



**Request for City Council Committee Action
From the City Attorney's Office**

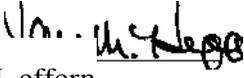
Date: August 30, 2006
To: Ways & Means/Budget Committee
Referral to:

Subject: Dahlen Sign Co., Truong Xuan Mai & Lighttech, Inc v. City of Minneapolis
Court File No.: 27-CV-06--8923

Recommendation: That the City Council approve the settlement of this case by payment of \$0.50 payable to Dahlen Sign Co.; \$0.50 payable to Lighttech, Inc.; \$10,000.00 payable to Institute for Justice from Fund/Org. 6900 150 1500 8350; approve the Consent Judgment, attached as Exhibit A; and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.

Previous Directives: None.

Prepared by: Tinno S. Skarda Phone: (612) 673-2553

Approved 
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.

Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 8350
Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact

Other: Build Community

Background/Supporting Information

This case involved a challenge by the Plaintiffs' to the licensing of sign-hangers by the City of Minneapolis. Under existing procedures, in order to become a licensed sign-hanger City ordinances require applicants: a) to fill out an application; b) to furnish proof of insurance and bonding; c) to pay a license fee; d) to be over eighteen years of age; and e) to obtain the approval of the Director of Licenses and Consumer Services, as well as, police, health, waterworks, building, zoning and fire approvals. Minneapolis Code of Ordinances ("M.C.O") §§ 259.30, 259.60 through 259.110, 259.130(a), 277.2480, 277.2500, 277.2510, and 277.2540.

The Plaintiffs allege that a lack of guiding criteria, deadlines and other procedural safeguards for the exercise of approval authority has resulted in numerous sign-hanger license applications being postponed by city officials for no legitimate reason and/or based on a legally unauthorized "competency test." The Plaintiffs allege that the resulting processing delays effectively deny many license applications and violate their due

process rights. The Plaintiffs seek injunctive relief changing City procedures and damages, including costs and attorney's fees, pursuant to 42 U.S.C. § 1983. The City has asserted that the current licensing process does not amount to a competency test and does not violate the applicants' due process rights.

Discovery in this case has revealed that after submission of completed application materials St. Paul immediately issues sign-hanger licenses; that Brooklyn Park issues sign-hanger licenses in three days or less; and that Bloomington, Shakopee, Falcon Heights, Forest Lake, Chaska, Prior Lake and Eagan do not require a license for sign-hangers.

A review of departmental files indicated that since 2002 an administrative hold has been placed on approximately 145 sign-hanger license applications. While applicants may be in communication with departmental representatives, the applicants are not typically notified of the hold status in a manner that would allow the applicant to effectively address the hold before the appropriate City Council committee. The hold status is used as a method to track completion of the application process. However, a significant portion of the applicants on hold did not receive a recommendation for approval or denial of the license, but can remain on hold status indefinitely. The Plaintiffs' applications were continuously on hold in consecutive years from 2003 to the present.

Delays in the application process, after all application materials required by Regulatory Services had been received, were caused by the "approval" requirement of M.C.O. §§ 259.60 through 259.110, which condition the issuance of a license on police, health, waterworks, building, zoning and fire inspections. The provisions do not specify criteria for approval, denial or postponement or set deadlines. Our review of the provisions of M.C.O. §§ 259.60 through 259.110 finds that the provisions are not applicable to the sign-hanger license application process. Under current procedures, the only review being done was by zoning, conducted pursuant to M.C.O. § 259.95, that required the applicant to submit background information, including a resume, biographical statement and presentation of prior work done by the applicant. The Plaintiffs challenged the zoning review as not having internal standards and criteria and as an illegal competency examination. Prior to 2002, competency testing boards were involved in the licensing process for sign hangers. On July 26, 2006, the Council repealed all ordinance provisions regarding competency boards and competency testing for sign-hangers. The zoning approval process contained in M.C.O. § 259.95 is directed toward the building or structure in which business is conducted, not the application process. It appears that some procedures that were in place prior to July, 2002, have continued and have resulted in allegations by the Plaintiffs of continued competency testing. Currently, the Director of Licenses and Consumer Services is authorized by M.C.O. § 259.30 to issue sign-hanger licenses without Council approval.

A proposed settlement of the above litigation has been reached in which the City would enter into a Consent Judgment formalizing the sign-hanger license application process. The City would be prohibited from requiring the additional approvals described above, specifically the City would discontinue the zoning review of sign-hanger license applications. Sign-hanger licenses will be issued pursuant to M.C.O. § 259.30 within five business days of the submission of a completed application. The City will have thirty days to clear the back log of pending applications. The proposed settlement will involve the payment of \$1.00 in damages to the Plaintiffs and \$10,000.00 in attorneys' fees and cost. The attorney's fees sought would be recoverable under 42 U.S.C. § 1983. The amount of fees was negotiated between the parties and based on the hours expended in the litigation the amount appears to be reasonable.

The Consent Judgment applies only to the sign-hanger license application process. The injunction does not affect the City's enforcement of the independent sign and billboard permitting process; the City's enforcement of the Zoning Code; the procedure for incomplete license applications; or any other provision of the Code of Ordinances regulating the business or business activities of licensed sign-hangers.

The Consent Judgment has been reviewed in detail with Barbara Sporlein, Steve Poor, Burt Osborne and Ricardo Cervantes on behalf of the Planning Department and Department of Regulatory Services. They have approved the terms and procedures and join in recommending approval of the proposed settlement. The

terms of the Consent Judgment are consistent with City ordinances and effectuate the intent of the prior Council action repealing competency testing related to sign-hangers.

For practical and procedural reasons, the Consent Judgment may have been issued by the district court prior to consideration of this proposed settlement by the Council and Mayor. The affected departments believe that the revised procedures are reasonable, streamline the application process and conserve City resources, and, if given the opportunity, would have initiated substantial terms of the Consent Judgment voluntarily. Litigation issues regarding the completion of pending discovery by the City, including witness depositions, would have required the expenditure of substantial City resources and increased the Plaintiffs' claim for costs and fees if not stayed. Finally, because the City Council cycles would have resulted in approximately a six week delay between substantial agreement on the terms of the proposed settlement and consideration by the Council, we agreed to allow the Consent Judgment to issue as a good faith showing of the intent of the City to resolve the issues raised by the Plaintiffs. The Consent Judgment contains provisions allowing the judgment to be vacated if not approved by the City and for the case to be fully litigated to conclusion. The City has not waived any right or incurred any prejudice should the district court enter judgment prior to a full consideration of the proposed settlement.

Exhibit A

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Dahlen Sign Co., Truong
Xuan Mai and Lighttech, Inc.,

Case Type: Other Civil

Court File No.: 27-CV-06-8923

Plaintiffs,

Hon. Judge Janet N. Poston

v.

STIPULATED CONSENT JUDGMENT

City of Minneapolis and Stuart
Roberson, in his official capacity
City Zoning Inspector II,

Defendants.

CONSENT JUDGMENT

Defendants recognize that Plaintiffs have raised legitimate questions about the current constitutionality of Minneapolis Code of Ordinances ("City Code") §§ 259.30 *et seq.* and 277.2480 *et seq.* as applied to sign-hangers. Accordingly, pursuant to stipulation of the parties, it is ordered as follows:

1. *Jurisdiction.* Plaintiffs filed and served their Complaint in this matter on May 4, 2006 and Defendants filed and served their Answer to the Complaint on May 24, 2006. The parties agree that: a) an actual case and controversy exists sufficient to enter the instant Consent Judgment; b) this Honorable District Court has jurisdiction over this matter pursuant to Minn. Stat. § 484.01; and c) venue is proper in the Fourth Judicial District Court (Hennepin County) for the State of Minnesota pursuant to Minn. Stat. §§ 542.03 and 542.09.

2. *Subject Matter of the Lawsuit.* The Plaintiffs' lawsuit challenges the City of Minneapolis' licensing of sign-hangers. A sign-hanger is a person or business that engages in the occupation of sign installation, billboard erecting, sign painting, sign repair, billboard repair,

and bill posting. City Code §§ 277.2480 *et seq.* consolidates and supersedes the separate occupational licensing requirements of City Code § 109.10, as well as §§ 277.2650 through 277.2740, and requires would-be sign-hangers to obtain a license if they wish to ply their trade within city limits. In order to become a licensed sign-hanger, City Code §§ 259.30, 259.60 through 259.110, 259.130(a), 277.2480, 277.2500, 277.2510, and 277.2540 require applicants: a) to fill out an application; b) to furnish proof of insurance and bonding; c) to pay a license fee; d) to be over eighteen years of age; and e) to obtain the "approval" of the Director of Licenses and Consumer Services, as well as the Police, Health, Waterworks, Building, Zoning and Fire Departments.

The Plaintiffs allege that the lack of guiding criteria, deadlines and other procedural safeguards for the exercise of the foregoing "approval" authority has resulted in numerous sign-hanger license applications being postponed by city officials for no legitimate reason and/or based on a legally unauthorized "competency test." They further allege that the resulting substantial processing delays effectively deny many license applications. Truong Xuan Mai and Lighttech, Inc. were unable to obtain sign-hanger licenses in two of the three years in which they applied, and Dahlen Sign Co. believes it is futile to apply for licensure under the current regime.

In their answer, the Defendants deny, or allege a lack of sufficient information to admit or deny, the Plaintiffs' allegations.

3. Stipulated Findings of Fact.

a) The City of St. Paul typically issues sign-hanger licenses within minutes of being presented with a completed application, license fee, and proof of insurance and bonding.

b) The City of Brooklyn Park typically issues sign-hanger licenses to applicants in three days or less upon receiving an application, a fee, and proof of bonding and insurance.

c) The cities of Bloomington, Shakopee, Falcon Heights, Forest Lake, Chaska, Prior Lake and Eagan do not require a license for sign-hangers.

d) The practices of other Minnesota municipalities in the Twin Cities area and the existence of City Code §§ 109.20, *et seq.*, which establishes an independent sign and billboard permitting process, indicate that a reasonable period of time for processing a sign-hanger license application is, at most, a few days.

e) Since July, 2002, approximately forty-five (45) sign-hanger license applications, which met the application, fee, insurance, bonding and age requirements of City Code §§ 277.2480, 277.2500, 277.2520, and 277.2540, were postponed and did not result in the issuance of licenses by the City of Minneapolis for one to two months from the date of submission.

f) Since July, 2002, approximately forty (40) sign-hanger license applications that met the application, fee, insurance, bonding and age requirements of City Code §§ 277.2480, 277.2500, 277.2520, and 277.2540, were postponed and did not result in the issuance of licenses by the City of Minneapolis for two to four months from the date of submission.

g) Since July, 2002, approximately fifteen (15) sign-hanger license applications that met the application, fee, insurance, bonding and age requirements of City Code §§ 277.2480, 277.2500, 277.2520, and 277.2540, were postponed and did not result in the issuance of licenses by the City of Minneapolis for four to eleven months from the date of submission.

h) Since July, 2002, approximately twenty-five (25) sign-hanger license applications that met the application, fee, insurance, bonding and age requirements of City Code §§ 277.2480, 277.2500, 277.2520, and 277.2540, were postponed and never resulted in the issuance of licenses by the City of Minneapolis during the year for which the application was submitted.

i) Approximately six (6) sign-hanger license applications for the 2006 license year that met the application, fee, insurance, bonding and age requirements of City Code §§ 277.2480, 277.2500, 277.2520, and 277.2540, were postponed and have not yet resulted in the issuance of licenses by the City of Minneapolis.

j) The cause of most of the foregoing application postponements is the license "approval" requirement of City Code §§ 259.60, 259.70, 259.80, 259.90, 259.95, 259.1001, 259.110, 259.130(a) and 277.2510, which condition the issuance of a license upon approval from the Director of Licenses and Consumer Services and the Police, Health, Waterworks, Building, Zoning and Fire Departments without: i) specifying criteria that identify the circumstances under which license applications are approved, denied or postponed; ii) setting a reasonable deadline for the exercise of such approval authority; and iii) giving the applicant notice and an opportunity to be heard with respect to the decision to postpone consideration of an application.

4. Applicable Principles of Law.

Procedural Due Process. Although the Defendants deny they acted illegally, the parties agree that the failure to approve or deny a completed license application within a reasonable period of time constitutes a constructive denial of the application. The right to procedural due process under Article 1, section 7 of the Minnesota Constitution and the Fourteenth Amendment to the United States Constitution requires that license applications be given reasonably prompt consideration according to objective licensing criteria of which the applicants have been given reasonable advance notice. Procedural due process further requires that applicants whose applications are postponed or denied, or recommended for postponement or denial, be given notice and an opportunity to contest the decision. Finally, procedural due process requires that

license applicants be notified of the approval, denial or postponement decision on an application within a reasonable period of time.

5. Permanent Injunction.

a) The parties agree that City Code §§ 259.60, 259.70, 259.80, 259.90, 259.95, 259.100, 259.110 and 259.130(a), as applied to the Plaintiffs and other sign-hangers, do not presently furnish adequate procedural safeguards for applicants with respect to the processing of sign-hanger license applications under City Code §§ 277.2480 *et seq.* Accordingly, the Defendants, their agents, employees, servants and representatives, are permanently enjoined from requiring sign-hangers, including the Plaintiffs, to obtain the departmental approvals otherwise required for an occupational license under the current language of City Code §§ 259.30, 259.60, 259.70, 259.80, 259.90, 259.95, 259.100, 259.110, 259.130(a), and 277.2510. The injunctive relief granted to the Plaintiffs and other sign-hangers is related to the procedures involved in the application approval process.

b) The Defendants, their agents, employees, servants and representatives, shall not employ what has been characterized by the Plaintiffs in their complaint as a "competency test" in considering any sign-hanger license application under the current language of City Code §§ 259.30, 259.60, 259.70, 259.80, 259.90, 259.95, 259.100, 259.110, 259.130(a), and 277.2510.

c) For sign-hanger license applications received after the date of this Consent Judgment, the Defendants agree that the Director of Licensing and Consumer Services shall administratively issue sign-hanger licenses pursuant to City Code § 259.30 within five (5) business days after the applicant: i) completes and tenders the City's standard license application form as required by City Code § 277.2480 evidencing satisfaction of the requirements of City Code § 277.2540; ii) furnishes proof of insurance as required by City Code § 277.2500; iii)

furnishes proof of bonding as required by City Code § 277.2500 or Minn. Stat. § 325E.58; and iv) pays the license fee required by City Code § 277.2520.

d) Within thirty (30) days after entry of this Consent Judgment, the Defendants agree that the Director of Licensing and Consumer Services shall contact and administratively issue sign-hanger licenses to all applicants who still want a sign-hanger license and who have currently pending sign-hanger license applications for which the City of Minneapolis has received: i) a completed standard license application form as required by City Code § 277.2480 evidencing satisfaction of the requirements of City Code § 277.2540; ii) proof of insurance as required by City Code § 277.2500; iii) proof of bonding as required by City Code § 277.2500 or Minn. Stat. § 325E.58; and iv) payment of the license fee required by City Code § 277.2520. This includes, but is not limited to, the sign-hanger license of Plaintiffs Truong Xuan Mai and Lighttech, Inc.

e) This injunction does not affect: i) the City's enforcement of the independent sign and billboard permitting process set forth in City Code §§ 109.20 *et seq.*; ii) the City's enforcement of the Zoning Code of Title 20 of the City Code as authorized under City Code §§ 520.10 through 551.1060; iii) the procedure for incomplete license applications under City Code § 259.130(b); and iv) any other provision of the City Code regulating the business or business activities of licensed sign-hangers unrelated to the license application process.

6. Damages, fees and costs.

a) Nominal Damages. The Defendant, City of Minneapolis, shall pay nominal damages of one dollar (\$1.00) to Plaintiffs within fourteen (14) days of approval of this agreement by the Mayor and City Council of the City of Minneapolis.

b) Attorneys' Fees and Litigation Expenses. The Defendant, City of Minneapolis, shall pay within fourteen (14) days approval of this agreement by the Mayor and City Council of the

City of Minneapolis reasonable costs, litigation expenses and attorneys fees to Plaintiffs pursuant to 42 U.S.C. §§ 1983 and 1988 in the amount of ten thousand and no/100ths dollars (\$10,000.00).

7. *Waiver and Release of Other Claims.* The parties mutually agree to waive any further claim for costs, litigation expenses, and attorneys fees, which are not determined by this Consent Judgment, that are related to the cause of action encompassed by this proceeding.

8. *Final Adjudication.* This Consent Judgment shall finally determine and dispose of the various claims alleged in the pending complaint.

9. *Approval of Consent Judgment and Settlement.* The Defendants warrant that the Director of Licensing and Consumer Services, the Department of Regulatory Services and the Zoning Administrator have authorized them to enter this Consent Judgment prior to its approval by the City Council and Mayor of the City of Minneapolis. Accordingly, the Defendants agree that the Court may enter this Consent Judgment instanter. The Defendants through the Office of the City Attorney shall engage in good faith efforts to procure the approval of this Consent Judgment by the City Council and Mayor of the City of Minneapolis at the earliest practicable time. The parties agree that if the Consent Judgment has not been approved by the Mayor and City Council of the City of Minneapolis in its entirety by October 14, 2006 either party will have just cause to vacate the judgment and may file a motion to vacate the judgment, which, if presented to the Court without undue delay, shall be granted pursuant to an order allowing the parties to fully litigate the cause of action encompassed by the Plaintiffs' complaint on its merits as of the date the Consent Judgment was entered. "Approval" by the Mayor of the City of Minneapolis under this Consent Judgment shall be construed as both express approval and

inaction that results in the City Council's approval becoming effective by publication. The Court shall retain jurisdiction to enforce the Consent Judgment.

Stipulated and Agreed to:

Dated: INSTITUTE FOR JUSTICE MINNESOTA
CHAPTER
By

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Executive Director
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Dated: JAY M. HEFFERN
City Attorney
By

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ORDER

Pursuant to the Stipulated Consent Judgment executed by the attorneys for the parties,

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: _____
Hon. Janet N. Poston
Judge of District Court