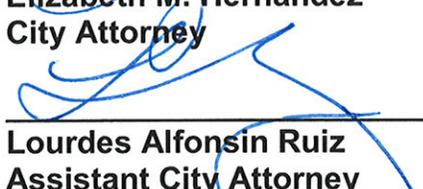


**CITY OF CORAL GABLES
OFFICE OF THE CITY ATTORNEY**

-MEMORANDUM-

TO: PLANNING AND ZONING BOARD **DATE: November 12, 2008**
FROM:  _____ **SUBJECT: Draft Amended Political & Campaign Sign Ordinance**
Elizabeth M. Hernandez
City Attorney
 _____
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