

VAN WAGNER-ATTACHMENT B NONCONFORMING SIGNS

There is one overarching issue that effects all provisions of the proposed rulemaking beyond these section-by-section comments that must be noted. Whatever the final form that the proposed rule might take, it is likely that individual or broad categories of existing signs that were lawfully erected under regulations applicable at the time that they were constructed, or exempt from regulation, may now become prohibited or subject to different restrictions than were in effect when they were initially constructed.

Chapter 2000 of the District of Columbia Zoning Code includes provisions that generally accord “grandfather” rights to nonconforming uses in the District of Columbia. However, these provisions while general in scope, were not written specifically for nonconforming sign and contain some ambiguity in that regard. Indeed, the government representatives participating at the November 29, 2012 Public Briefing seemed to indicate that while it is their intent to grant “grandfather” status to nonconforming signs, they shared others participant’s concern that the proposed rules do incorporate a clear statement of that policy.

The Highway Beautification Act makes it particularly critical that the District take care to include an additional provision within the proposed rule that expressly grants “grandfather” status to lawfully erected nonconforming outdoor advertising signs, displays and devices. The Highway Beautification Act, 23 U.S.C.131(g), separately provides as an element of “effective control” that just compensation must be paid if the District regulation compel effectively requires the removal of any existing lawfully erected off-premise sign within a control area that is rendered nonconforming under the provisions of the proposed rule.

(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display or device erected under State Law...whether of not removed pursuant to or because of this section.

Section 131(g) further requires that the just compensation obligation extends to losses suffered by the sign owner and the property owner as well.

Accordingly, Van Wagner recommends that the proposed rules are further revised to include the following additional Chapter 14 that addresses nonconforming signs directly and assures that the District does not run afoul of the just compensation provisions of the HBA.

CHAPTER 14: NONCONFORMING SIGNS

14.01 Nonconforming Sign Defined: A Nonconforming Sign is a Sign, including its foundation and supporting structure, that was lawfully erected but does not comply with the provisions of District Columbia law or regulations adopted at a later date or later fails to comply with such law or regulations or due to changed conditions, which may include a lawfully erected sign of a type, location or other characteristic that at a later date is no longer authorized.

14.02 All lawfully erected Nonconforming Signs in existence on the date that this Title becomes final and is enacted into the laws of the District of Columbia, or the date that any subsequent amendment to this Title becomes final and is adopted, may be continued, operated, occupied or maintained unless abandoned.

14.03 In the event that more than fifty percent (50%) of a Nonconforming Sign is destroyed by fire, collapse or other casualty, or by Act of God, such Sign shall not be restored or reconstructed except in conformity with all provisions of this Title.

14.04 Any Special Signs that may become nonconforming under this title shall be governed by the separate provisions of chapter 910 and not by the provisions of this chapter

