

**COUNCIL ACTION FORM**

**SUBJECT: 116 WELCH AVENUE ENCROACHMENT PERMIT APPLICATION**

**BACKGROUND:**

At the regularly scheduled meeting on October 28, 2014, the City Council discussed an Encroachment Permit Application from Campustown Properties for its property at 116 Welch Avenue. There is an existing sign structure at this address that encroaches into the public right-of-way but which has no encroachment permit. Photos depicting the proposed sign are attached. The structure requires an approved encroachment permit to remain in place. If the application is approved per the terms requested by the applicant property owner, the owner may put any permitted sign on the structure. If denied, the applicant would be required to take the sign structure down.

**During the October 28<sup>th</sup> Council meeting, much discussion centered on the sign that is proposed to be placed on the encroachment. Encroachment permit applications before Council usually focus primarily on the structure that encroaches into the public right-of-way. Here, however, the applicant has already purchased a sign that they want to display upon the encroaching structure, and seeks to have permission for that specific signage. The sign proposed to be affixed to the structure would normally be approved administratively through a separate sign permitting process, but that permit process does not regulate content of the sign. The sign, as proposed, meets all of the applicable regulations under the sign code and would be permitted if the structure is allowed to remain.**

Encroachment permits are required by Ames Municipal Code Section 22.3 for any encroachment into the public right-of-way. Since the City is not under any obligation to allow such encroachments, this Municipal Code section gives Council very broad discretion to determine if and when an encroachment permit should be issued. The Council may place reasonable conditions on those permits which it grants. Some conditions have been incorporated into the Code section because the Council has determined they should apply in every situation. For example, there is a requirement that the permittee have hazard insurance to cover the risk for hazards that may occur in association with having that structure in the right-of-way. There may be other conditions which are specific to the particular encroachment being sought, and which can apply to that encroachment permit alone based on the unique character of the request. This latter category, while authorized, is by its very nature more difficult to apply consistently.

When encroachment permits have been considered in the past throughout the city, typical requests have been for awnings that have no words on them, or for signs that identify the name of the business or building at that specific location and perhaps include the street address number. At least a dozen encroachment permits have been approved in the Campustown area. Those typically have been applications which were requested with the intention to use the encroaching structure as nothing more than an aesthetic feature for that location, or as a means to identify a business location.

Council has not previously received an encroachment request which, if permitted, would be used as a sign face to incorporate much more verbiage than just identification of the business or building or location information like the street address. Granting the permit to allow any sign that meets the sign code to be placed on a permitted structure could create a precedent of allowing more than identification of the building name or business name or an address, as part of the use of the encroaching structure. For safety or aesthetic reasons, however, Council may determine that this is undesirable. The amount of verbiage being requested may be a factor that is considered specifically in approving, modifying, or denying this encroachment permit. Unlike a business name or street number, which can be quickly read by a passing motorist, a large amount of text takes more time to read and can be a distraction to drivers. Although limiting the amount of text on a permitted encroachment has not occurred in the past, Council may wish to do so here. **Moreover, it may be that Council would consider this kind of restriction of sufficient importance from the standpoint of motorist safety or neighborhood aesthetics that they would like it specifically incorporated into the Code, rather than being applied on a case-by-case basis.**

With this background, there are several options that Council may want to consider. These include the following:

1. Council could approve the encroachment permit application for 116 Welch with standard conditions and additional conditions specifying that the attached sign may only identify the name of the business or building at that specific location, along with the street address number.
2. Council could approve the encroachment permit application for 116 Welch with standard conditions and additional conditions specifying that the attached sign may only identify the name of the business or building at that specific location, the street address number, and a description of the number of units available for rent at that specific location.
3. Council could approve the encroachment permit application as requested by Campustown Properties with the City's standard conditions. This approval would allow the encroaching structure that is currently attached to 116 Welch to remain, and would allow Campustown Properties to affix either their proposed sign or any other sign that complies with Chapter 21 to the structure.
4. Deny the encroachment permit application for 116 Welch. This denial would require Campustown Properties to remove the structure that is currently attached to the property at 116 Welch Avenue, since there is not an approved encroachment permit.

As was noted above, this is the first known instance when proposed signage attached to an encroachment contains language advertising services provided off premises. If Council chooses to follow options 1 or 2 above for this particular encroachment permit, it could also direct Legal staff to prepare an amendment to the Municipal Code that includes these same restrictions on all other encroachments signs. This action would ensure that both applicants and City staff apply this same standard to future encroachment permits.

**No matter which option is chosen, it is important to note one additional facet of the City's sign ordinance. This property is located within the Campustown Service Center (CSC) zone, which allows off premises signs. Therefore, the property owner may install the proposed sign onto the building itself and still conform to the requirements of the sign ordinance.**

**ALTERNATIVES**

1. Approve the encroachment permit application for 116 Welch with the City's standard conditions and additional conditions specifying that the attached sign may only identify the name of the business or building at that specific location, along with the street address number.
2. Approve the encroachment permit application for 116 Welch with the City's standard conditions and additional conditions specifying that the attached sign may only identify the name of the business or building at that specific location, the street address number, and a description of the number of units available for rent at that specific location.
3. Approve the encroachment permit application as requested by Campustown Properties with only the City's standard conditions. This approval would allow the encroaching structure that is currently attached to 116 Welch to remain, and would allow Campustown Properties to affix either their proposed sign or any other sign that complies with Chapter 21 to the structure.
4. Deny the encroachment permit application for 116 Welch. This denial would require Campustown Properties to remove the structure that is currently attached to the property at 116 Welch Avenue.

**MANAGER RECOMMENDED ACTION:**

Council struggled with this issue on October 28<sup>th</sup>, since it is the first time Council has been faced with an encroachment permit application that included verbiage related to off premises activities. Judging from the discussion at the October City Council meeting, it appears that either Alternative No. 1 or Alternative No. 2 best meet Council's objectives.

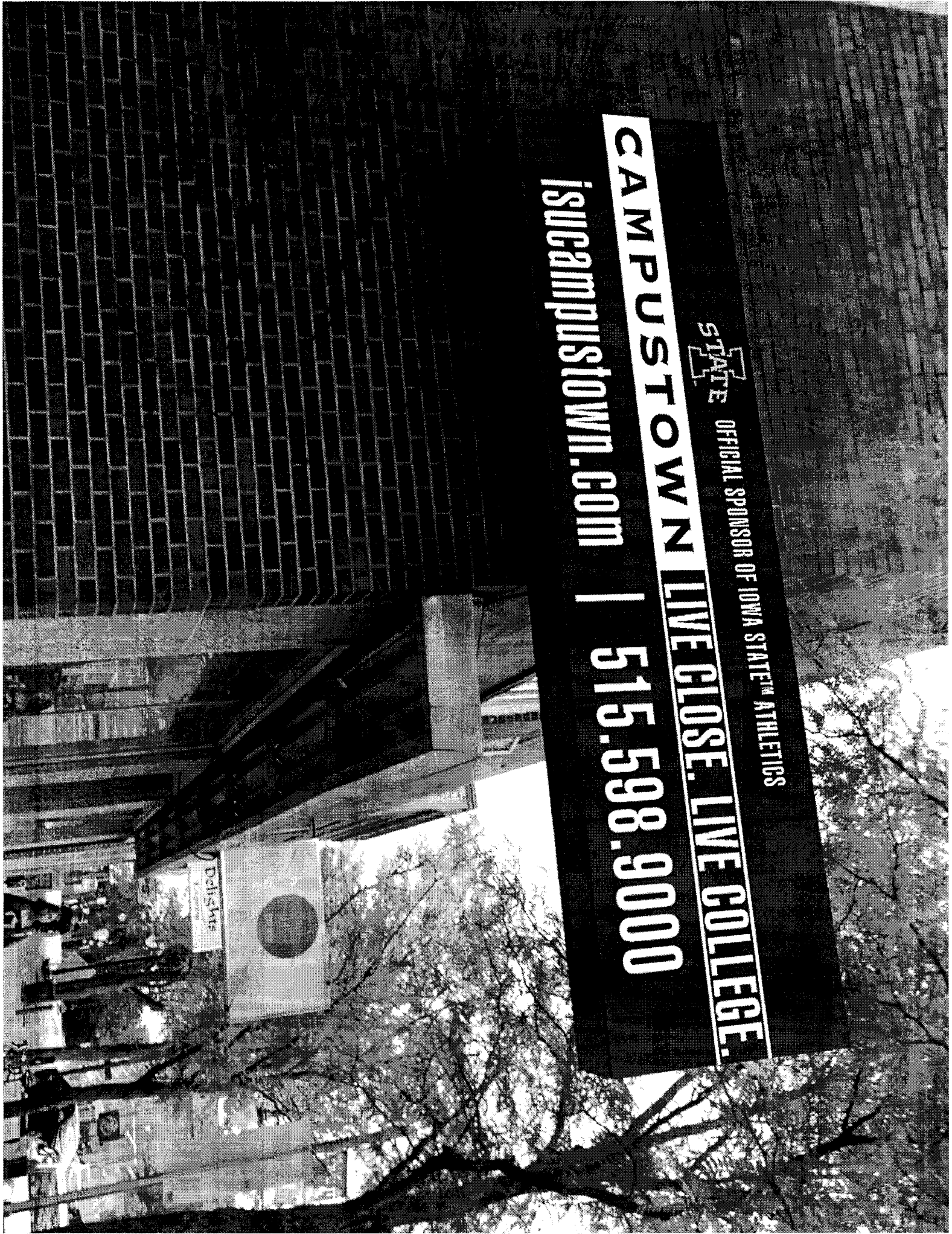
If that is the case, it is recommended that Council also direct the City Attorney to prepare an amendment to the Municipal Code that includes these same restrictions on all other encroachments signs.

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