

April 8, 2002

REPORT TO THE COMMITTEE ON PUBLIC
SAFETY AND NEIGHBORHOOD SERVICES

PROPOSED CHANGES TO THE MUNICIPAL CODE
RELATING TO CAMPAIGN SIGNS

INTRODUCTION

At the October 10, 2001, meeting of the Committee on Public Safety and Neighborhood Services, the Committee passed a motion requesting the City Attorney to make several changes to the San Diego Municipal Code [Code] relating to campaign signs. Specifically, the motion directed the City Attorney to draft an ordinance amending the Code to eliminate a presumption making candidates or campaign supporters whose names appear on campaign signs responsible for illegally erected signs, and to require responsible parties of campaign signs to place their names and telephone numbers on each sign. Also included in the written minutes of the meeting, but not clearly mentioned in the Committee's motion on the audio recording of the item, was instruction to add a time limit for campaign signs, specifically limiting the display of campaign signs to a period ninety days before and fifteen days after an election. The City Attorney was directed to return to the Committee with the desired changes at a future date. City staff later suggested a return date after March 2002.

The purpose of this report is to briefly analyze the underlying legal issues surrounding campaign signs, present several possible amendments to the Code, and seek clarification of the Committee's prior motion.

DISCUSSION

A. Legal Background

The City's sign regulations span parts of three chapters of the Code. With only a few exceptions, the Code prohibits signs on public property or public rights-of-way. San Diego Municipal Code 95.0102, 95.0135, 142.1206, 142.1210(b)(5). On private property, the Code generally allows all signs except for new billboards, but limits size, location, and construction depending on underlying zoning regulations. San Diego Municipal Code 95.0112, 142.1210. The Code also requires permits for most non-incidental signs on private property. San Diego Municipal Code 95.0103, 129.0802.

References to campaign signs appear only in the Code's enforcement procedures for sign

violations. San Diego Municipal Code 95.0137, 121.0503. These sections presume a party is responsible for a Code violation where the party's name either appears on an illegally placed sign as a candidate, or as a party supporting or opposing a candidate or ballot initiative. *Id.* Typically, this presumption is used where no one saw the campaign sign being illegally erected in the public right-of-way. A person presumed by the Code to be the responsible party may rebut the presumption by filing a declaration with the City Manager. San Diego Municipal Code 95.0138, 121.0503.

Affecting any changes to the City's sign regulations are the free speech protections of the First Amendment to the United States Constitution. The First Amendment favors regulations that treat all types of speech equally, versus regulations that allow some speech while banning other viewpoints. *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984). Courts evaluating content neutral regulations will uphold the law if the government shows that the regulation is narrowly tailored to serve a significant government interest while leaving open alternate means of communication. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). Cities have successfully used traffic safety and aesthetics to justify these types of restrictions. *Taxpayers for Vincent*, 466 U.S. at 805; *Baldwin v. Redwood City*, 540 F.2d 1360, 1368 (9th Cir. 1976). Courts evaluating the content based regulations will only uphold the law if the government shows that the regulation is narrowly drawn to meet a compelling interest. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). Regulations that focus on campaign signs receive even greater scrutiny because infringement of political speech goes straight to the core of First Amendment protection. *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 665 (1990). For these types of regulations, the government must show that the restriction is narrowly tailored to meet an overriding state interest. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995).

Currently, the City's sign regulations are content neutral because they treat all signs the same without regard to their message. However, new restrictions on campaign signs will receive heightened judicial scrutiny because of their focus on political speech.

B. Amendments to Responsible Party Sections

1. Elimination of Responsible Party Presumption for Campaign Signs

The first proposed change eliminates a presumption making candidates or campaign supporters whose names appear on campaign signs responsible for illegally erected signs. After this change, only parties observed illegally placing campaign signs will be responsible for Code violations. Because this change does not limit any speech, there is no need for analysis under the First Amendment. Therefore, deletions of the presumptions for candidates and campaign supporters in sections 95.0137 and 121.0502, along with minor alterations elsewhere in the Code, will achieve the Committee's goal.

2. Identification Requirement for Responsible Parties of Campaign Signs

In addition to deleting the responsible party presumption, the Committee also directed that the Code require persons or parties who erect campaign signs to place their names and telephone numbers on each sign. However, this change presents both legal and practical questions. The First Amendment protects speakers who wish to remain anonymous while

expressing political viewpoints. *McIntyre* 514 U.S. at 343. In *McIntyre*, the United States Supreme Court found that an Ohio statute prohibiting anonymous distribution of campaign literature violated the First Amendment, because the state could not show its interest in preventing fraudulent speech was strong enough to justify such a broadly tailored ban. *Id.* at 357. The Court recognized the long American tradition of anonymous political speech, and distinguished campaign finance disclosure requirements by noting: “though money may ‘talk,’ its speech is less specific, less personal, and less provocative” than campaign literature. *Id.* at 355.

In this case, not only does the proposed identification requirement focus on political speech, a trait that will already result in enhanced judicial scrutiny, but it also compels speakers to identify themselves when expressing their private political views. In light of the Court’s fervent protection of anonymous speech, the City will need a particularly strong governmental interest to justify its identification requirement. However, the main purpose of the requirement is to reduce unsightly clutter in public rights-of-way and improve traffic safety during political campaigns. Unfortunately, this interest will not likely be compelling or overriding enough to justify identification requirements for campaign signs. See *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 509-510 (1981).

An alternative to identification requirements may be to incorporate campaign signs into the Code’s sign permit procedures. This may allow the City to track responsible parties of campaign signs without speakers having to identify themselves to the general public. See San Diego Municipal Code 95.0103, 95.0107, 95.011, 129.0804, 129.0805. However, the Code currently exempts incidental signs, such as campaign signs, from permit requirements. San Diego Municipal Code 95.0103, 129.0802. In order to require permits for campaign signs without offending the First Amendment, the Code must require permits for all signs, including each incidental sign. Because this would be a monumental administrative and enforcement task, this alternative may not be feasible for the City to perform. In addition, although permit requirements for campaign signs would not force speakers to identify themselves to the general public, these conditions may still have an improper chilling effect on political speakers who wish to remain completely anonymous.

If neither the First Amendment nor other practical considerations allows identification requirements for campaign signs, the deletion of the responsible party presumption would leave the City with little enforcement ability against illegal campaign signs. Only those individuals seen while illegally placing campaign signs would be liable under this version of the Code. Consequently, if the Committee decides not to proceed with identification requirements, it may also opt to retain the presumption language in sections 95.0137 and 121.0502 of the Code.

C. Time Limits

Included in the written minutes of the meeting, but not clearly mentioned in the Committee’s motion on the audio recording of the item, was direction to add a time limit for campaign signs. The proposed amendment would limit the display of campaign signs to ninety days before an election and require removal within fifteen days after an election. Because neither the recorded discussion nor the written minutes specified whether this limitation would apply to public or private property, our office needs additional direction from the Committee. Below we have highlighted some of the issues applicable to both types of property.

As mentioned earlier, the Code currently excludes all signs from public property and public rights-of-way. A time limit for campaign signs on both types of public property creates an exception to this general ban by allowing display of the signs several times a year. Because this exception gives special treatment to political speech, it affects the neutrality of the City's sign regulations. As the Supreme Court noted while upholding an overall ban on signs on public property: "To create an exception for...political speech and not these other types of speech might create a risk of engaging in constitutionally forbidden content discrimination." *Taxpayers for Vincent*, 466 U.S. at 816. Such content discrimination invites strict scrutiny from courts, a review few speech regulations can survive. At the same time, a limit that neutrally applies to all signs potentially opens up public property and rights-of-way to commercial signs linked to an event or date, negatively affecting the goal of the City's sign regulations. For these reasons, our office has previously advised against an exception allowing campaign signs on public property three weeks before an election. 1990 Op. City Att'y 968. (See attached Report dated January 3, 1990.)

On private property, the Code currently allows campaign signs without any time limits. However, a restriction limiting campaigns signs to certain times of the year will once again receive heightened judicial scrutiny because of its focus on political speech. In addition, courts are particularly sensitive about speech regulations that reach private residential property: "A special respect for individual liberty in the home has long been a part of our culture and our law; that principle has special resonance when the government seeks to constrain a person's ability to speak there." [Citations omitted.] *City of Ladue v. Gilleo*, 512 U.S. 43, 58 (1994). A time limit on private property that neutrally regulates all signs tied to an event or date, such as a sale or election, may survive judicial scrutiny. However, when combined with the Code's complete ban of signs on public property, this limitation may still forbid too much speech by not leaving open alternate channels of communication. *Id.* at 55. In addition, a time limit on private property may not effectively address the problem of campaign sign violations citywide, most of which occur on public property where the Code already prohibits signs.

CONCLUSION

Deletion of the presumption making candidates or campaign supporters whose names appear on campaigns signs responsible for illegally erected signs, can be accomplished without raising free speech concerns. However, an amendment requiring responsible parties of campaign signs to identify themselves likely offends First Amendment protections for anonymous speech. Extension of the general permit requirements to campaign signs may alternatively accomplish the Committee's goals without silencing too much speech, but may not be administratively or monetarily feasible. If the Committee decides not to pursue identification requirements, retaining the rebuttable presumption for responsible parties of campaign signs may offer more enforcement flexibility. Finally, our office needs further direction on time limits for campaign signs, mindful that different legal concerns surround time limits for both public and private property.

Respectfully submitted,

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Attachment
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