

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

February 2, 2009

CALL TO PODIUM:

**Greg Ossont, Director
Planning & Code
Administration**

RESPONSIBLE STAFF:

**Greg Ossont, Director
Planning & Code
Administration**

AGENDA ITEM:

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Joint Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	NA
Advertised	11/12/2008
	11/19/2008
Hearing Date	12/01/2008
Record Held Open	01/08/2009
Policy Discussion	02/02/2009

TITLE: Text Amendment T-388

POLICY DISCUSSION

Proposal to Amend Chapter 24 of the City Code (City Zoning Ordinance), Article IX, Entitled, "Signs," § 24-211 Entitled, "Signs Permitted In All Zones," subsection (e), Entitled, "Election Campaign And Ballot Questions Signs," to Eliminate Conflicting Provisions and Renumber Accordingly.

SUPPORTING BACKGROUND:

Staff has received correspondence from the American Civil Liberties Union of Maryland (ACLUM). In summary, the ACLUM has provided case law from the City of Baltimore and Prince George's County asserting that the time limit restrictions regarding Election Campaign And Ballot Questions signs found the City's zoning ordinance are unconstitutional.

Staff has presented a draft text amendment, **T-388**, to modify § 24-211(e) by removing subsections (2) and (3) that are deemed unconstitutional and renumbering accordingly. A joint public hearing was held December 1, 2008. The Planning Commission recommended approval January 7, 2009. The Mayor & City Council record closed on January 8, 2009. This application is ready for final action.

*Attachments:
Index of Memoranda and Exhibits (in **BOLD**)*

DESIRED OUTCOME:

Conduct Policy Discussion
Ordinance is ready for Final Action

Joint Public Hearing
M&CC and PC
December 1, 2008

INDEX OF MEMORANDA
T-388

1. Application
2. **Draft T-388 Ordinance**
3. Background Material from the American Civil Liberties Union
4. Letter to *Gaithersburg Gazette* dated November 6, 2008, requesting a Legal Ad for November 12 and 19, 2008, issues
5. Legal Ads, as published in the November 12 and 19, 2008 issues of the *Gaithersburg Gazette*
6. Notice of Joint Public Hearing, sent November 14, 2008
7. Mailing List of JPH Notices
8. Cover Sheet, Joint Public Hearing: December 1, 2008
9. **Transcript of Joint Public Hearing: December 1, 2008**
10. **Staff Comments for Planning Commission**
11. **Planning Commission Recommendation: Jan. 7, 2009**

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED "ZONING," ARTICLE IX, ENTITLED, "SIGNS," § 24-211, ENTITLED, "SIGNS PERMITTED IN ALL ZONES," SUBSECTION (e), ENTITLED, "ELECTION CAMPAIGN AND BALLOT QUESTIONS SIGNS," TO ELIMINATE CONFLICTING PROVISIONS AND RENUMBER ACCORDINGLY

Text Amendment **T-388**

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that Chapter 24 of the City Code, Article IX, is hereby amended to read as follows:

ARTICLE IX. SIGNS

* * * * *

Sec. 24-211. Signs permitted in all zones

* * * * *

(e) *Election campaign and ballot questions signs:*

* * * * *

(2) ~~These signs may be displayed thirty (30) days prior to and seven (7) days after the election for which intended.~~

(3) ~~In cases where a final election follows within seventy-five (75) days of a primary election, those candidates who won in the primary election or those running unopposed may continue to display their signs during the interim period and up to seven (7) days after the final election.~~

~~(4)(2)~~ * * * * *

~~(5)(3)~~ * * * * *

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
Single strikethrough	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
Double boldface-strikethrough	<i>Deleted from existing law or the bill by amendment.</i>
***	<i>Existing law unaffected by bill.</i>

ADOPTED this ____ day of _____, 2008, by the City Council of Gaithersburg, Maryland.

SIDNEY A. KATZ, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2008. APPROVED by the Mayor of the City of Gaithersburg, this ____ day of _____ 2008.

Sidney A. Katz, Mayor

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2008, and that the same was approved/vetoed by the Mayor of the City of Gaithersburg on the ____ day of _____, 2008. This Ordinance will become effective on the ____ day of _____, 2008.

Angel L. Jones, City Manager

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
Single strikethrough	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
Double boldface strikethrough	<i>Deleted from existing law or the bill by amendment.</i>
***	<i>Existing law unaffected by bill.</i>

TRANSCRIPT OF

JOINT PUBLIC HEARING

ON

T-388

An Ordinance to Amend Chapter 24 of the City Code (City Zoning Ordinance), Entitled, "Zoning," Article IX, Entitled, "Signs," § 24-211 Entitled, "Signs Permitted In All Zones," Subsection (e), Entitled, "Election Campaign and Ballot Questions Signs," to Eliminate Conflicting Provisions and Renumber Accordingly

BEFORE THE

CITY OF GAITHERSBURG

MAYOR AND CITY COUNCIL

and

PLANNING COMMISSION

On

December 1, 2008

Transcribed by
Doris R. Stokes

JOINT EXHIBIT

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T-388

PARTICIPANTS

CITY COUNCIL

Mayor Katz
Council Vice President Sesma
Council Member Ashman
Council Member Drzyzgula
Council Member Marraffa
Council Member Spiegel

PLANNING COMMISSION

Chair Bauer
Vice Chair Levy
Commissioner Hopkins
Commissioner Kaufman
Commissioner Winborne

STAFF

Planning and Code Administration Director Ossont

SPEAKERS FROM THE PUBLIC

No speakers from the public.

Katz I have an idea that you are doing the next joint public hearing?

Ossont I am, and I suspect that this one will be a bit shorter.

Katz You think?

Ossont This is text amendment T-388, an ordinance to amend Chapter 24 of the City Code, entitled, "Zoning," Article IX, Entitled, "Signs," § 24-211 Entitled, "Signs Permitted in all Zones," Subsection (e), Entitled, "Election Campaign and Ballot Questions Signs," to Eliminate Conflicting Provisions and Renumber Accordingly. Staff received correspondence earlier this summer from the American Civil Liberties Union of Maryland (ACLUM). In summary, the ACLU had provided case law from the City of Baltimore and the County of Prince Georges asserting that the time limit restrictions of election signs are unconstitutional. This is a fairly straight forward text amendment. We do have current time limits and I will read those aloud for the record. Referring to section 24-211(e)(2), these signs may be displaced thirty (30) days prior to and seven (7) days after the election. And 24-211(e)(3), in the case where final election follows within seventy-five (75) days of a primary election, those candidates who won in the primary election, may leave those up for seven (7) days after the final election. It is those two sections that would be eliminated and I can answer any questions.

Katz Anybody want to question what the courts have said?

Council/Commission No.

Ashman Just to clarify that this is on private property?

Ossont That is correct.

Drzyzgula Political signs also, not commercial?

Ossont Election campaign and ballot question signs. Just to clarify now that we mentioned this on the introduction, but we have not, immediately state any enforcement and after speaking with Fred and Kevin, who has been effectively in charge of the enforcement of this ordinance for the last 15 days, we don't remember ever enforcing this. It is something that we have on the books that can go away pretty easily.

Winborne Well let me ask a question because I heard and I am just asking this question, a lot of folks say that signs are removed and they are fined and that kind of thing. Is not the City, is it someone else that is doing that?

Ossont I can almost with absolute certainty that we have never removed a sign from someone's private yard.

Katz Now on public property that is where the confusion is. State Highway will come through and take signs.

Winborne Ok. Maybe that is what it is.

Ossont I am certain that we have not issued any election sign violation fines.

Levy There has been accusations that people have come on private property removing the signs. No governmental body just maybe some opponent who just didn't like the sign.

Katz Any other questions?

Spiegel Yes. Just a quick question or point. I just wanted to clarify, the City can still regulate the size and location on the property of such signs, just can't regulate the timing or the placement.

Ossont Precisely. We do have those restrictions as well and the courts have said that the location and size may be effected, but not the time restrictions.

Katz Ok. This is the time that we are going to hear from the public on this public hearing. Would anyone like to speak on it? No. Thank you. And with that, what is the pleasure of the Planning Commission.

Bauer Staff has recommended that the Planning Commission hold their record open until 5 p.m. on December 29, 2008, with anticipated recommendation on January 7, 2009. Is there a motion please?

Kaufman So moved.

Winborne Second.

Bauer It's been moved and seconded. All in favor please say aye?

Commission Ayes.

Bauer Opposed? That passes unanimously (5-0). Our record will close on December 29th at 5 p.m

Katz Thank you very much. And our staff has recommended that the Mayor and Council hold their record open until 5 p.m. on Thursday, January 8, 2009, with anticipated policy discussion on Tuesday. Well, we are saying Tuesday, January 20th, but we are probably not going to have a meeting that night. That is inauguration day. It will be an anticipated policy discussion sometime after Tuesday, January 20, 2009. What is the pleasure of the Council?

Marraffa So moved.

Sesma Second.

Katz It's been moved and seconded. All those in favor please say aye?

Council Ayes.

Katz Opposed? That carries unanimously (5-0). Thank you very much.

End of Joint Public Hearing

T-388

STAFF COMMENTS FOR PLANNING COMMISSION

MEETING DATE: January 7, 2009

TEXT AMENDMENT: **T-388**

TITLE: AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED "ZONING," ARTICLE IX, ENTITLED, "SIGNS," § 24-211, ENTITLED, "SIGNS PERMITTED IN ALL ZONES," SUBSECTION (e), ENTITLED, "ELECTION CAMPAIGN AND BALLOT QUESTIONS SIGNS," TO ELIMINATE CONFLICTING PROVISIONS AND RENUMBER ACCORDINGLY

REQUEST: **RECOMMENDATION TO M&CC**

ADDRESS: N/A

ZONE: N/A

APPLICANT/REPRESENTATIVE/ATTORNEY/DEVELOPER: (as applicable)

STAFF PERSON: Greg Ossont, Director
Planning and Code Administration

Enclosures:

Staff Comments
Index of Memorandum and Exhibits (In **Bold**)

JOINT EXHIBIT

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T-388

STAFF COMMENTS

This item is on your agenda for a transmittal of a recommendation to the Mayor and Council.

The joint public hearing on T-388 was held on December 1, 2008. The Planning Commission held open its record until 5 PM on December 29, 2008. There are nine (9) exhibits in the public record.

This is a proposal to amend Chapter 24 of the City Code (City Zoning Ordinance), Article IX, entitled, "Signs," § 24-211 entitled, "Signs Permitted In All Zones," subsection (e), entitled, "Election Campaign And Ballot Questions Signs," to eliminate conflicting provisions and renumber accordingly. Staff received correspondence from the American Civil Liberties Union of Maryland (ACLUM). In summary, the ACLUM has provided case law from the City of Baltimore and Prince George's County asserting that the time limit restrictions regarding Election Campaign and Ballot Questions signs found the City's zoning ordinance are unconstitutional.

The information provided by ACLUM was reviewed by the City Attorney and Ms. Board concurs with their assessment. As such, a stay of enforcement of the applicable section in question has been issued and staff is presenting a draft text amendment to modify § 24-211(e) by removing subsections (2) and (3) that are deemed unconstitutional and renumbering accordingly.

Sec. 24-211. Signs permitted in all zones

Staff and the ACLUM have recommended the following underlined language be removed from subsection (e), Election campaign and ballot questions signs:

"(2) These signs may be displayed thirty (30) days prior to and seven (7) days after the election for which intended.

(3) In cases where a final election follows within seventy-five (75) days of a primary election, those candidates who won in the primary election or those running unopposed may continue to display their signs during the interim period and up to seven (7) days after the final election."

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Mayor and City Council

FROM: Planning Commission

DATE: January 8, 2009

SUBJECT: T-388 -- Request to amend Chapter 24 of the City Code (City Zoning Ordinance), entitled, "Zoning," Article IX, entitled, "Signs," § 24-211 entitled, "Signs Permitted in All Zones," subsection (e), entitled, "Election Campaign and Ballot Questions Signs," to eliminate conflicting provisions and renumber accordingly

At its regular meeting on January 7, 2009, the Planning Commission made the following motion:

Commissioner Kaufman moved, seconded by Commissioner Hopkins, to recommend Text Amendment T-388 for ADOPTION to the Mayor and City Council.
Vote: 5-0

JOINT EXHIBIT
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T-388