



April 14, 2017

City Clerk File No.:

ORD C35489

ORD C35490

COUNCIL ACTION MEMORANDUM

RE: EMERGENCY ORDINANCE C35489 IMPOSING AN IMMEDIATE MORATORIUM ON DEMOLITION PERMITS IN THE BROWNE'S ADDITION NEIGHBORHOOD IN SOUTH SPOKANE and EMERGENCY ORDINANCE C35490 IMPOSING AN IMMEDIATE MORATORIUM ON THE RELOCATION OF OFF-PREMISES SIGNS INTO AREAS OF SPOKANE HAVING CENTER AND CORRIDOR ZONING DESIGNATIONS

During the Spokane City Council's 3:00 p.m. Briefing Session held Monday, April 10, 2017, upon review of the April 10 Current Agenda, Council Member Waldref introduced and provided an overview of Emergency Ordinance C35490 and Council Member Kinnear introduced and provided an overview of Emergency Ordinance C35489, and Council commentary on the items was held. The following actions were taken:

**Motion** by Council Member Waldref, seconded by Council Member Kinnear, **to suspend** the Council Rules; **carried unanimously.**

**Motion** by Council Member Waldref, seconded by Council Member Kinnear, **to place** the emergency ordinance (Emergency Ordinance C35490) on tonight's Legislative Agenda for consideration; **carried unanimously.**

**Motion** by Council Member Kinnear, seconded by Council Fagan, **to place** the emergency ordinance (Emergency Ordinance C35489) on tonight's Legislative Agenda; **carried unanimously.**

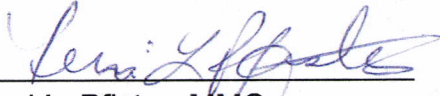
At its 6:00 p.m. Legislative Session on April 10, the City Council considered Emergency Ordinances C35489 and C35490. Following a full reading of the respective ordinances by the City Clerk, Council Member Kinnear provided an overview of Ordinance C35489. Subsequent to the opportunity for public testimony, with no individuals requesting to speak, and Council commentary, the following action was taken:

**Upon Unanimous Roll Call Vote**, the City Council **passed Emergency Ordinance C35489** imposing an immediate moratorium on demolition

permits in the Browne's Addition neighborhood in south Spokane; setting a public hearing; and declaring an emergency.

Council Member Waldref provided an overview of Emergency Ordinance C35490. Subsequent to an opportunity for public testimony, with no individuals requesting to speak, and Council and staff commentary, the following action was taken:

**Upon Unanimous Roll Call Vote**, the City Council **passed Emergency Ordinance C35490** imposing an immediate moratorium on the relocation of off-premises signs into areas of Spokane having center and corridor zoning designations; setting a public hearing; and declaring an emergency.



Terri L. Pfister, MMC  
Spokane City Clerk

## ORDINANCE NO. C35490

An ordinance imposing an immediate moratorium on the relocation of off-premises signs into areas of Spokane having center and corridor zoning designations; setting a public hearing; and declaring an emergency.

**WHEREAS**, sections 17C.240.070(H) and 17C.240.250(A) and (B) of the Spokane Municipal Code prohibit new off-premises signs and indicate that existing off-premises signs are nonconforming uses which are allowed to remain subject to restrictions; and

**WHEREAS**, under Washington law, nonconforming uses are uniformly disfavored because they limit the effectiveness of land-use controls, imperil the success of community plans, and injure property values (*Rhod-A-Zalea & 35<sup>th</sup>, Inc. v. Snohomish County*, 136 Wn.2d 1, 959 P.2d 1024 (1998); *City of University Place v. McGuire*, 144 Wn.2d 640, 30 P.3d 453 (2001) (recognizing that nonconforming uses are detrimental to public interests such as health, safety, morals, or welfare)); and

**WHEREAS**, existing SMC 17C.240.250(B)(2) allows the relocation of off-premises signs if the relocation is necessitated for the accomplishment of a public works project, subject to specified limitations; and

**WHEREAS**, this "public works exception" contains no restriction or conditions on the character or zoning category of the area into which off-premises signs would be moved, which means that off-premises signs, under current law, can be relocated into areas zoned to encourage and enhance pedestrian activity and therefore intended to be less accommodating for motor vehicles, such as the center and corridor (CC) zones; and

**WHEREAS**, the current North South Corridor development is triggering the relocation of off-premise signs along the Market St. Corridor, which contains a historic district and CC zone where over \$9M was invested in 2009 to improve pedestrian infrastructure, support redevelopment of historic structures, and enhance small business growth; and

**WHEREAS**, the potential proliferation of off-premises signs in areas of the City within the CC zoning categories would, as recognized in case law, create substantial hazards to traffic safety, would frustrate advancement of the City's goal of improving the appearance of the City, and would be contrary to the City's

land use objectives in these areas (*Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981)); and

**WHEREAS**, the City has begun the process of reviewing its current codes and ordinances in a comprehensive fashion to determine whether amendments to the sign code are necessary to better protect the public health, welfare, and safety in the City of Spokane from the aesthetic and visual impacts associated with off-premises signs located in, or to be relocated into, areas having CC zoning designations and zoning designations related to the CC zones; and

**WHEREAS**, sections 35.63.200 and 36.70A.390 of the Revised Code of Washington authorize cities to implement land use moratoria without a hearing (*see also Matson v. Clark County Board of Commissioners*, 79 Wash.App. 641, 904 P.2d 317 (1995)); and

**WHEREAS**, pursuant to RCW 35.63.200 and 36.70A.390, when the City Council adopts a moratorium without holding a public hearing on the proposed moratorium, it must hold a hearing on the adopted moratorium within at least sixty days of its adoption; and

**WHEREAS**, the City intends to impose a moratorium barring the acceptance of applications relating to permits or approvals for the relocation of off-premises signs into areas of the City having of CC zoning designations; and

**WHEREAS**, pursuant to WAC 197-11-880, the adoption of this ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act ("SEPA"); and

**WHEREAS**, the City Council adopts the foregoing as its findings of fact justifying its adoption of this ordinance and documenting the existence of an emergency allowing this ordinance to become effective immediately upon adoption; and

**WHEREAS**, the City Council finds that the moratorium imposed by this ordinance is necessary for the protection of the public health, safety, property or peace.

**NOW, THEREFORE, THE CITY OF SPOKANE DOES ORDAIN:**

**Section 1. Moratorium Imposed.** A moratorium is imposed on the location, permitting, or relocation of off-premises signs, under SMC 17C.240.2503(B)(2), into any the area of the City of Spokane having any of the following zoning designations (referred to herein as the "moratorium zones"):

- Center and Corridor Type 1: Pedestrian Emphasis/Auto Accommodating

- (CC1)
- Center and Corridor Type 2: Pedestrian Enhanced/Auto Accommodating (CC2)
- Center and Corridor Type 3: Overlay Zone (CC3)
- Center and Corridor Type 4: Mixed-Use Transition Zone (CC4)
- The Form-Based Code Context Areas 1-4, as defined in Chapter 17C.123, SMC Context Area 1: (CA-1 through CA-4)

During the term of this moratorium, the City will not accept, process, or approve applications for the relocation of existing off-premises signs into the moratorium zones. This moratorium does not apply to any pending applications that were counter complete, as provided in the Spokane Municipal Code, prior to the effective date of this ordinance.

Section 2. Purposes. The purpose of this moratorium is to allow the City adequate time to review and possibly amend its land use regulations relating to signs to adequately address issues relating to the Washington and federal constitutions and consistent with recent judicial decisions concerning sign regulations and to prevent the potential frustration of the City's amendment of development regulations regarding certain pedestrian-focused and neighborhood retail areas of the City.

Section 3. Duration of Moratorium. The moratorium imposed by this Ordinance shall be in effect for a period of six months, beginning on the date of the adoption of this Ordinance. During this period, City Planning Department staff is directed to develop a work plan to study appropriate amendments to the City's sign code, Chapter 17C.240, SMC, and is authorized to employ consultants or experts to assist staff in this regard, subject to the City Council's usual budgetary and contract approvals. City staff shall provide a work plan for this review and development of recommendations to the City Council at least two weeks prior to the date of the public hearing scheduled in Section 4 of this Ordinance. In addition, City staff shall submit its final recommendations to the City Council within 150 days of the effective date of this Ordinance.

Section 4. Public Hearing on Moratorium. Pursuant to RCW 35.63.200 and 36.70A.390, the City Council shall hold a public hearing on this moratorium on **May 22, 2017**. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this moratorium, and either extend the moratorium for an additional six-month period or cancel the moratorium.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. Declaration of Emergency and Effective Date. This ordinance, passed by a majority plus one of the whole membership of the City Council as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or public peace, shall be effective immediately upon its passage. Without an immediate moratorium on the City's acceptance, processing, and approval of permit applications for relocation of off-premises signs into the moratorium zones, the acceptance, processing, or approval of such applications by the City could occur under regulations that are inconsistent with the City's legitimate policy of protecting the areas within the moratorium zones from the aesthetic, visual, and noise impacts associated with the relocation of off-premises signs and related infrastructure. Current City regulations have not anticipated the relocation of off-premises signs into areas which were zoned with the intention of enhancing and emphasizing a pedestrian environment while de-emphasizing auto-accommodating uses and visual impacts associated with auto-accommodating land uses. Therefore, the City's moratorium must be imposed immediately to prevent any development rights from vesting and preserve the City's ability to process applications under valid codes.

ADOPTED BY THE CITY COUNCIL ON April 10, 2017



Ben Frucht

Council President

Attest:

Leri Effects  
City Clerk

Approved as to form:

Michael J. Pardo  
Assistant City Attorney

David A. Cramer  
Mayor

May 8, 2017  
Date

Returned after Mayoral Signature Deadline

Returned: May 8, 2017

April 10, 2017  
**EFFECTIVE DATE**