

ORDINANCE NO. 2009-14

AN ORDINANCE SETTING AN EXPIRATION DATE FOR THE SPECIAL USE PERMIT GRANTED BY ORDINANCE NO. 84-18, ENTITLED "GRANTING A SPECIAL USE PERMIT TO RED ROOF INNS, INC. AND JOSEPH H. GALLENSTEIN & SONS, INC., UNDER SECTION 154.7.307 OF THE COMPREHENSIVE ZONING ORDINANCE FOR CONSTRUCTION OF A SIGN TO BE LOCATED AT 10996 DEERFIELD ROAD; REPEALING SECTION I.(B) OF ORDINANCE NO. 83-47; AND DECLARING AN EMERGENCY."

WHEREAS, on March 22, 1984, the City of Blue Ash, Ohio (the "City") enacted Ordinance No. 84-18, entitled "Granting a Special Permit to Red Roof Inns, Inc. and Joseph H. Gallenstein & Sons, Inc. under Section 154.7.307 of the Comprehensive Zoning Ordinance for construction of a sign located at 10996 Deerfield Road; Repealing Section I.(B) of Ordinance No. 83-47; and Declaring an Emergency;" and

WHEREAS, Ordinance No. 84-18, through special use permit, authorized the construction of a free-standing "banjo" sign (the "Sign") located at 10996 Deerfield Road, Blue Ash, Ohio 45242 (the "Property"); and

WHEREAS, at the time Ordinance No. 84-18 was enacted, it was the intent of City Council that the Sign was permitted to exist on the Property for a period of twenty (20) years, to be removed in 2004; and

WHEREAS, Section IV of Ordinance No. 84-18 provides in part that the ordinance shall take effect and be in force from and after the execution and delivery of a lease acceptable to Red Roof Inns, Inc. and Joseph H. Gallenstein & Sons, Inc. along the lines mentioned in paragraph 3 of the February 1, 1984 letter from Red Roof Inns, Inc. to Marvin D. Thompson; and

WHEREAS, paragraph 3 of the February 1, 1984 letter provides that the term of the lease shall be twenty (20) years, including renewals; and

WHEREAS, Grasshopper Investments, LLC ("Grasshopper"), who now owns the Property on which the Sign is located, leases the Property under the Sign to the Sign's present owner, Lamar Advantage GP Company ("Lamar"); and

WHEREAS, on or about February 10, 2004, Grasshopper and Lamar entered into a renewal lease agreement whereby Grasshopper leased the property under the sign to Lamar for a term of ten years from July 1, 2004 and ending on June 30, 2014; and

WHEREAS, after Ordinance No. 84-18 was enacted, the City adopted the Comprehensive Plan and Zoning Code of 1989 to promote significant and legitimate aesthetic interests in the City and to enhance property values and psychological well-being for individuals and families in the City; and

WHEREAS, the City's development and implementation of the Comprehensive Plan and Zoning Code of 1989 has historically been encouraged by both the state legislature and the Ohio Supreme Court; and

WHEREAS, the City has the power to regulate the physical characteristics of signs and billboards; and

WHEREAS, the Sign is contrary to and does not conform with the City's Comprehensive Plan and Zoning Code of 1989; and

WHEREAS, the Supreme Courts of the United States and the State of Ohio have recognized that billboards by their very nature may be perceived as aesthetic harm, which adversely impacts the value of the City's properties and other areas; and

WHEREAS, the Sixth Circuit Court of Appeals has recognized that regulations restricting billboards may serve significant government interests when they promote significant and legitimate aesthetic interests which enhance property values and psychological well-being for individuals and families; and

WHEREAS, on September 14, 2005, the City filed an Amended Complaint for Injunction in the Hamilton County, Ohio Court of Common Pleas against Grasshopper and Lamar seeking removal of the Sign; and

WHEREAS, on October 29, 2008, the Hamilton County, Ohio First District Court of Appeals determined that Ordinance No. 84-18, which authorized the construction of the Sign, was still in effect because the ordinance itself did not state that the special use permit expired in twenty (20) years or any other period of time; and

WHEREAS, City Council is authorized and empowered to impose restrictions as it deems necessary on special use permits pursuant to the City's Code of Ordinances, including Section 1183.01; and

WHEREAS, City Council has determined that the Sign is no longer in the best interest of the City and its continued existence poses a real and substantial danger to the City's health, safety, and welfare; and

WHEREAS, City Council wants to set an expiration date of July 1, 2014 for the special use permit granted by Ordinance No. 84-18.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Blue Ash, Ohio, not less than five (5) members thereof concurring, that:

Section 1: The special use permit for the Sign granted by Ordinance No. 84-18 shall expire on July 1, 2014.

Section 2: The Sign is not in the best interest of the City and its continued existence poses a real and substantial danger to the City's health, safety, and welfare. Accordingly, the Sign must be removed from the Property on July 1, 2014, upon the expiration of the special use permit.

Section 3: This Ordinance shall take and be in full force and effect from and after the earliest period allowed by law.

PASSED this 28th day of May, 2009.

Mark F. Weber, Vice Mayor

Jamie K. Eifert, Clerk of Council

FIRST READING: February 12, 2009

APPROVED AS TO FORM:

Mark A. Vander Laan, Solicitor