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REPORT TO THE COMMITTEE ON RULES, OPEN GOVERNMENT AND INTERGOVERNMENTAL RELATIONS

POLITICAL COPY ON SIGNS LOCATED ON APN 450-830-27 AT LIBERTY STATION

INTRODUCTION

A citizen addressed the Committee on Rules, Open Government and Intergovernmental Relations [Rules Committee] during Non-Agenda Public Comment to express her concerns about the posting of political signs placed on a portion of Liberty Station – alluding to a sign containing political copy that had previously been placed on certain property (APN 450-830-27) located at the northeast corner of North Harbor Drive and Laning Road [Subject Property]. At the citizen's request, the Rules Committee referred the matter to the City Attorney's Office for a legal opinion.

The purpose of this Report is to discuss whether political copy on signs located at the Subject Property is permissible under the San Diego Municipal Code [SDMC] and the applicable development permit. For the reasons set forth in more detail in this Report, we conclude that political copy on signs located at the Subject Property is permissible under the SDMC, subject to the applicable sign regulations in the SDMC and sign criteria in the applicable development permit.

DISCUSSION

I. Background

The Subject Property is owned by the Redevelopment Agency of the City of San Diego and is governed by the Naval Training Center Ground Lease [Unit 7, Lot 3] by and between the Redevelopment Agency of the City of San Diego and McMillin-NTC, LLC, dated April 21, 2006 [Lease]. The Lease was subsequently assigned to Liberty Station – Harbor Retail, LLC pursuant to an Assignment of Ground Lease, dated August 9, 2006. Pursuant to Section 2.5 (“Basic Rent”) of the Lease, the basic rent is one dollar (\$1.00) per year.

II. The Subject Property is Not “Public Property” During the Lease Term

SDMC sections 142.1206(a)(1)¹ and 142.1210(b)(5)(A)² prohibit the posting of signs on public property. To determine whether political copy on signs located on the Subject Property is prohibited or not, we must first establish whether public property leased to a private entity remains “public property.”

The SDMC makes numerous references to “public property,” but defines the term in only two sections – Sections 54.0202 and 54.0122, both of which are limited to the respective divisions of the SDMC in which they are found.³

If a word or phrase is not specifically defined in the SDMC, such word or phrase “shall be construed according to the context and approved usage of the language.” SDMC § 11.0209(e). Black’s Law Dictionary, 8th Edition (2004), defines “public property” as: “State- or community-owned property not restricted to any one individual’s use or possession.” Further, Black’s Law Dictionary defines “individual” as: “Existing as an indivisible entity”

If public property is leased to a private entity, the private entity obtains a leasehold estate in the property. In *Golden West Baseball Co. v. City of Anaheim*, a case involving the lease of city-owned property to a private company, the court stated: “The distinguishing characteristics of a leasehold estate are that the lease gives the lessee the exclusive possession of the premises against all the world, including the owner [citation], and its term is limited to endure for a definite and ascertainable period, however short or long the period may be.” 25 Cal. App. 4th 11, 32 (1994) (citing *Howard v. County of Amador*, 220 Cal. App. 3d 962, 972 (1990)). Since the Subject Property is leased to a private entity, it is not “public property” during the lease term. Thus, the prohibitions against posting signs on public property under SDMC sections 142.1206(a)(1) and 142.1210(b)(5)(A) do not apply to the Subject Property during the lease term.

III. Political Copy on Primary and Secondary Signs Located on the Subject Property is Permissible Under the SDMC, Subject to the Applicable Sign Regulations

As to whether the SDMC prohibits political copy on signs located on the Subject Property, we turn to the sign regulations contained in SDMC sections 142.1210 et seq.

¹ This section states: “It is unlawful to do the following: (1) Place, post, paint or secure any sign, pennant, flag, banner, balloon, or similar attention-seeking device on public property or within the public right-of-way unless otherwise provided in the Municipal Code or specific state statute;”

² This section states: “Signs are not permitted to be installed on public property or public rights-of-way, except for signs that are authorized by law, or as otherwise permitted in the Municipal Code.”

³ The definition of “public property” in Section 54.0202 is limited to Division 2 of Chapter 5, Article 4 of the SDMC (“Weed, Rubbish and Waste Abatement”); the definition of “public property” in Section 54.0122 is found in the context of the “Sale or Distribution of Foods, Beverages, Merchandise or Services from Vehicles and Mobile Food Units.”

Section 142.1210(a)(1) states: "Permanent or changeable copy on *signs* shall contain on-premises or public interest messages only." Public interest messages include political copy: "(iii) political and ideological signs and notices related to any federal, state, or local election issue or candidate and signs and notices unrelated to election issues or candidates but expressing ideological or political views." SDMC § 142.1210(a)(1)(B)(iii).

The SDMC classifies signs into three categories: primary, permanent secondary, and temporary secondary. Primary signs "identify an establishment or a *premises* while the establishment is operative or the *premises* is occupied" and are either wall signs, roof signs, projecting signs, and/or ground signs. SDMC § 142.1215(a). The area of any primary sign may be used for public interest signs. SDMC § 142.1220(e). Accordingly, political copy on primary signs located on the Subject Property is permissible under the SDMC, subject to the sign regulations contained in Section 142.1210, the primary sign regulations contained in Sections 142.1220 through 142.1240, and any other applicable sign regulations for that zone.

Permanent secondary signs "are used for establishment identification, incidental *signs*, traffic direction, and *public utility* and safety information that is required by law." SDMC § 142.1215(b)(1). Incidental signs are those that "pertain to goods, products, services, or facilities that are available on the *premises* where the *sign* is located . . ." SDMC § 142.1250(d). Under Section 142.1250(d)(3)(D), incidental signs are limited to, among other things, "[t]rade affiliations or public interest messages." Thus, political copy on incidental signs located on the Subject Property is permissible under the SDMC, subject to the sign regulations contained in Section 142.1210, the permanent secondary sign regulations contained in Sections 142.1245 through 142.1250, and any other applicable sign regulations for that zone.

Temporary secondary signs "are used for a specific reason for a specific period of time." SDMC § 142.1215(b)(2). Although the SDMC does not explicitly allow or prohibit political copy on such signs, SDMC section 142.1210(a)(10) states:

The owner of any *sign* which is otherwise allowed by this chapter may substitute noncommercial copy in lieu of any other commercial or noncommercial copy. This substitution of copy may be made without any additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or favoring of any particular noncommercial message over any other noncommercial message. This provision prevails over any more specific provision to the contrary.

Therefore, political copy may be substituted for any commercial or noncommercial copy on any sign otherwise allowed under Chapter 14 of the SDMC, including temporary secondary signs.

IV. Political Copy on Signs Located on the Subject Property is Subject to the Sign Criteria Contained in the Applicable Development Permit

The Subject Property is governed by Naval Training Center (MMRP) Master Planned Development Permit/Coastal Development Permit No. 99-1076, recorded as Document No. 2002-0193944 on March 7, 2002 [Permit]. Condition No. 34 of the Permit states: "All signage associated with this development shall be consistent with sign criteria established by all of the following: a. The *NTC Urban Design Guidelines and NTC Guidelines for the Treatment of Historic Properties*; b. The *NTC Precise Plan/LCP*; c. Citywide sign regulations; and d. the Peninsula Community Plan."

Thus, in addition to the sign regulations contained in the SDMC (discussed above), political copy on signs located on the Subject Property is subject to the sign criteria contained in the Permit.

V. Political Copy on Signs Located on the Subject Property is Not Subject to Council Policy No. 700-11

Council Policy No. 700-11 [Policy] prohibits political activities on City-owned property that is leased at less than fair market value. The Policy defines political activities as "activities primarily focused on publicly endorsing or actively campaigning for or against the nomination or election of any person to any public office (partisan or non-partisan), or for the adoption or defeat of any ballot measure." The Policy requires that this prohibition be a condition in all such leases and subleases, and applies to all leases granted in accordance with Council Policy Nos. 700-03 ("Use of City-owned Land by Youth Sports Organizations"), 700-04 ("Balboa Park Uses and Occupancy"), 700-08 ("Mission Bay Park Policies"), and 700-12 ("Disposition of City Property to Nonprofit Organizations").

Although the Subject Property is leased at less than fair market value (i.e., \$1.00 per year), the Subject Property is not owned by the City, but by the Redevelopment Agency of the City of San Diego [Agency]. Pursuant to the First Amended Agreement between the City and the Agency, dated July 30, 1991, all services provided by the City to the Agency will be carried out in accordance with the Agency's regulations and policies unless no Agency regulation or policy exists, in which case, City regulations and policies shall apply.⁴ Here, because no City services to the Agency are involved, political copy on signs located on the Subject Property is not subject to the Policy.

⁴ This provision does not apply to the Centre City Development Corporation or the Southeast Economic Development Corporation.

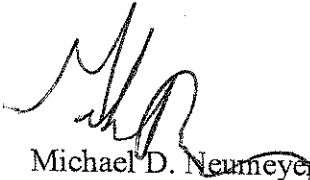
CONCLUSION

Based on the foregoing, political copy on signs located on the Subject Property is permissible under the SDMC, subject to the applicable sign regulations in the SDMC and sign criteria in the Permit. Such political copy is not subject to Council Policy No. 700-11 because the Subject Property is not owned by the City and no City services to the Agency are involved.

Respectfully submitted,

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cc: Robert Vacchi, Deputy Director, Neighborhood Code Compliance Division
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