

November 9, 2020

To: Mayor and Members of City Council 202002117
From: Paula Boggs Muething, City Manager
Subject: Emergency Ordinance – Modifying Chapter 313 Outdoor Advertising Sign Excise Tax

Transmitted herewith is an emergency ordinance captioned as follows:

MODIFYING the provisions of Chapter 313, “Outdoor Advertising Sign Excise Tax,” of Title III, “Financial, Personnel, Procurement and Real Property Procedures,” of the Cincinnati Municipal Code by **AMENDING** Section 313-1-O, “Outdoor Advertising Sign,” and Section 313-5, “Exemptions,” and by **REPEALING** Section 313-7, “Tax Not to be Separately Stated or Charged”; and further **MODIFYING** the provisions of Chapter 895, “Outdoor Advertising Signs,” of Title VIII, “Business Regulations,” of the Cincinnati Municipal Code by **AMENDING** Section 895-1-O, “Outdoor Advertising Sign,” and Section 895-2, “Applicability,” by **REPEALING** Section 895-10, “Additional Permitted Uses of Outdoor Advertising Signs,” and by **ORDAINING** new Section 895-29, “Severability,” to provide additional clarity regarding the applicability of the City’s outdoor advertising excise tax to the owners and operators of outdoor advertising signs.

This ordinance modifies Chapter 313, “Outdoor Advertising Sign Excise Tax,” and Chapter 895, “Outdoor Advertising Signs,” of the Cincinnati Municipal Code to provide additional clarity regarding the applicability of the outdoor advertising sign excise tax to the owners and operators of outdoor advertising signs, i.e. billboards. These laws are the subject of pending litigation, and the proposed changes to these laws reinforce the Council’s intent to apply the City’s outdoor advertising sign excise tax consistent with constitutional requirements and applicable law.

The City’s outdoor advertising excise tax was adopted by the Council in connection with its passage of the FY19 budget. The tax was soon challenged in the Hamilton County Court of Common Pleas by two large billboard operators, Lamar Advertising and Norton Outdoor Advertising. The trial judge issued a temporary injunction preventing the City from collecting the tax, and the trial judge later made its injunction permanent on the grounds that it violates the First Amendment.

The City appealed the trial judge’s injunction to the First District Court of Appeals. The appellate court reversed the trial judge in part and held that the City’s outdoor advertising excise tax is constitutional. But it did uphold that part of the trial judge’s injunction that held Section 313-7 of Chapter 313 to be unconstitutional. Lamar Advertising and Norton Outdoor Advertising have appealed this decision to the Ohio Supreme Court, and the matter will be briefed and argued over the coming months.

The changes to Chapters 313 and 895 clarify and confirm the Council's intent that the outdoor advertising tax apply to billboard owner and operators consistent with constitutional standards. They include refining the definition of outdoor advertising sign to comprise those signs used by their owners and operators to engage in the sign rental business without regard to the messages placed on them, and further include distinguishing signs located on government property that are governed by separate legal and constitutional requirements. The changes also include repealing Section 313-7 of Chapter 313.

The reason for the emergency is the immediate need to provide additional clarity regarding the applicability of the City's outdoor advertising excise tax to the owners and operators of outdoor advertising signs.

cc: John Juech, Assistant City Manager