
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**)

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."

INDEX OF MEMORANDA
T-388

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2. **Draft T-388 Ordinance**
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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
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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>

M&CC,

Staff is preparing a response.

JDA



Distribution M&C: 6/9/08 47,60,
KR, SF

DEBORAH A. JEON
LEGAL DIRECTOR

June 3, 2008

Mayor Sidney Katz
City Hall
31 South Summit Avenue
Gaithersburg, MD 20877

Dear Mayor Katz:

As we head toward the 2008 general election, we write on behalf of the American Civil Liberties Union of Maryland to call your attention to a recent federal district court decision finding unconstitutional a Baltimore County ordinance regulating political yard signs. *Bell v. Baltimore County*, 2008 WL 1953475 (D.Md. Mar. 31, 2008). Gaithersburg has a similar provision, Chapter 24, Article IX, Sec. 24-211 of the Code of City of Gaithersburg, which we understand to be your current law.¹ Like the Baltimore County law, the Gaithersburg law restricts the length of time political lawn signs may be displayed by residents on their private property.

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LIBERTIES UNION OF
MARYLAND FOUNDATION
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T-410-889-8555
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OFFICERS AND DIRECTORS
SARA N. LOVE
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN
GENERAL COUNSEL

Specifically, your ordinance provides that election campaign and ballot questions signs “may be displayed thirty (30) days prior to and seven (7) days after the election for which intended” and “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.” Gaithersburg, MD, City Code, ch. 24, art. IX, §24-211.

The United States District Court for the District of Maryland repeatedly has found similarly-worded provisions to violate the First Amendment, including the recently invalidated Baltimore County law. That law banned residents from posting political campaign signs on their private property beyond a limited window of time surrounding the election. Judge Catherine Blake found the regulation to be an “unconstitutional durational limit on political residential signs.” *Bell v. Baltimore County*, 2008 WL 1953475 at *1 (D.Md. Mar. 31, 2008). Judge Blake noted that many courts have recognized “the importance of official campaign signs and the message they provide” as a form of protected speech. *Id.* at *2. This type of regulation is not narrowly tailored when it specifically restricts campaign signs. *Id.* Enclosed is a copy of Judge Blake’s decision.

The *Bell* ruling followed a 1999 federal district court ruling that struck down a similar provision of the Prince George’s County Code. *Curry v. Prince George’s County*, 33 F. Supp. 2d 447, 448 (D. Md. 1999). There, Judge Peter J. Messitte held that the Prince George’s ordinance unconstitutionally infringed First Amendment rights “insofar as it impose[d] durational limitations on the posting of political campaign signs by individuals at their private residences.” *Id.* at 448. The court found that, while valid regulations for

¹ Please advise us if this understanding is incorrect.

private, residential property "may include size, shape and location restrictions upon campaign signs, they may not include durational ones." *Id.* at 454-55.

A restriction on the amount of time a political campaign sign may be displayed on private property restricts the First Amendment rights of both the resident and the candidate. *Curry*, 33 F. Supp. 2d at 449 n. 3. The Supreme Court said in *City of Ladue v. Gilleo*, "[d]isplaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means. Precisely because of their location, such signs provide information about the identity of the 'speaker.'" 512 U.S. 43, 56 (1994).

Like the sign ordinances the court has found unconstitutional in Prince George's and Baltimore Counties, the Gaithersburg ordinance restricts the amount of time residential property owners may display political signs, and thereby unconstitutionally restricts the First Amendment rights of both residents and candidates.

We realize that some laws of questionable constitutionality remain on the books long after enforcement ceases. Perhaps this is the case with this regulation. For this reason, we request that you let us know whether Gaithersburg enforces this law. If so, kindly tell us the details of each enforcement over the past three years.

Even if you are not actively enforcing your sign law, the continued retention of a law that unconstitutionally limits speech has a chilling effect upon residents. Accordingly, we urge you to consider repeal the portions of your sign ordinance that offend the Constitution.

We would appreciate it if you or your attorney would contact one of us after you have a chance to review this request to advise us of the city's thoughts about the matter.

Thank you for your consideration.

Sincerely,



Deborah A. Jeon
Legal Director



Peter Montefusco
Law Clerk

Enclosure

--- F.Supp.2d ----, 2008 WL 1953475 (D.Md.)

Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court,
D. Maryland.
Clarence BELL, et al.
v.
BALTIMORE COUNTY, MARYLAND.
Civil No. CCB-07-305.
March 31, 2008.

Deborah A. Jeon, American Civil Liberties Union of Maryland Foundation, Baltimore, MD, Kathleen Adele Orr, Russell D. Duncan, Zeno B. Baucus, Orrick Herrington and Sutcliffe LLP, Washington, DC, for Clarence Bell, Kathleen Cahill, Joseph Michael Collins, Sr., Ruth Goldstein, Noel Levy, Homayoon Moghbeli, Manzar Moghbeli, Patricia Visser.

James J. Nolan, Jr., Baltimore County Office of Law, Towson, MD, for Baltimore County, Maryland.

MEMORANDUM

CATHERINE C. BLAKE, District Judge.

*1 Now pending is the plaintiffs' motion for attorneys' fees and costs in this case involving a challenge to a Baltimore County zoning ordinance restricting the posting of certain political lawn signs. For the reasons that follow, fees in the amount of \$67,789.50 and expenses in the amount of \$1,742.17 will be awarded.

Preliminarily, it appears the parties agree on the standards for determining a reasonable fee award to a prevailing party under 42 U.S.C. § 1988. As summarized by this court:

The Supreme Court has held that "the proper first step in determining a reasonable attorney's fee is to multiply 'the number of hours reasonably expended on the litigation times a reasonable hourly rate.'" The resulting product is commonly known as the lodestar award. The Supreme Court has noted that most of the factors articulated by the United States Court of Appeals for the Fifth Circuit in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir.1974), are subsumed in the initial calculation of the "lodestar" award. See Hensley v. Eckerhart, 461 U.S. at 424, 434 n. 9, 103 S.Ct. 1933, 1940 n. 9, 76 L.Ed.2d 40 (1983). Those factors have been adopted by the United States Court of Appeals for the Fourth Circuit. Consideration of those factors in arriving at the reasonable rate and reasonable number of hours expended ordinarily will produce a lodestar figure that results in fair compensation without further adjustment.

McCollum v. McDaniel, 136 F.Supp.2d 472, 478-79 (D.Md.2001).

See, e.g., *Whitton v. City of Gladstone*, 54 F.3d 1400, 1408 (8th Cir.1995); *McFadden*, 422 F.Supp.2d at 675; *Curry*, 33 F.Supp.2d at 455; *Dimas v. City of Warren*, 939 F.Supp. 554, 558 (E.D.Mich.1996).

Accordingly, on July 31, 2007, I entered an Order denying the County's motion for summary judgment, declaring the regulation unconstitutional, and enjoining its enforcement. No appeal was taken and this petition for attorneys' fees followed.

I will first address the reasonableness of the hourly rates requested by plaintiffs' counsel. The plaintiffs request \$400 per hour for Russell Duncan, a partner at Orrick, Herrington & Sutcliffe LLP, with over 20 years' experience in general litigation; \$350 per hour for Deborah Jeon, ACLU Legal Director with over 20 years' experience in civil rights litigation; and amounts from \$155 to \$225 per hour for the three associates whose time is claimed on the case.^{FN3} The County challenges only the rates for Ms. Jeon and Mr. Duncan, and does so only by reference to the presumptive rates set in this court's Rules and Guidelines for Determining Attorney's Fees before their upward adjustment became effective in January 2008. *See* Local Rules, App. B (D.Md.). Considering the affidavits submitted in support of the plaintiffs' counsel's hourly rates, however, and the opinion of Judge J. Frederick Motz in *Williams v. Maryland Office Relocators*, No. 05-3030 (D.Md. June 18, 2007), I will apply the \$360 hourly rate used in that case for an experienced Maryland attorney to Mr. Duncan's hours, and the \$350 hourly rate claimed by Ms. Jeon to her hours.^{FN4}

*3 In considering the hours to award for each litigation stage, I have considered all the *Johnson* factors, most of which are subsumed in the rate and hour analysis. This includes the excellent results obtained by plaintiffs, and awards in similar cases, *see Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir.2006) (over \$165,000); *Sugarman v. Village of Chester*, 213 F.Supp.2d 304 (S.D.N.Y.2002) (over \$75,000). I note also that the County requested an award of over \$36,000 in fees, at 1999 rates, for approximately 190 hours of work on a motion to dismiss, *see Greenspring Racquet Club, Inc. v. Baltimore County*, 77 F.Supp.2d 699, 703-05 (D.Md.1999).

I also recognize that cases such as these in part provide a training opportunity and a sought-after pro bono experience for associates at large law firms. Orrick recognizes this as well, and the plaintiffs have exercised billing judgment by not charging for several attorneys and paralegals at all and by reducing the hours claimed for those whose time is charged. Obviously, the County should not pay for work beyond that necessary to responsibly represent the plaintiffs.

With all this in mind, my award by litigation phase follows:

Case	Attorney	Hours	Award
Development	Jeon	13.2 x 350	\$ 4,620
Pleadings			

Duncan	12.0 x 360	\$ 4,320
Jeon	8.0 x 350	\$ 2,800
Orr	35.0 x 225	\$ 7,875
Total	55 hours	\$14,995

Motions

Duncan	12.0 x 360	\$ 4,320
Orr	22.0 x 225	\$ 4,950
Baucus	15.0 x 170	\$ 2,550
Showalter	15.0 x 155	\$ 2,325
Total	64 hours	\$14,145

Hearings

Duncan	7.0 x 360	\$ 2,520
Baucus	25.0 x 170	\$ 4,250
Showalter	10.0 x 155	\$ 1,550
Total	42 hours	\$ 8,320

Settlement

Jeon	23.1 x 350	\$ 8,085
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Fee Petition
(including
Reply)

Jeon	40.0 x 350	\$14,000
Duncan	1.5 x 360	\$ 540
Showalter	19.9 x 155	\$ 3,084.50
Total	61.4 hours	\$17,624.50

Before applying the factors, it is appropriate to describe briefly the events and issues involved in this case. After efforts to forestall passage of the ordinance were unsuccessful, the plaintiffs filed suit on February 2, 2007 seeking a declaration that Zoning Regulation 450.7.F as amended by the County Council in December 2006 violated the First Amendment by providing that a political campaign sign required to carry an authority line on behalf of a candidate or a political issue could be displayed on private property no earlier than 45 days before any primary and must be removed 7 days after the primary for an unsuccessful candidate. Cross-motions for summary judgment were filed and oral argument was heard July 20, 2007. For reasons more fully explained in the transcript of the oral ruling, I found the regulation to be an unconstitutional durational limit on political residential signs, noting the significant protection provided such speech in City of Ladue v. Gilleo, 512 U.S. 43, 54-57, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994).

At oral argument and in their papers, both sides acknowledged that the regulation potentially burdens the First Amendment rights of citizens—those homeowners or residents who wished to display the signs—and also of political candidates, see Arlington County Republican Comm. v. Arlington County, 983 F.2d 587, 595 (4th Cir.1993), and that political speech is entitled to the highest degree of protection under the First Amendment, *id.* at 593. Also there was no dispute that, if the regulation is content-based, it must be narrowly tailored to promote a compelling governmental interest, and if there is a less restrictive alternative that would serve that purpose, the alternative must be used. Burson v. Freeman, 504 U.S. 191, 197-98, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992); Curry v. Prince George's County, 33 F.Supp.2d 447, 452 (D.Md.1999). The County conceded that its asserted justification of traffic safety and aesthetics would not survive a content-based standard, but argued the regulation was content-neutral.^{FN1}

*2 It appeared to me that the regulation was content-based, as it applied only to certain types of political signs, and indeed most courts considering the issue have reached this conclusion. See McFadden v. City of Bridgeport, 422 F.Supp.2d 659, 671-74 (N.D.W.Va.2006) (discussing cases); Curry, 33 F.Supp.2d at 452 (collecting cases).^{FN2} Recognizing that Baltimore County did not direct the regulation at any particular political party or viewpoint, however, see Covenant Media v. City of North Charleston, 413 F.3d 421, 432-34 (4th Cir.2007), I acknowledged the question was at least debatable and proceeded to rule on the assumption the regulation was content-neutral, as did the Court in City of Ladue and the Fourth Circuit in Arlington County. If the regulation is content-neutral, it still must be narrowly tailored to serve a significant governmental interest and has to leave open ample alternatives for communication. Burson, 504 U.S. at 197, Arlington County, 983 F.2d at 593. While traffic safety and visual clutter are significant governmental concerns, Regulation 450.7.F was not narrowly tailored to accomplish those objectives. For example, it left many signs unregulated rather than applying setbacks or size restrictions to all signs, or simply requiring any sign that had fallen into disrepair to be removed. See, e.g., McFadden, 422 F.Supp.2d at 675 (applying strict scrutiny). Most significantly, the importance of official campaign signs and the message they provide both visually and as a direct form of speech has been recognized by many courts. It is difficult to identify a sufficient alternative. The County cited no case after the Court's ruling in City of Ladue that has upheld durational limits on political yard signs, while several courts have found such limits unconstitutional.

This is a total of 258.70 hours allowed for all phases, including the time-consuming work of fee preparation, and a total award of \$67,789.50 in fees. Expenses in the amount of \$1,742.17 are not challenged and also will be awarded.

A separate Order follows.

ORDER

For the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that:

1. the Plaintiffs' Motion for Attorneys' Fees and Costs (docket entry no. 25) is **Granted**; and

2. the plaintiffs are awarded **\$67,789.50** in fees and **\$1,742.17** in costs for a total of **\$69,531.67** to be paid by defendant Baltimore County.

FN1. The court appreciates James T. Nolan, Jr., Esquire's able and professional representation of the County at the hearing.

FN2. Judge Murnaghan of the Fourth Circuit found a very similar regulation to be content-based in an unreported Order granting a preliminary injunction against the County in 1998. *Taylor v. Baltimore County*, No. 98-2090 (4th Cir. July 28, 1998).

FN3. Work done by several other attorneys and paralegals was not claimed.

FN4. The court notes and appreciates the excellent representation provided by both the ACLU and Orrick.
D.Md.,2008.

Bell v. Baltimore County, MD

--- F.Supp.2d ----, 2008 WL 1953475 (D.Md.)

Motions, Pleadings and Filings ([Back to top](#))

- [2007 WL 4578689](#) (Trial Motion, Memorandum and Affidavit) Baltimore County's Reply in Support of Motion for Summary Judgment (Jun. 27, 2007)
- [2007 WL 4578688](#) (Trial Motion, Memorandum and Affidavit) Plaintiffs' Opposition to Baltimore County's Motion for Summary Judgment and Reply in Support of Plaintiffs' Motion for Summary Judgment (Jun. 18, 2007)
- [2007 WL 4578686](#) (Trial Motion, Memorandum and Affidavit) Plaintiffs' Memorandum of Points and Authorities in Support of Their Motion for Summary Judgment (Apr. 16, 2007)
- [2007 WL 4578685](#) (Trial Pleading) Defendant's Answer to Complaint (Mar. 13, 2007)
- [2007 WL 4578684](#) (Trial Pleading) Verified Complaint (Feb. 2, 2007)
- [2007 WL 4578687](#) (Trial Motion, Memorandum and Affidavit) Plaintiffs' Memorandum of Points and Authorities in Support of Their Motion for Preliminary Injunction (Feb. 2, 2007)
- [1:07cv00305](#) (Docket) (Feb. 2, 2007)

END OF DOCUMENT

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

9

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 (ACLU). 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