

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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 2023”.

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

37 approved by the Council as of January 18, 2017. The City Administrator thereafter issued final
38 regulations.

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

43 (d) On August 11, 2022, however, the District of Columbia Court of Appeals held that,
44 despite the District’s longstanding practice of promulgating sign regulations under section 10 of
45 the Construction Codes Act, section 1 of An Act To regulate the erection, hanging, placing,
46 painting, display and maintenance of outdoor signs and other forms of exterior advertising within
47 the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code § 1303.21)
48 (“Outdoor Sign Regulation Act”), governed the rulemaking. Neither the advertising company
49 nor the District had relied on the Outdoor Sign Regulation Act during the litigation; the Court of
50 Appeals raised the issue on its own. The Outdoor Sign Regulation Act requires the Council to
51 affirmatively approve rules. The Court of Appeals held that the emergency rules adopted by the
52 City Administrator were not valid because the Council had not affirmatively passed a resolution
53 approving the rules. The Court of Appeals remanded the case to the Superior Court for further
54 proceedings to determine whether, absent those rules, District law otherwise required the
55 advertising corporation to obtain permits for its signs.

56 (e) The Court of Appeals’ decision not only invalidated the sign regulations at issue but
57 also called into question the validity of other sign regulations that had been promulgated under
58 section 10 of the Construction Codes Act. The decision also altered the Mayor’s rulemaking

59 authority with respect to signs in ways the Council had not intended, and it threatened to
60 undermine the Mayor’s ability to promulgate emergency sign rules.

61 (f) To ensure that the Court of Appeals’ decision would not undermine the District’s
62 efforts to prevent the proliferation of unpermitted outdoor and externally visible advertising signs
63 or the Mayor’s ability to issue emergency sign rules, the Council passed emergency and
64 temporary legislation on October 18, 2022, and November 1, 2022, respectively. The identical
65 emergency and temporary legislation ratified and adopted emergency and final sign regulations
66 that had been promulgated by the City Administrator, the Chairperson of the Construction Codes
67 Coordinating Board, and the Director of the Department of Consumer and Regulatory Affairs
68 under section 10 of the Construction Codes Act. The legislation made the substance of the
69 regulations effective both prospectively and retroactively to the effective date set forth in each of
70 the applicable rulemaking notices. The legislation also clarified that the Mayor can issue sign
71 regulations under section 10 of the Construction Codes Act until the Mayor issues a
72 comprehensive set of new sign regulations under the Outdoor Sign Regulation Act, and the
73 legislation amended the Outdoor Sign Regulation Act to include a reference to Title I of the
74 District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204;
75 D.C. Official Code § 2-501 *et seq.*). These changes were made to preserve the Mayor’s
76 rulemaking authority for signs under section 10 of the Construction Codes and to clarify that the
77 Mayor has emergency rulemaking authority under the Outdoor Sign Regulation Act. Finally, the
78 legislation clarified that the District’s off-premises advertising restriction applies to both
79 permitted and unpermitted signs and applies to signs regardless of whether they were subject to
80 the District’s sign rules at the time they were erected. The Council determined that this
81 clarification was needed to avoid a proliferation of off-premises advertising signs in the

82 downtown area and District neighborhoods, because off-premises advertising signs are generally
83 inconsistent with the history and character of the District.

84 (g) The temporary legislation is projected to expire on October 6, 2023.

85 (h) There continues to be a need to ensure that the Court of Appeals' decision does not
86 undermine the District's efforts to prevent the proliferation of unpermitted outdoor and externally
87 visible advertising signs or the Mayor's ability to issue emergency sign rules.

88 (i) The provisions of the Sign Regulations Emergency Amendment Act of 2023 are
89 substantively identical to the provisions in the earlier emergency and temporary acts and address
90 the District's goals and need described in subsections (f) and (h) of this section.

91 (j) The adoption of the Sign Regulations Emergency Amendment Act of 2023 will also
92 prevent a gap in the law as the Council advances permanent legislation.

93 Sec. 3. Emergency declaration.

94 The Council of the District of Columbia determines that the circumstances enumerated in
95 section 2 constitute emergency circumstances making it necessary that the Sign Regulations
96 Emergency Amendment Act of 2023 be adopted after a single reading.

97 Sec. 4. Effective date.

98 This resolution shall take effect immediately.