

A RESOLUTION

24-651

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 18, 2022

To declare the existence of an emergency with respect to the need to amend Appendix N of Title 12-A of the District of Columbia Municipal Regulations to ratify and adopt certain sign regulations previously issued by the Chairperson of the Construction Codes Coordinating Board, the Director of the Department of Consumer and Regulatory Affairs, and the City Administrator, to amend An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia and the Construction Codes Approval and Amendments Act of 1986 to clarify the rulemaking process for sign regulations, and to clarify the prohibition on off-premises advertising in Appendix N of Title 12-A of the District of Columbia Municipal Regulations.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Sign Regulations Emergency Declaration Resolution of 2022”.

Sec. 2. Emergency circumstances.

(a) In July 2016, the City Administrator issued emergency and proposed regulations that clarified the permitting requirement for signs located inside a building and required permits for certain signs within a building that are visible outside the building.

(b) The proposed final regulations were thereafter transmitted to the Council for its review and approval under section 10 of the Construction Codes Approval and Amendments Act of 1986, effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409) (“Construction Codes Act”). After the review period required by the Construction Codes Act, the Chairman sent the Mayor a letter informing the Mayor that the regulations had been deemed approved by the Council as of January 18, 2017. The City Administrator thereafter issued final regulations.

(c) An advertising corporation that was seeking to operate a large quantity of off-premises digital advertising signs throughout the District challenged the validity of the regulations in a suit before the Superior Court of the District of Columbia, and the Superior Court upheld the emergency and final regulations.

(d) On August 11, 2022, however, the District of Columbia Court of Appeals held that, despite the District’s longstanding practice of promulgating sign regulations under section 10 of

the Construction Codes Act, section 1 of An Act To regulate the erection, hanging, placing, painting, display and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code § 1-303.21) (“Outdoor Sign Regulation Act”), governed the rulemaking. Neither the advertising company nor the District relied on the Outdoor Sign Regulation Act during the litigation; the Court of Appeals raised the issue on its own. The Outdoor Sign Regulation Act requires the Council to affirmatively approve rules. The Court of Appeals held that the emergency rules adopted by the City Administrator were not valid because the Council had not affirmatively passed a resolution approving the rules. The Court of Appeals remanded the case to the Superior Court for further proceedings to determine whether, absent those rules, District law otherwise required the advertising corporation to obtain permits for its signs.

(e) Although even absent the above-referenced rules, District law requires the advertising corporation to obtain permits for its signs, the advertising corporation maintains that the law contains no such requirement. It has asserted that a pre-existing permit exemption for signs erected within a building encompasses outdoor signs erected within the footprint of a building.

(f) To avoid any ambiguity in the current litigation or in future instances—and to avoid the risk that the current litigation could undermine the District’s efforts to prevent the proliferation of unpermitted outdoor and externally visible advertising signs—the Council concludes that there is an immediate need to statutorily approve the emergency sign regulations that were promulgated by the City Administrator and the final regulations that were promulgated by the City Administrator and deemed approved by the Council under section 10 of the Construction Codes Act and to make the regulations effective retroactive to the effective date set forth in the applicable rulemaking notices. There is also an immediate need to approve prior and subsequent emergency sign regulations promulgated by the Chairperson of the Construction Codes Coordinating Board, final sign regulations promulgated by the Director of the Department of Consumer and Regulatory Affairs, and final sign regulations promulgated by the Chairperson of the Construction Codes Coordinating Board and deemed approved by the Council under section 10 of the Construction Codes Act and to make these regulations effective retroactive to the effective date set forth in the applicable rulemaking notices. Retroactive application is appropriate because, until the Court’s ruling, the sign rules were considered valid by the Mayor, the Council, and other affected sign companies, and were enforced as valid rules by the Mayor.

(g) Because the Court of Appeals’ decision also altered the Mayor’s rulemaking authority with respect to signs in ways the Council did not intend and the decision threatens to undermine the Mayor’s ability to adopt emergency sign regulations when necessary, there is also an immediate need to clarify the laws regarding the promulgation and approval of sign regulations. Specifically, there is an immediate need to clarify that the Mayor can issue sign regulations under section 10 of the Construction Codes Act until the Mayor issues a comprehensive set of new sign regulations under the Outdoor Sign Regulation Act. There is also a need to clarify that the Mayor has authority to issue emergency sign regulations under the Outdoor Sign Regulation Act by adding to the Outdoor Sign Regulation Act a reference to Title I of the District of

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Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*) (“District of Columbia Administrative Procedure Act”). The emergency rulemaking authority under the Outdoor Sign Regulation Act would then be clearly equivalent to the Mayor’s current authority to issue emergency regulations under the Construction Codes Act; that act provides emergency rulemaking authority to the Mayor by the same general grant of authority to the Mayor to promulgate rules under Title I of the District of Columbia Administrative Procedure Act.

(h) There is also an immediate need to clarify that the District’s existing off-premises advertising restriction applies to both permitted and unpermitted signs and applies to signs regardless of whether they were subject to the District’s sign rules at the time they were erected. This clarification is needed to avoid a proliferation of off-premises advertising signs in the downtown area and District neighborhoods. Off-premises advertising signs are generally inconsistent with the history and character of the District, and the City Administrator and the Council intended to restrict their presence by promulgating and approving the regulations that the Court of Appeals invalidated.

**Sec. 3. Emergency declaration.**

The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Sign Regulations Emergency Amendment Act of 2022 be adopted after a single reading.

**Sec. 4. Effective date.**

This resolution shall take effect immediately.