CITY OF SAN DIEGO
M E M O R A N D U M

DATE: May 5, 2004

TO: Honorable Mayor and City Council

FROM: Marcia K. Samuels, Neighborhood Code Compliance Department Director

SUBJECT: Campaign Signs

This memo is intended to respond to issues raised by Mr. John Dean during Non-Agenda Public Comment at the City Council meeting of March 23, 2004.

BACKGROUND:

We believe Mr. Dean made the following key points during his comments:

1) Political campaigns and independent organizations affiliated with campaigns are posting signs on public property in violation of the Code, and are posting signs on private property without the property owner's permission. He believes these signs are visual pollution and that the practice is costly to business owners and lowers property values. The instances he cited were mainly related to campaign signs posted at commercial properties (strip malls, parking lots, etc.).

2) The City Council should amend the Land Development Code to require responsible parties to retain written authorizations/records on file with the City Clerk for signs they post on private property.

"General Sign Regulations" are included in the Land Development Code in Chapter 14, Article 2, Division 12. Campaign sign regulations are not delineated in a separate section. It is unlawful per San Diego Municipal Code (SDMC) Section 142.1206 to post any sign in the public right-of-way. Signs on private property are restricted by size and type per the zone in which the property is located. In general, the code states that signs on private property shall contain "on premises" or "public interest" messages only. Public interest messages include campaign/political signs. There is no limit to the number of campaign signs that can be posted on private property (other than the total area restrictions), nor are there any explicit requirements to ask private property owners for permission to post campaign signs.

The Neighborhood Code Compliance Department (NCCD) was directed by the Public Safety & Neighborhood Services Committee on October 10, 2001 to aggressively respond to complaints regarding illegally placed campaign signs. Since that time, NCCD has been very responsive to

complaints concerning campaign sign violations on public property by: responding generally within 24 working hours of the complaint, removing illegally posted signs, and taking enforcement actions as appropriate. Previous attempts to respond to campaign sign complaints in residential areas were received negatively by constituents.

SDMC Section 95.0137 presumes the responsible party for campaign sign violations as the person or organization whose name appears on the sign. In a legal opinion dated April 8, 2002, City Attorney Casey Gwinn concluded in part that: *"Deletion of the presumption making candidates or campaign supporters whose names appear on campaign 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. ... different legal concerns surround time limits for both public and private property."* Please see the attachment for the complete legal opinion.

DISCUSSION:

Current regulations make it difficult and impractical to perform effective code enforcement on campaign signs on private property.

The City of San Diego's sign ordinance is very restrictive on private property in single-unit residential zones. Permanent signage is limited to address, nameplate, and accessory warning signs such as, "No Parking," or "Beware of Dogs" (maximum sign area 1 sq. ft.). Some types of temporary signs are also permitted with similar restrictions on square footage. However, there are no square footage requirements in the Code for campaign signs.

In commercial and industrial areas, signage is based on several factors, beginning with the zone, the width of the street, existing building frontage and existing signage. While generally the sign code is most restrictive in coastal areas, private commercial and industrial properties can choose from combinations that include ground, wall, roof, and projecting signs. The maximum amount permitted is 300 sq. ft. for a ground sign, 350 sq. ft. for wall signs, 100 sq. ft. for a roof sign, and 160 sq. ft for a projecting sign. These commercial and industrial regulations are not easily applied to campaign signs. To conduct effective enforcement under current code requirements, inspection and measurement of each existing sign is required to determine allowable signage, which would be extremely labor-intensive.

We believe that current enforcement remedies, including Administrative Citations for $100, $250 and $500 per sign, are adequate to properly handle these violations.

RECOMMENDATIONS:

Though we believe that current enforcement actions are appropriate and effective for campaign sign violations on public rights-of-way, and that most residents are tolerant of campaign signs because of their temporary nature, staff offers the following code modifications for Council consideration:

1) Create/consolidate all references to political/campaign signs into one separate section of the Land Development Code that enumerates the requirements related strictly to temporary signs of this nature. Given the temporary nature of campaigns and the issues regarding First Amendment protections, standard sign regulations are not easily applicable. Furthermore, the regulations would be more attainable and understandable to political campaigns, candidates, and independent organizations that are involved in campaigns if they were not scattered through the Code.

2) Establish a time frame before and after an election when political signs are permitted to be posted. The City of Sacramento allows 90 days before the election and 15 days after the election.

3) Modify the definition of "responsible party." During a campaign, there are three potential parties that could be responsible for a campaign sign violation: the candidate's campaign, an independent organization in support of the candidate, and the private property owner. The Code currently identifies the Responsible Party as the candidate.

4) Limit the number of campaign signs and/or the square footage that can be placed on any single property, pole, post, structure, or fence. Delete zone and setback requirements.

5) Require that campaigns get written permission from a private property owner prior to posting any signs on their property. Campaigns could be responsible for retaining written permission and making it available upon request by City code enforcement officials.

6) Add enforcement provisions for failure to comply with new code amendments.

The Neighborhood Code Compliance Department (NCCD) will serve as the enforcement authority for the current as well as any future sign regulations; however, the drafting of the regulations is best handled by a joint effort between NCCD, the Development Services Department, and the City Attorney.

Staff recommends bringing this proposal before the Land Use & Housing Committee (LU&H) for further consideration. The Fiscal Year 2005 Development Services Work Program for the Land Development Code has already been approved by LU&H. In order to allocate the sufficient staff resources required to make these Code modifications, the FY 05 Work Program would need to be modified, or this task added to the FY 06 Work Program.

I may be contacted at (619) 236-5502 if you have questions or need further information.

Marcia /C - Samuels

Marcia K. Samuels, Director
Neighborhood Code Compliance Department

MKS/SFC/pkj

Attachment: April 8, 2002 Memo from City Attorney Casey Gwinn to PS&NS

cc: Casey Gwinn, City Attorney
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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, 95.0111, 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,

CASEY GWINN
City Attorney

WWW:cdk
Attachment
RC-2002-5

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January 3, 1990

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

TEMPORARY EXEMPTION OF POLITICAL ADVERTISING AND SIGNS FROM CITY'S SIGN CODE ORDINANCE

I have been asked to respond to a question regarding the legality of exempting political advertising and signs from the provisions of the City's Sign Code Ordinance (codified in the Municipal Code as section 95.0101 et seg.) for a period of three (3) weeks prior to a municipal election. This report is being sent to you to advise you of possible adverse consequences associated with such an action.

Section 95.0101 forbids the placement of advertising structures or signs over or upon public property unless otherwise authorized in the Municipal Code. Exceptions to this general rule enacted over the last couple of years include the allowance of advertising in transit shelters and establishment of the Downtown Banner Program which permits copy to be placed on banners hung along a section of the downtown Broadway corridor.

As you know, the City was involved in costly and protracted litigation over various provisions of the sign code, including the placement of billboards and other signs on public property; e.g., Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981). Exempting political advertising and signs from the sign code, even on a temporary basis, could seriously undercut the ability of the sign code administrator and my office to continue to uphold the general ban of signs or advertising in the public right-of-way.

There are two primary concerns. The first is that even though political advertising or signs would be exempted for a minimal amount of time, the exemption would commence on a regular basis; i.e. during every election. The cumulative effect of such an exemption would result in a major deviation from the general intent of the City's current sign program.

The second concern revolves around exempting a particular type of speech, in this case political, from the sign code

ordinance. Our current sign regulations are "content-neutral." Such regulatory schemes have been held proper since they do not favor one viewpoint or type of speech over another. City Council v. Taxpayers for Vincent, 466 U.S. 789, 804 (1984).

In City Council v. Taxpayers for Vincent, plaintiffs, Taxpayers for Vincent, sought an injunction to stop enforcement of a local ordinance that prohibited the placement of posters on public utility poles and similar objects. Plaintiffs who wished to place campaign signs on the utility poles, claimed the ordinance created an unconstitutional prohibition of their free speech rights under the First Amendment.

The Supreme Court held against the plaintiffs stating there were sufficient governmental interests, such as traffic control and safety "to justify this content-neutral, impartially administered prohibition against the posting of appellee's temporary signs on public property . . . ." City Council v. Taxpayers for Vincent, 466 U.S. at 817. Speaking directly to the question of exempting political speech, the Supreme Court stated on page 816:

> To create an exception for appellees' political speech and not these other types of speech might create a risk of engaging in constitutionally forbidden content discrimination.

Exempting political signs from the City's sign code would appear to be in direct contraposition to the holding in the Vincent case.

Finally, please be aware that if the City's sign code regulations are challenged, every exception to the overall regulatory scheme will be closely scrutinized to determine if the general ban on signage in the public right-of-way can continue to be justified.

Respectfully submitted,

JOHN W. WITT
City Attorney

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