

Office of  
The City Attorney  
City of San Diego  
MEMORANDUM  
236-6220

DATE: May 19, 1992

TO: Councilmember Ron Roberts via Ruth Polk

FROM: City Attorney

SUBJECT: Route Slip No. 02-0492-019

This memorandum was prepared in response to Route Slip No. 02-0492-019 in which you requested our comments on the billboard located at 3981 Mission Boulevard which had been altered by increasing its height and adding another display face. After researching this matter, we believe that the billboard must be returned to the condition it was in prior to such alteration. However, the alteration of the billboard does not extinguish its status as a legal nonconforming advertising display.

FACTS

Our legal analysis is based on the following facts. A complaint was received regarding a ground mounted billboard located at 3981 Mission Boulevard. It is our understanding that the billboard was lawfully constructed prior to 1983. A sign code administrator from the City of San Diego (the "City") inspected the site and found that the height of the billboard was increased and a second display face was added. (A copy of the original application for a building permit has been attached as Exhibit 1 for your convenience. The address has subsequently been changed to 3981 Mission Boulevard)

ANALYSIS

California has long recognized the principal of "nonconforming uses". A nonconforming use is one which was valid when brought into existence, but the use later differs from subsequent regulations. *City of Los Angeles v. Gage*, 127 Cal. App. 2d 442, 453 (1954) and *Hill v. City of Manhattan Beach*, 6 Cal. 3d 279, 285 (1971). Moreover, the California Courts have generally followed a strict policy preventing nonconforming uses from being extended or expanded. *Paramount Rock Co. v. County of San Diego*, 180 Cal. App. 2d 217, 228 (1960). Although repairs may be made

to a nonconforming use, the court in *Dienelt v. County of Monterey*, 113 Cal. App. 2d 128 (1952), upheld an ordinance that prevented any structural alterations to a nonconforming use because it would encourage its expansion.

The principles that govern "nonconforming uses" have been applied to billboards erected in the City prior to July 19, 1983. Municipal Code section 101.1153F

Hereafter all Section references are to the Municipal Code.

classifies billboards

constructed prior to this time as legal nonconforming advertising displays. This means that an advertising display which was valid when originally erected may continue in existence even though subsequent regulation would no longer allow the display to be erected. Section 101.1153 provides that legal nonconforming advertising displays may be altered or repaired in accordance with Section 101.0303. Section 101.0303 provides that repairs and alterations may be made to a legal nonconforming display provided such work does not increase the size of the display, the degree of the display's use or the degree of the display's nonconformance with present regulations.F

The aggregate value of repairs or alterations to a display can not exceed fifty percent (50%) of the display's fair market value for the fiscal year during which the repairs or alterations occur. We do not in this instance need to be concerned with the value of the repair or alteration work for the reasons stated in this memorandum.

In addition, Section 101.1154 provides that billboards located within the coastal zone may not be reconstructed. Reconstruction is defined as an improvement to the display which exceeds fifty percent (50%) of its fair market value.

In the case before us, when the owners of the billboard increased the height of the billboard and added an additional display face the billboard's use was expanded and its size was increased. In addition, it is our understanding that the work completed on the billboard did not meet the current requirements of the Municipal Code. Consequently, the City may require the owner of the billboard to return the billboard to the condition it was in prior to the alteration. Moreover, even if the alteration to the billboard was characterized by the owner as "reconstruction," the billboard, located within the coastal zone, is not eligible for reconstruction.

However, the alterations that were made to the billboard did not extinguish its status as a legal nonconforming advertising display. It has been well established by case law, that nonconforming uses may be terminated by its abandonment, destruction or at the end of an amortization period. City of

Fontana v. Atkinson, 212 Cal. App. 2d 499, 507 (1963) (abandonment terminates a nonconforming use); Mora v. Council of the City of Newark, 238 Cal. App. 2d 836, 838 (1965) (the destruction of a structure extinguishes the nonconforming use) and United Business Com. v. City of San Diego, 91 Cal. App. 3d 156, 189 (1976) (a nonconforming use may be eliminated by amortizing the use over a reasonable period of time). Similarly, Section 101.0303 provides that a legal nonconforming advertising display may only be extinguished by destruction or abandonment. Abandonment occurs when the nonconforming use is discontinued for a continuous period of twelve (12) months or a change occurs from a nonconforming use to a more restrictive or conforming use. (Section 101.0303)

#### CONCLUSION

The billboard located at 3981 Mission Boulevard was lawfully erected prior to July 19, 1983 and the billboard was neither destroyed nor abandoned by the owners. As a result the billboard may remain in existence. However the billboard can not be enlarged or added to in any way. The billboard must be returned to its original condition.

JOHN W. WITT, City Attorney

By

Ann Y. Moore

Deputy City Attorney

AYM:pev

Attachment

cc: Gene Lathrop

Bob Didion

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