored to serve a recognized and identified government interest, and reasonable alternative channels of communication do not exist to disseminate the information that Adams (and those similarly situated to Adams) seeks to distribute. As such, the Ordinance as it relates to these restrictions of "Advertising Signs" is overbroad and unconstitutional on its face.

124. On its face, the Ordinance creates Group 1, Group 2, and Group 3 zoning districts and regulates and prohibits "Advertising Signs" in those Groups based on content and based on a number of restrictive regulations as to size, setbacks, height, location, and spacing that are not imposed on other types of signs. These restrictions of "Advertising Signs" in the Ordinance are thus not narrowly tailored to serve a recognized and identified government interest, and reasonable alternative channels of communication do not exist to disseminate the information that Adams (and those similarly situated to Adams) seeks to distribute. As such, the Ordinance

as it relates to these restrictions of "Advertising Signs" is overbroad and unconstitutional on its face.

125. By being vague, ambiguous, and/or overbroad, the Ordinance violates the Wisconsin Constitution, including but not limited to Article 1, §§ 1 and 3.

126. By being vague, ambiguous, and/or overbroad, the Ordinance violates the United States Constitution, including but not limited to the First and Fourteenth Amendments.

127. By being vague, ambiguous, and/or overbroad, the Ordinance arbitrarily deprives, and/or attempts to deprive, Adams (and those similarly situated to Adams) of its vested property rights.

128. By being vague, ambiguous, and/or overbroad, the Ordinance is arbitrary, capricious, and/or unfounded; and otherwise results in the arbitrary deprivation of Adams' (and those similarly situated to Adams) vested property rights/interests without due process of law.

129. By being vague, ambiguous, and/or overbroad, the Ordinance violates Adams' (and those similarly situated to Adams) civil rights.

COUNT III
FACIAL CHALLENGE TO THE CONSTITUTIONALITY OF THE ORDINANCE AS A PRIOR RESTRAINT

130. Adams incorporates by reference Paragraphs 1 through 129 of this Complaint as if each Paragraph was set forth herein in its entirety.

131. Section 31.041 of the Ordinance contains several provisions that attempt to explain how and when one needs to obtain a permit or license with respect to a sign or a message.

132. Section 31.041(6) of the Ordinance contains a provision that makes all granted permits with respect to a sign or a message **subject to revocation at any time, and for any reason (or no reason)** by the Zoning Administrator.

133. Section 31.112(5) of the Ordinance contains several provisions that attempt to explain how and when one needs to obtain a permit or license with respect to a "Replacement Advertising Sign."

134. Section 31.041 of the Ordinance fails to set forth content-neutral criteria—such as narrow, objective, and definite standards—to ensure that the City's and/or the Zoning Administrator's permitting, licensing, or revocation decisions are not based on the content or viewpoint of the speech or message.

135. Section 31.112(5) of the Ordinance fails to set forth content-neutral criteria—such as narrow, objective, and definite standards—to ensure that the City's and/or the Zoning Administrator's permitting, licensing, or revocation decisions are not based on the content or viewpoint of the speech or message.

136. Section 31.041 of the Ordinance fails to create a permitting or licensing scheme that reduces the City and/or Zoning Administrator's act of granting, denying, or revoking a permit or license to a ministerial one, without the exercise of judgment or the formation of an opinion by the City and/or Zoning Administrator.

137. Section 31.112(5) of the Ordinance fails to create a permitting or licensing scheme that reduces the City and/or Zoning Administrator's act of granting, denying, or revoking a permit or license to a ministerial one, without the exercise of judgment or the formation of an opinion by the City and/or Zoning Administrator.

138. For example, and not by way of limitation, Sections 31.041 and 31.112(5) of the Ordinance lack all of the following:

(a) Clearly defined—*i.e.*, not vague or overbroad—terms;

(b) Any clearly defined limits on the time within which the decision-maker must issue a permit or license;

(c) Any clearly defined limits on the time within which the decision-maker must deny a permit or license;

(d) Any requirement that a decision on a permit or license be made within a specified brief period;

(e) With the exception of those reasons stated in Section 31.041(5), which are discretionary ("[t]he Zoning Administrator **may** refuse to issue a sign permit . . ."), any additional reasons why a decision-maker could deny or revoke a permit or license;

(e) With the exception of those requirements stated in Section 31.041(5), which only apply to a denial for unpaid fees, etc., any additional requirement that the decision-maker clearly explain his or her reasons for denying or revoking a permit or license;

(f) Any guarantee of prompt judicial review of a decision denying or revoking a permit or license; and/or

(g) Any requirement that the status quo be maintained during any period of review.

139. Sections 31.041 and 31.112(5) of the Ordinance lack any procedural safeguards or neutral criteria of any type with respect to permitting or licensing.

140. Sections 31.041 and 31.112(5) of the Ordinance give the City and/or the Zoning Administrator unbridled and/or boundless discretion to determine whether to permit or deny expressive activity.

141. Sections 31.041 and 31.112(5) of the Ordinance leave the decision whether to grant, deny, or revoke a permit or license, and the time period in which to do so, to the whim of the City and the Zoning Administrator.

142. Section 31.043(1) of the Ordinance purports to give the City's Urban Design Commission ("UDC") the authority to "hear and decide appeals of decisions of the Zoning Administrator where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this chapter and, where applicable[.]" In exercising this authority, the City has granted the UDC throughout Section 31.043 of the Ordinance the right to grant variances from a strict application of the Ordinance as to a particular sign or message with respect to a number of defined sign types based on a number of subjective factors. However, the UDC has no power to "approve Advertising beyond the restrictions in Sec. 31.11[,]" which sets forth restrictions applicable to "Advertising Signs."

143. Indeed, the Ordinance does not provide an avenue by which an "Advertising Sign" may obtain a variance from a strict application of the Ordinance.

144. Variance procedures such as those in Section 31.043 that are discretionary and subjective in nature and foreclose the ability of "Advertising Signs" to obtain a variance of any type, are a form of prior restraint and unconstitutional. *See e.g.*, *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358, 1362 (11th Cir. 1999) (variance criteria that empowered zoning board to covertly discriminate against speech activity under the guise of general "compatibility" or "environmental" considerations unconstitutional); *see also Desert Outdoor Adver. v. City of*

Moreno Valley, 103 F.3d 814, 818 (9th Cir. 1996); *Lamar Advertising Co. v. City of Douglasville*, 254 F. Supp. 2d 1321, 1329 (N. D. Ga 2003).

145. Section 31.112(4)(b) of the Ordinance, which affects the ability of an owner of an advertising sign to bank sign credits on the removal of an advertising sign, provides, in relevant part: "Square footage may not be banked until a building permit or zoning certificate for new improvement(s) on the property in question has been issued, **the Zoning Administrator gives his or her written approval to bank the square footage**." Section 31.112(4)(b) of the Ordinance thus lacks any clearly defined limits on the time within which the Zoning Administrator must give his or her written approval to bank the square footage.

146. As an unconstitutional prior restraint, the Ordinance violates the Wisconsin Constitution, including but not limited to Article 1, §3.

147. As an unconstitutional prior restraint, the Ordinance violates the United States Constitution, including but not limited to the First and Fourteenth Amendments.

148. As an unconstitutional prior restraint, the Ordinance arbitrarily deprives, and/or attempts to deprive, Adams (and those similarly situated to Adams) of its vested property rights.

149. As an unconstitutional prior restraint, the Ordinance is arbitrary, capricious, and/or unfounded; and otherwise results in the arbitrary deprivation of Adams' (and those similarly situated to Adams) vested property rights/interests without due process of law.

150. As an unconstitutional prior restraint, the Ordinance violates Adams' (and those similarly situated to Adams) civil rights.

COUNT IV
FACIAL CHALLENGE TO THE CONSTITUTIONALITY OF THE ORDINANCE AS A VIOLATION OF EQUAL PROTECTION AND/OR SUBSTANTIVE DUE PROCESS

151. Adams incorporates by reference Paragraphs 1 through 150 of this Complaint as if each Paragraph was set forth herein in its entirety.

152. On its face, the Ordinance makes content-based distinctions between "Advertising Signs" and all other types of signs or messages, and treats "Advertising Signs" differently than all other types of signs or messages based on such content-based distinctions.

153. On its face, the Ordinance restricts and regulates "Advertising Signs" and signs containing commercial messages based on content and the intent of the speaker.

154. For example, and not by way of limitation, the Ordinance provides for all of the following:

(a) Section 31.03(2) of the Ordinance, which defines "Advertising Sign," contains an express exemption for advertising on public transportation vehicles, signs authorized on Madison Transit Utility bus shelters under Sec. 3.14(4)(i), and signs on City-sponsored bicycle-sharing facilities and the bicycles provided as part of a city-sponsored bicycle-sharing program located in the right-of-way or on other City lands in compliance with Sec. 10.33;

(b) Section 31.04(1)(b) of the Ordinance subjects signs containing commercial messages to the following standard: "Where the conditions imposed by any provision of this ordinance upon the erection or maintenance of signs containing commercial messages are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this ordinance or of any other law, ordinance, resolution, rule or regulation of any kind, the regulations which are more

restrictive or which impose the higher standards or requirements shall govern." Signs containing noncommercial messages (and other content-based exempt signs under the Ordinance) are not subject to the same standard;

(c) Section 31.04(5)(k) of the Ordinance, which relates to illumination of signs, contains an exemption for "official traffic control devices" and exposed neon signs;

(d) Section 31.041(3)(a) of the Ordinance, which establishes the permit fees for various types of signs, subjects "Advertising Signs" to a higher permit fee than all other signs;

(e) Section 31.043 of the Ordinance, which relates to the Urban Design Commission and Comprehensive Design Review, contains numerous exceptions, exemptions, and variance opportunities for various types of signs to be permitted and displayed based on their content and purpose, without affording similar exceptions, exemptions, and variance opportunities for "Advertising Signs"—including but not limited to—an exemption in Section 31.043(3)(i) of the Ordinance for an Electronic Changeable Copy feature for identification signs for high schools;

(f) Section 31.044 of the Ordinance, which relates to Signs Exempt From Permit, contains numerous content-based exemptions that allow non-commercial and various other types of signs—including but not limited to signs on city owned property—to be erected and displayed without a permit, while providing no exemptions to "Advertising Signs";

(g) Section 31.045(3)(c) of the Ordinance, which relates to Public Right-of-Ways, prohibits signs and advertisements in the public right-of-way, but makes content-

based exemptions for those matters set forth in Section 3.14(4)(i) of the Madison General Ordinances ("MGO"); signs on City-sponsored bicycle-sharing facilities set forth in Section 10.33 of the MGO; and Government Building Identification Signs and Promotional and Decorative Banners under Section 31.07(5)(f) of the Ordinance;

(h) The Ordinance allows for Changeable Copy Signs (Electric) in some instances (*see* Section 31.046(1)), but completely prohibits Digital Image Signs (*see* Section 31.045(3)(i));

(i) Sections 31.046(1)(e)(2), (3), and (4) of the Ordinance contain content-based exemptions for certain types of Changeable Copy Signs (Electric) that are not available to "Advertising Signs";

(j) Section 31.046(4) of the Ordinance, which relates to Bicycle-Sharing Facility Signs, completely prohibits "Advertising Signs" (*see* Section 31.046(4)(c)), but allows certain other signs on non-City owned zoning lots in any zoning district where a City-sponsored bicycle-sharing facility (as defined in Section 10.33 of the MGO) is permitted based upon the content of such signs;

(k) Section 31.05 of the Ordinance, which relates to Nonconforming Signs, establishes liberal rules for the right to continue to display, maintain, and repair all nonconforming signs within the City except "Advertising Signs." Nonconforming "Advertising Signs" are subject to stringent and discriminatory rules that make it difficult, if not impossible (particularly in certain areas of the City), to continue to display, maintain, and repair nonconforming "Advertising Signs";

(l) Section 31.11(2) of the Ordinance, which relates to General Regulations for Advertising Signs, contains a number of restrictive regulations (based on content) as

to size, setbacks, height, location, and spacing that are not imposed on other types of signs;

(m) Section 31.112(6) of the Ordinance, which relates to Replacement Advertising Sign Criteria, contains a number of restrictive regulations (based on content) as to size, setbacks, height, location, and spacing for Replacement Advertising Signs that are not imposed on other types of signs;

(n) The Ordinance renders all existing "Advertising Signs" within the City nonconforming and completely prohibits any new "Advertising Signs" from being erected within the City. No other types of signs are similarly deemed nonconforming or completely prohibited;

(o) The Ordinance creates an Advertising Sign Bank and corresponding procedure for claiming Advertising Sign Bank credits. No other types of signs are similarly subjected to such a bank or procedure;

(p) The Ordinance creates a No Advertising Sign District within the City and completely prohibits "Advertising Signs" in that District. No other types of signs are similarly restricted in that District;

(q) The Ordinance prohibits "Advertising Signs" within Districts of Special Control in the City. No other types of signs are similarly restricted in Districts of Special Control;

(r) The Ordinance creates Group 1, Group 2, and Group 3 zoning districts and regulates and prohibits "Advertising Signs" in those Groups based on content and based on a number of restrictive regulations as to size, setbacks, height, location, and spacing that are not imposed on other types of signs; and

(s) The Ordinance allows variances from a strict application of the Ordinance for certain types of signs, but does not provide an avenue by which an "Advertising Sign" may obtain a variance from a strict application of the Ordinance.

155. The facially disparate treatment of "Advertising Signs" and signs containing commercial messages under the Ordinance violates the Wisconsin Constitution, including but not limited to Article 1, §1.

156. The facially disparate treatment of "Outdoor Advertising Signs" and signs containing commercial messages under the Ordinance violates the United States Constitution, including but not limited to the Equal Protection Clause of the Fourteenth Amendment.

157. The facially disparate treatment of "Advertising Signs" and signs containing commercial messages under the Ordinance is arbitrary, capricious, and/or unfounded; and otherwise results in the arbitrary deprivation of Adams' (and those similarly situated to Adams) vested property interests without due process of law.

158. The facially content-based distinctions, restrictions, and regulations with respect to "Advertising Signs" and signs containing commercial messages and all other types of signs or messages under the Ordinance violate the Wisconsin Constitution, including but not limited to Article 1, §1.

159. The facially content-based distinctions, restrictions, and regulations with respect to "Advertising Signs" and signs containing commercial messages and all other types of signs or messages under the Ordinance violate the United States Constitution, including but not limited to the Equal Protection Clause of the Fourteenth Amendment.

160. The facially content-based distinctions, restrictions, and regulations with respect to "Advertising Signs" and signs containing commercial messages and all other types of signs or

messages under the Ordinance are arbitrary, capricious, and/or unfounded; and otherwise result in the arbitrary deprivation of Adams' (and those similarly situated to Adams) vested property interests without due process of law.

COUNT V
"AS APPLIED" CHALLENGE TO THE CONSTITUTIONALITY OF THE ORDINANCE AND/OR THE DEFENDANTS' ACTIONS WITH RESPECT TO ADAMS

161. Adams incorporates by reference paragraphs 1 through 160 as if each paragraph was set forth herein in its entirety.

162. In issuing the Denials, the Zoning Administrator is exercising unstructured, unlimited, and/or unbridled discretion in applying provisions of the Ordinance—including but not limited to the definitions of Changeable Copy Signs (Electric) and Digital Image Signs—with respect to and against Adams.

163. In denying Adams' request to receive credits under Section 31.112(2)(b)3. of the Ordinance related to a billboard located at 615 Forward Drive, Madison, WI, the Zoning Administrator exercised unstructured, unlimited, and/or unbridled discretion with respect to and against Adams.

164. Section 31.04(1)(b) of the Ordinance actually **requires** the Defendants to interpret and apply the provisions of the Ordinance with respect to signs containing commercial messages (such as many of Adams' signs within the City), in a more restrictive manner and using higher standards than when interpreting and applying the provisions of the Ordinance with respect to signs that do not contain commercial messages. As a result, Defendants are interpreting and applying the Ordinance with respect to and against Adams in a manner that differs from, and is more favorable to, speakers with noncommercial messages.

165. Paragraphs 28 through 44 (inclusive) of this Complaint also provide additional examples of a pattern of bias and hostility of Defendants towards Adams and its business interests and property rights, which has repeatedly manifested itself in the manner in which Defendants have applied the Ordinance with respect to and against Adams.

166. As applied by Defendants with respect to and against Adams, the Ordinance is vague, ambiguous, and/or overbroad and does not provide fair notice to Adams of the conduct proscribed or when a permit is necessary.

167. Defendants are exercising unstructured, unlimited, and/or unbridled discretion in interpreting and applying the Ordinance with respect to and against Adams.

168. The Defendants' disparate treatment of Adams under the Ordinance violates the Wisconsin Constitution, including but not limited to Article 1, §1.

169. The Defendants' disparate treatment of Adams under the Ordinance violates the United States Constitution, including but not limited to the Equal Protection Clause of the Fourteenth Amendment.

170. The Defendants' disparate treatment of Adams under the Ordinance is arbitrary, capricious, and/or unfounded; and otherwise results in the arbitrary deprivation of Adams' vested property interests without due process of law.

171. As applied by Defendants with respect to and against Adams, the Ordinance impinges on freedoms guaranteed by the Wisconsin Constitution, including but not limited to those freedoms guaranteed under Article 1, §3.

172. As applied by Defendants with respect to and against Adams, the Ordinance impinges on freedoms guaranteed by the United States Constitution, including but not limited to those freedoms guaranteed under the First and Fourteenth Amendments.

173. As applied by Defendants with respect to and against Adams, the Ordinance violates Adams' civil rights.

174. As applied by Defendants with respect to and against Adams, the Ordinance deprives Adams of its vested property rights.

175. As a direct and proximate result of the City's actions and the Zoning Administrator's actions as detailed throughout this Complaint, Adams has suffered (and will continue to suffer) damages.

176. As a direct and proximate result of the City's actions and the Zoning Administrator's actions as detailed throughout this Complaint, Adams has suffered (and will continue suffer) irreparable harm because, *inter alia*, it has been deprived of rights guaranteed to it under the United States Constitution and Wisconsin Constitution, including important and vested property rights and the right to engage in protected speech, and is subject to penalties and fines for any alleged violation of the Ordinance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Adams Outdoor Advertising Limited Partnership respectfully requests that this Honorable Court:

(a) declare that the City's Ordinance (or portions thereof) violates the Wisconsin Constitution, including but not limited to Article 1, §3, and the United States Constitution, including but not limited to the First and Fourteenth Amendments, on its face by making content-based distinctions, regulations, and restrictions on speech, and is therefore invalid and unenforceable;

(b) declare that the City's Ordinance (or portions thereof) violates the Wisconsin Constitution, including but not limited to Article 1, §3, and the United States Constitution,

including but not limited to the First and Fourteenth Amendments, on its face by being vague, ambiguous, overbroad, and/or a violation of Procedural Due Process, and is therefore invalid and unenforceable;

(c) declare that the City's Ordinance (or portions thereof) violates the Wisconsin Constitution, including but not limited to Article 1, §3, and the United States Constitution, including but not limited to the First and Fourteenth Amendments, on its face as a prior restraint, and is therefore invalid and unenforceable;

(d) declare that the City's Ordinance (or portions thereof) violates the Wisconsin Constitution, including but not limited to Article 1, §1, and the United States Constitution, including but not limited to the Equal Protection Clause and Substantive Due Process Clauses, on its face, and is therefore invalid and unenforceable;

(e) declare that the City's Ordinance (or portions thereof) violates Adams' (and those similarly situated to Adams) civil rights—including but not limited to those rights protected by 42 U.S.C. § 1983—and is therefore invalid and unenforceable;

(f) declare that the complete ban on Digital Image Signs and on Advertising Signs in the Ordinance violates the Wisconsin Constitution, including but not limited to Article 1, §3, and the United States Constitution, including but not limited to the First and Fourteenth Amendments, on its face and both are therefore invalid and unenforceable;

(g) declare that the manner in which Defendants are interpreting and applying the Ordinance with respect to and against Adams, violates the Wisconsin Constitution and the United States Constitution;

(h) declare that the manner in which Defendants are interpreting and applying the Ordinance with respect to and against Adams violates Adams' civil rights—including but not limited to those rights protected by 42 U.S.C. § 1983;

(i) preliminarily and permanently enjoin the City and the Zoning Administrator from enforcing the Ordinance and from issuing any civil fines and/or penalties to Adams (or those similarly situated to Adams) for a past, present, or future purported violation thereof;

(j) declare that the Denials are null and void;

(k) declare that the Zoning Administrator must issue the replacement sign credits Adams requested on November 17, 2016, and that were denied by the Zoning Administrator on December 1, 2016;

(l) award damages to Adams for the violation of its rights—including but not limited to those rights protected by 42 U.S.C. § 1983—as detailed herein;

(m) award Adams its costs and fees (including reasonable attorney's fees) pursuant to 42 U.S.C. § 1988; and

(n) grant such further, additional, and/or other relief as this Court may deem equitable, just, and/or appropriate.

Dated this 25th day of July, 2017.

PERKINS COIE LLP

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