

City of Coral Gables Planning Department Staff Report

To: Planning and Zoning Board Members

From: Planning Department

Date: December 10, 2008

Subject: **Zoning Code Text Amendment - Article 5, Division 19, "Signs".** An Ordinance of the City of Coral Gables amending Zoning Code Article 5, Division 19, entitled "Signs", Section 5-1909, "Campaign", by providing for the allowance of campaign or political signs in residential districts, providing the size of campaign and political signs in residential districts, providing for the length of time campaign or political signs are allowed in the City of Coral Gables following elections; and, Article 8, "Definitions", by adding a definition for "political signs" and "campaign signs"; and providing for severability, repealer, codification, and an effective date.

Background

Attached are proposed Zoning Code text amendments requested by the City Attorney regarding campaign signage. The City Attorney's Office has provided for the Planning and Zoning Board's review and information a completed Planning Department Zoning Code Text Amendment Request form, cover memorandum providing background for the amendment and a draft Ordinance containing the specific language in ~~strike thru~~ / underline format (see Attachments A, B and C).

The City Attorney's Office will present the proposed amendments to the Board at the meeting and secure input and testimony.

Public Hearing Timeline

This Zoning Code amendment is under the purview of the Planning and Zoning Board and City Commission since it requires public hearing review. Upon recommendations from the Planning and Zoning Board, the proposed text amendments are tentatively scheduled to proceed forward for public hearing before the City Commission as follows:

*City Commission, 1st Reading –January 13, 2009, 9:00 a.m.
City Commission, 2nd Reading –February 10, 2009, 9:00 a.m.*

The above dates and times are subject to change.

Public Notification

The Planning and Zoning Board meeting agenda has been advertised and posted on the City web page. The Planning Department staff report and attachments are also posted on the City web page.

Zoning Code Text Amendment – Signs

December 10, 2008

Page 2 of 2

Respectfully submitted,


Eric Riel, Jr.
Planning Director

Attachments:

- A. Planning Department Zoning Code Text Amendment Request form.
- B. 11.12.08 City Attorney cover memorandum.
- C. Draft Ordinance.

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City of Coral Gables Zoning Code Text Amendment Request

1

Date of request:

November 10, 2008

Sponsoring department(s):

Legal

Code section(s) to be amended (attach additional sheets as necessary):

Section 5-1909: Political Signs

Purpose or explanation of text amendment (attach additional sheets as necessary):

To meet the Supreme Court requirements for the display of signs on private and public property. A memorandum dated November 12, 2008, is attached hereto for a better explanation of the amendment.

Proposed text amendment (attach additional sheets as necessary):

Please see attached draft, proposed amended ordinance.

Sponsoring department(s) signature:

Lourdes Alfonsin Ruiz

Print name

Signature

11/10/2008

Date

CITY OF CORAL GABLES
OFFICE OF THE CITY ATTORNEY

-MEMORANDUM-

TO: PLANNING AND ZONING BOARD **DATE: November 12, 2008**

FROM:

ELIZABETH M. HERNANDEZ
Elizabeth M. Hernandez
City Attorney

SUBJECT: Draft Amended Political & Campaign Sign Ordinance

Lourdes Alfonsin Ruiz
Lourdes Alfonsin Ruiz
Assistant City Attorney

Attached hereto is the proposed draft of the amendments to the political and campaign sign ordinance for your review and consideration. To follow is an analysis of the laws regulating signs as it involves the 1st Amendment.

INTRODUCTION

Messages on signs are protected from unwarranted government regulation by the Free Speech Clause of the First Amendment with few exceptions. However, signs pose distinctive problems that are subject to a government's police powers. Local government may therefore enforce reasonable time, place, and manner restrictions such as size, illumination, location, shape, number, and manner of posting signs without regard to the content of the speech. In order to be sustained as a reasonable time, place, and manner restriction, the Courts have asked if the regulation meets the following criteria:

- (1) Is the regulation content-neutral;
- (2) Does the regulation serve a significant governmental interest; and
- (3) Does the regulation leave ample alternative channels for communicating the regulated speech?

See, *Clark v. Community for Creative Nonviolence*, 468 U.S. 288 (1984).

Political and campaign signs are entitled to the highest form of protection afforded by the Free Speech Clause of the First Amendment. Therefore, an examination of relevant United States Supreme Court cases involving this type of speech will be reviewed to determine what restrictions of political and campaign signs are constitutional for both private and public property.

LEGAL ANALYSIS/SUPREME COURT DECISIONS

The following cases provide a brief history of the United States Supreme Court decisions related to statutes prohibiting certain commercial speech when the regulation is content-neutral, serves a significant governmental interest, and leaves alternative channels for communicating the commercial speech.

(1) *Metromedia Inc. v. City of San Diego*, 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981)

This case involves a San Diego ordinance imposing substantial prohibitions on outdoor advertising displays within the city in the interest of traffic safety and aesthetics. The ordinance banned all such signs except for those advertising on-site activities.

The Court concluded that the City's aesthetic interests were sufficiently substantial to provide an acceptable justification for a content-neutral prohibition against the use of some billboards and not others. Nevertheless, the Court concluded that the ordinance impermissibly discriminated on the basis of content by permitting on-site commercial speech while broadly prohibiting non-commercial messages.

(2) *Ward v. Rock Against Racism*, 491 U.S. 781, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989)

This case involved a New York City ordinance regulating noise levels requiring performers to use sound technicians and a sound system provided by the City.

The Court upheld the ordinance and found the ordinance to be content-neutral. It further found the government's purpose of controlling noise levels at these events was a "controlling consideration" having nothing to do with the content of the music. The Court concluded that the City's regulation was narrowly tailored to serve a significant government interest by protecting its citizens from unwelcome noise.

(3) *Thomas v. Chicago Park District*, 535 U.S. 316, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002)

This case involved a Chicago park ordinance requiring individuals to obtain a permit before conducting events for more than 50 persons. It also provides an application process with a 14 day time limitation for granting or denying the application which could be denied for any of 13 specific reasons. The Plaintiffs sought to obtain a permit to hold a rally to legalize marijuana. The application was denied.

The Court held the ordinance to be constitutional and upheld it as a content-neutral time, place, and manner regulation. It found that the grounds for denial of the permit had nothing "to do with what a speaker might say." The City was not limiting activities in the park based upon the applicant's viewpoint.

SIGNS ON PRIVATE PROPERTY

Political, religious, and personal message signs at residences were deemed to be a Constitutional First Amendment Free Speech right in 1994 when the United States Supreme Court, in *City of Ladue v. Gilleo*, 512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994), held unconstitutional an ordinance of the City prohibiting homeowners from displaying signs on their property, except identification signs, for sale signs, and signs warning of hazards.

In *Gilleo, supra*, Margaret Gilleo placed a 24 inch by 36 inch sign in her front yard with an anti-Persian Gulf War message. The Court found that the ordinance violated the resident's right to free speech, in large part, because there were no alternative means of communication for her. The Court held the sign ordinance unconstitutional because it was not allowed to ban some signs and allow others based upon the content of the message. The Court stated that the prohibition of the residential sign was too broad.

However, in the Court's analysis, it found that signs "pose distinctive problems and thus are subject to municipalities' police powers and measures regulating them inevitably affect communications themselves....Unlike oral speech, signs take up space and may obstruct views, detract motorists, displace alternative use for land, and pose other problems that legitimately call for regulation. Although Ladue has a concededly valid interest in minimizing visual clutter, it has almost completely foreclosed an important and distinct medium of expression to political, religious, or personal messages.... Our decision that Ladue's ban on almost all residential signs violates the First Amendment by no means leaves the City powerless to address the ills that may be associated with residential signs" *Gilleo, supra* @ 48, 58.

SIGNS ON PUBLIC PROPERTY

Another area of concern is where there are prohibitions of the posting of political or campaign signs on public property. The United States Supreme Court, in *Members of the City Council of Los Angeles v. Taxpayers for Vincent*, 446 U.S. 789, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984), upheld a City ordinance prohibiting the posting of any handbills and signs on public property and public objects (utility poles).

A group supporting a candidate for election had signs posted on utility poles around the City of Los Angeles supporting candidate Vincent. Employees of the City removed all signs, including this group's signs, pursuant to the ban. The supporters of the political candidate challenged the ordinance under First Amendment grounds.

The Court upheld the ordinance because it found it was content-neutral because it was not intended to suppress any ideas or that it applied to this group based on their views. The Court justified the law by finding the State may exercise its police powers to improve its appearance, an interest that was unrelated to the suppression of ideas.

CONCLUSION

Residents have the right to display political or campaign signs. However, the aforementioned decisions clearly show that local governments may legitimately exercise its police powers to advance its aesthetic interests and traffic safety. Thus, size, placement, and number of signs, as long as reasonable, are acceptable regulations.

The proposed amendments to the City of Coral Gables Campaign Signs ordinance conform to the aforementioned U.S. Supreme Court cases. The changes to the ordinance commence with the title by adding "Political Signs", thereby reading as "Campaign & Political Signs". The amendments also allow for campaign and political signs in residential districts by permitting one political sign per candidate and/or per ballot issue. It further provides the size limitations and location of the sign(s) on the residential property and provides for the removal of the sign(s) within seven (7) days of the election. Finally, the amendments to the ordinance prohibit the pasting, gluing, printing, painting, affixing or attaching signs, posters, placards or bumper stickers advocating or opposing a candidate or issue on public property, vacant lots, trees or poles. If a sign is found to be in non-compliance of this section, the City will remove it at a cost to the candidate or sponsor of the sign.

The proposed amendments also conform to the requirements of Florida Statutes §106.1435, pertaining to the usage and removal of political campaign advertisements.

Attachment.

cc. Maria A. Jimenez, Interim City Manager
 Dona Lubin, Assistant City Manager
 Catherine Swanson, Assistant City Manager
 Eric Riel, Planning Director
 Edward Weller, Interim Director, Building & Zoning
 Martha Salazar-Blanco, Zoning Administrator

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2008-_____

AN ORDINANCE OF THE CITY OF CORAL GABLES AMENDING ZONING CODE ARTICLE 5, DIVISION 19, ENTITLED "SIGNS", SECTION 5-1909, "CAMPAIGN", BY PROVIDING FOR THE ALLOWANCE OF CAMPAIGN OR POLITICAL SIGNS IN RESIDENTIAL DISTRICTS, PROVIDING THE SIZE OF CAMPAIGN AND POLITICAL SIGNS IN RESIDENTIAL DISTRICTS, PROVIDING FOR THE LENGTH OF TIME CAMPAIGN OR POLITICAL SIGNS ARE ALLOWED IN THE CITY OF CORAL GABLES FOLLOWING ELECTIONS; AND, ARTICLE 8, "DEFINITIONS", BY ADDING A DEFINITION FOR "POLITICAL SIGNS" AND "CAMPAIGN SIGNS"; AND PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECIVE DATE

WHEREAS, courts have recognized the right of jurisdictions to enact reasonable time, place and manner restrictions related to signs while not restricting the First Amendment rights of groups and individuals wishing to express their views by placing political or campaign signs in their yards, City of Ladue v. Gilleo, 512 U.S. 43, 114 S.Ct. 2038 (1994); and

WHEREAS, the City of Coral Gables recognizes the First Amendment rights of those wishing to express their views on certain issues and candidates; and

WHEREAS, the City Commission of Coral Gables believes that the manner of erection, location and maintenance of signs affects the public health, safety, morals and welfare of the citizens of Coral Gables; and

WHEREAS, the City Commission of Coral Gables recognizes that the safety of motorists, cyclists, pedestrians, and other users of public streets is affected by the number, size, location, lighting and movement of signs that divert the attention of drivers; and

WHEREAS, the City of Coral Gables Commission wants to promote public safety by avoiding visual clutter, reducing conflicts between and among signs, and requiring removal of signs in a timely manner; and

WHEREAS, the City Commission of Coral Gables is aware that the size and location of signs, if uncontrolled, may constitute an obstacle to effective fire fighting techniques and police protection; and

WHEREAS, uncontrolled and unlimited signs may degrade the aesthetic attractiveness of the natural and manmade attributes of the community and thereby

undermine the economic value of tourism, visitation and permanent economic growth within the City of Coral Gables.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA THAT:

Section 1. The recitals and findings contained in the Preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. The Zoning Code of the City of Coral Gables, Florida is hereby amended by adding the following to Section 5-1909 entitled "Campaign", and adding the following definitions to Article 8, "Definitions" to read as follows:

Sec. 5-1909. Campaign and Political Signs.

A. Campaign and political:

1. Campaign Headquarter sign shall be permitted in Commercial, Commercial Limited, or Industrial Districts subject to the following conditions:

- (a) There shall be no more than one sign per campaign headquarters and may only be attached to the primary street frontage of any building which is the authorized campaign headquarters for the candidate in question.
- (b) It shall include the words "Campaign Headquarters" which shall be clearly visible at street level.
- (c) The sign shall be of temporary nature and shall not exceed twenty-four (24) inches by thirty-six (36) inches.
- (d) The maximum height to the top of the sign, including posts, shall not be more than twelve (12) feet above the ground.

2. Political Signs shall be permitted in Single-Family Residential District, Multi-Family 1 Duplex District, Multi-Family 2 District, and Multi-Family Special Use District subject to the following conditions:

- (a) There shall be no more than one sign per candidate or ballot issue.
- (b) The sign shall not exceed twenty (22) inches by twenty-eight (28) inches in size.
- (c) The sign shall be a minimum of five (5) feet from a public right-of-way
- (d) The sign shall be a minimum of five (5) feet from property under separate ownership.

B. Duration:

Campaign or political signs may be permitted no earlier than six (6) months prior to the date of election and shall be removed within seven (7) days after the election which is the subject matter of such sign except as follows:

(a) A campaign or political sign that proceeds to a General Election from a Primary Election which shall be removed no later than seven (7) days after the General Election.

C. Permits:

No permit shall be required for such sign.

D. Prohibited Signs:

1. It shall be unlawful for any person to paste, glue, print, paint, affix or attach by any means whatsoever any sign, poster, placard or flag designed or intended to advocate or oppose any candidate or issue to the surface of any parkway, vacant lot, utility pole, or tree or to the surface of any public street, sidewalk, right-of-way, swale, curb or to any property of any governmental body. No candidate signs or placards shall be permitted to be erected or placed upon.

E. Penalties:

Failure to comply with the provisions of this Section shall cause any non-complying sign to be immediately impounded by the City and a removal fee shall be adopted by Resolution of the City Commission.

F. Enforcement.

This chapter shall be enforced by any code enforcement official of the City authorized to enforce this chapter.

ARTICLE 8 - DEFINITIONS

Campaign Headquarters means the center of operations from which a candidate runs his/her campaign.

Campaign Sign means a temporary sign designed to influence the passage or defeat of any measure on the ballot or designed to influence voters with respect to the nomination, election, defeat or removal of a candidate from public office at any national, state, or local general or special election.

General Election means an election in which the candidates voted for in the primary election are elected to office.

Political Sign means generally a campaign sign but may also include signs pertaining to the conduct of government in general.

Primary Election means a preliminary election in which voters select a political party's candidate for a subsequent election.

Section 3. Severability.

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 4. Repealer.

All ordinances or parts of ordinances in conflict herewith, be and the same, are hereby repealed.

Section 5. Codification.

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances; and that the sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

Section 6. Effective Date.

This ordinance shall become effective immediately upon the date of its adoption by the City Commission.

PASSED AND ADOPTED this _____ day of _____ 2008.

DONALD D. SLESNICK II, MAYOR

ATTEST:

WALTER FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

ELIZABETH M. HERNANDEZ
CITY ATTORNEY