



PLANNING COMMISSION

AGENDA REPORT

MEETING DATE: JUNE 13, 2016

ITEM NUMBER: PH-1

SUBJECT: CODE AMENDMENT CO-16-01 – AMENDMENT TO TITLE 13, CHAPTER VIII, ARTICLES 2, 6 & 6.5, POLITICAL CAMPAIGN SIGNS AND PORTABLE SIGNS WITHIN PUBLIC RIGHT-OF-WAY AND TABLE 13-115 OF THE COSTA MESA MUNICIPAL CODE

DATE: JUNE 6, 2016

FROM: PLANNING DIVISION/DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: WILLA BOUWENS-KILLEEN
ZONING ADMINISTRATOR

FOR FURTHER INFORMATION CONTACT: WILLA BOUWENS-KILLEEN, AICP (714) 754-5153
willa.bouwens-killeen@costamesaca.gov

DESCRIPTION

Code Amendment CO-16-01 is a Zoning Code amendment related to portable signs placed within public right-of-ways. Portable signs are not permanently affixed to the ground, structure(s), or a building; these signs include commercial advertisements, realty signs, political campaign signs, directional signage, etc. The proposed code amendment relates to the following:

- Create new definitions to distinguish between commercial and non-commercial portable signs due to a recent United States Supreme Court ruling.
- Establish sign regulations specifying allowable time periods and installations for commercial and non-commercial signs in the public right-of-ways.

RECOMMENDATION

Recommend that the City Council approve the ordinance and give first reading.

BACKGROUND

At the end of 2014 election season, it was suggested that the City's Sign Code and policy, as it pertains to temporary signs (which includes political campaign signs but does not distinguish between types of temporary signs) be reviewed for possible modifications based on issues such as number of signs displayed throughout the City; overall cost to remove the signs; and where the signs were placed.

During the November 2014 general election season, a total of 1,813 temporary/political campaign signs were removed. The majority were placed in public rights-of-ways outside the permissible display time of Friday morning to Sunday evening. Experience with temporary/political campaign signs in 2012 led the Building Official to hire two contractors to remove signs on Mondays and Tuesdays starting the last week of September and ending the last week after the election; final cost for the contractors was \$9,600.00.

Additional costs – albeit as part of regular staff salaries – were incurred: In-house staff also removed signs when complaints were received on Wednesdays and Thursdays, and the signs had to be stored and then disposed. (Code requires that campaign signs be retained until after Election Day.)

Since that time, the United States Supreme Court has made a ruling in the *Reed vs. Town of Gilbert*, which impacts most cities' sign ordinances. The Court held that the Town of Gilbert's sign ordinance was a content based restriction on speech due to its categorization of temporary, non-commercial signs into different types.

The ordinance included various restrictions on the size, location, and duration that political, directional, and ideological signs could be displayed in the city. The Court found that because the ordinance "on its face" drew a distinction based on the message a sign conveys, the ordinance was subject to strict scrutiny and could only be justified if it was narrowly tailored to serve a compelling government interest. As such it was determined that the ordinance was not content neutral. To avoid this, cities have since amended their codes by treating all temporary, non-commercial signs the same, irrespective of their nature including, but not limited to, campaign and other political signs.

At the City Council meeting of January 5, 2016, City Council gave direction to Staff to proceed with modifications to Code, including specific parameters. Links to the staff report prepared for that meeting as well as the minutes of the meeting are provided below:

Staff report: <http://www.costamesaca.gov/ftp/council/agenda/2016/2016-01-05/NB-1.pdf>

Minutes: <http://www.costamesaca.gov/modules/showdocument.aspx?documentid=20747>

ANALYSIS

Code Amendment CO-16-01

New Definitions for Commercial and Non-commercial Portable Signs

Three sections are proposed to be amended, as well as the related definitions. First, as contained under Costa Mesa Municipal Code Section 13-111, *Portable Signs* and *Political*

Campaign Signs will now be classified as *Commercial Portable Signs* and *Non-Commercial Portable Signs*, respectively. This distinction is in response to the *Reed vs. Town of Gilbert*, which also reflects the need for content neutrality. The proposed changes are as follows:

Commercial portable sign. Any sign which can be moved from place to place which is not permanently affixed to the ground or to a building **used for commercial purposes**. The term portable sign includes, but is not limited to, any sign affixed to an automobile, truck, trailer, or other vehicle where such sign solicits patronage to a specific business by means of parking such a vehicle primarily for the purpose of advertising such business. The term portable sign shall also include a sign posted in or on a vehicle parked on public or private property without written consent of the property owner, advertising that vehicle for sale.

~~Political campaign sign.~~ **Non-commercial portable sign.** A sign indicating the name and/or picture of an individual seeking election to a public office, or concerning any issue, ballot measure or ballot proposition in a municipal, community, state or federal election, or pertaining to the advocating by persons, groups, or parties of political view or policies regarding a matter to be voted on in a forthcoming election. **Any sign which can be moved from place to place which is not permanently affixed to the ground or to a building which is not used for commercial purposes. Examples of non-commercial signs generally include, but are not limited to, signs that espouse a political or religious viewpoint, and signs commenting on public official(s) or matter(s) of public discourse.**

Allowable Time Frames for Non-Commercial Portable Signs

The primary changes involve when and how long political campaign signs – now non-commercial portable signs – can be placed. Based on City Council’s direction in January, non-commercial portable signs will still continue to be allowed to be placed in public right-of-ways like commercial portable signs, but will also be allowed to remain in place for a 4-week period (staff now recommends a 6 week window) before any municipal, community, state or federal elections; basically, any election that directly serves the residents of the City of Costa Mesa. Additionally, there is now a deadline for removal of the non-commercial portable signs after an election; placement parameters are also included for safety purposes:

ARTICLE 6. POLITICAL CAMPAIGN SIGNS PORTABLE SIGNS WITHIN THE PUBLIC RIGHT-OF-WAY

Sec. 13-123. POLITICAL CAMPAIGN SIGNS NON-COMMERCIAL PORTABLE SIGNS

- (a) ~~Any person, party, entity, or group posting political campaign signs within the boundaries of the city shall first file a statement with the city clerk designating the person or entity responsible for posting the political campaign signs in the city and liable for the estimated actual cost of removal of the political campaign signs to ensure compliance with the provisions of this article, and such statement shall certify to the city clerk that consent has been obtained from the owners, lessees or occupants of non-publically owned real property prior to placement of political campaign signs thereon. Only one (1) political campaign sign statement is required~~

of any party or group, regardless of the number of individuals posting signs on its behalf.

- ~~(b) All political campaign signs shall be removed not later than ten (10) days following the date of any election to which they pertain, if any.~~
- ~~(c) No political campaign sign shall be placed or posted on any public property or utility pole, except on or within a public right-of-way pursuant to the provisions of [section 13-123.5](#), Portable Signs within Public Right-of-Way.~~
- ~~(d) No political campaign sign shall be lighted, either internally or externally.~~
- ~~(e) No political campaign sign shall be placed in a manner that would obstruct visibility to pedestrian or vehicular traffic.~~

(a) **Standards.** A non-commercial portable sign may be placed on or within the public right-of-way without a permit, provided it complies with the following requirements:

- (1) **Size and height.** The maximum size shall not exceed five square feet and the maximum height shall not be more than three feet above grade.
- (2) **Identification.** The owner of the signs(s) shall affix its name, address, and telephone number to the sign prior to installation of the sign.
- (3) **Location.** The location for installation of a non-commercial portable sign within the public right-of-way shall be subject to the following:
 - a. The sign may be placed in any landscaped parkway but not within the center median of any street or highway. Tree wells shall not be considered a landscaped parkway for the purposes of this section;
 - b. The sign shall not overhang any street, curb, sidewalk, or driveway;
 - c. The sign shall not be within 15 feet of any fire hydrant;
 - d. The sign shall not be within 15 feet of the edge of any driveway nor within 15 feet of any intersection of an alley, street, or highway, as measured from the midpoint of the corner radius;
 - e. The sign shall not be placed within the public right-of-way adjacent to any property zone I & R, or I & R-S;
 - f. The sign shall not be affixed to traffic control devices, government signs, light standards, utility poles, bus shelters, or other structures, posts, fences, shrubs or trees.
- (4) **Installation.** The installation of the non-commercial portable sign shall not cause damage to the public right-of-way.
- (5) **Time Period.** In general, a non-commercial portable sign in the public right-of-way shall only be displayed during the time period between 6 am Friday to 6 pm Sunday of any week period. However, during the six-week period before any election of any level of federal, state, or local government that directly serves the residents of the City of Costa Mesa, non-commercial signs be installed in the public right-of-way regardless of the day or time. Such signs are to be removed no later than 10 days following the date of such election.

(b) **Exceptions.** The requirements of this section shall not apply to a non-commercial portable sign with a total area of not more than five square feet that is carried by a person within the public right-of-way unless prohibited by Section 13-112.

~~ARTICLE 6.5 PORTABLE SIGNS WITHIN PUBLIC RIGHT-OF-WAY~~

Sec. 13-123.5 COMMERCIAL PORTABLE SIGNS WITHIN PUBLIC RIGHT-OF-WAY

- (a) **Standards.** A **commercial** portable sign may be placed on or within the public right-of-way without a permit, provided it complies with the following requirements:
- (1) **Size and height.** The maximum size shall not exceed five square feet and the maximum height shall not be more than three feet above grade.
 - (2) **Identification.** The owner of the signs(s) shall affix its name, address, and telephone number to the sign prior to installation of the sign.
 - (3) **Location.** The location for installation of a **commercial** portable sign within the public right-of-way shall be subject to the following:
 - a. The sign may be placed in any landscaped parkway but not within the center median of any street or highway. Tree wells shall not be considered a landscaped parkway for the purposes of this section;
 - b. The sign shall not overhang any street, curb, sidewalk, or driveway;
 - c. The sign shall not be within 15 feet of any fire hydrant;
 - d. The sign shall not be within 15 feet of the edge of any driveway nor within 15 feet of any intersection of an alley, street, or highway, as measured from the midpoint of the corner radius;
 - e. The sign shall not be placed within the public right-of-way adjacent to any property zone I & R, or I & R-S;
 - f. The sign shall not be affixed to traffic control devices, government signs, light standards, utility poles, bus shelters, or other structures, posts, fences, shrubs or trees.
 - (4) **Installation.** The installation of the **commercial** portable sign shall not cause damage to the public right-of-way.
 - (5) **Time period.** A **commercial** portable sign shall only be displayed during the time period between 6 am Friday to 6 pm Sunday of any week period.
 - (6) **Number.** The total number of **commercial** portable signs per owner or its agent pursuant to this section shall not exceed 10 signs in the city at any one time.
- (b) **Exceptions.** The requirements of this section shall not apply to a **commercial** portable sign with a total area of not more than five square feet that is carried by a person within the public right-of-way unless prohibited by Section 13-112.

Lastly, the table under Section 13-115 will need to be modified to replace references to political campaign signs with the non-commercial portable sign terminology.

These new requirements should reduce the amount of staff time involved in the enforcement of the political campaign signs as well as allowing the City's Sign Code to comply with the Supreme Court's ruling.

GENERAL PLAN CONFORMITY

The proposed amendment to the Sign Ordinance is consistent with the following objective of the General Plan:

Objective LU-1F. Establish policies, standards, and procedures to minimize blighting influences and maintain the integrity of stable neighborhoods.

PUBLIC NOTICE

Code requires publication of a display advertisement in the local newspaper (Daily Pilot) for amendments to Title 13 Code Amendments. At the time of publication of this report, no public comments have been received. Any correspondence will be forwarded to the Planning Commission under separate cover.

ENVIRONMENTAL DETERMINATION

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to CEQA Guidelines Section 15061(b)(3) (general rule), in that it can be seen with certainty that there is no possibility that the proposed amendment to the Zoning Code will have a significant effect on the environment, as this regulation affects only temporary signage, the revisions caused by the ordinance are technical, rather than substantive in nature, and this ordinance authorizes that which is, for practical purposes, nearly the baseline condition.

LEGAL REVIEW

The staff report and the draft ordinance have been reviewed and approved by the City Attorney.

CONCLUSION

Adoption of the ordinance will allow compliance with the recent ruling by the United States Supreme Court and will reduce the staff time expended to enforce rules on campaign signs.



WILLA BOUWENS-KILLEEN, AICP
Zoning Administrator



GARY ARMSTRONG, AICP
Economic Development & Development
Services Director/Deputy CEO

Attachment: 1. Draft Ordinance

Distribution: Economic Development & Development Services Director/Deputy CEO
Senior Deputy City Attorney
Public Services Director
City Engineer
Transportation Services Manager
Fire Protection Analyst
File (2)

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ORDINANCE NO. 16-

**AN ORDINANCE OF THE CITY COUNCIL OF COSTA MESA,
CALIFORNIA ADOPTING ZONING CODE AMENDMENT CO-16-01
AMENDING TITLE 13, CHAPTER VIII, ARTICLES 2, 6 & 6.5,
POLITICAL CAMPAIGN SIGNS AND PORTABLE SIGNS WITHIN
PUBLIC RIGHT-OF-WAY AND TABLE 13-115**

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: FINDINGS

The City Council finds as follows:

- a. The City controls the rights of way within the city, and, as property owner, has greater ability to regulate what speech may or may not occur in the right of way than it does on private property.
- b. The City could lawfully prohibit all temporary non-commercial and commercial signage in the right of way.
- c. In the four weeks prior to an election, there is a greater desire by the public to place non-commercial signage in the city's right of way than in the period after an election.
- d. The city has significant interest in promoting traffic safety and protecting the aesthetics of the community.
- e. Especially in the four weeks prior to elections, the city incurs substantial direct and indirect costs in enforcing strict regulations upon the placement of non-commercial signage within the city's right of way.
- f. The best way to balance the public's desire to place signage within the right of way with the need for the city to promote community aesthetics and traffic safety is to establish reasonable, content neutral time-place manner restrictions which allow the public to place signage within the city's right of way in the four weeks prior to an election.
- g. This ordinance will revise the municipal code to better align the code with the 2015 U.S. Supreme Court case, *Reed v. Town of Gilbert*.
- h. The ordinance is intended to treat all non-commercial portable signs in an equal manner, regardless of the content of such signs.
- i. The regulations established by this ordinance do not impermissibly infringe upon speech as there are multiple alternate methods via which the public may communicate including via signs placed on private property in a manner consistent with applicable law.

SECTION 2: Title 13, Chapter VIII, Article 2, Definitions of the Costa Mesa Municipal Code, is hereby amended as follows:

Commercial portable sign. Any sign which can be moved from place to place which is not permanently affixed to the ground or to a building **used for commercial purposes**. The term portable sign includes, but is not limited to, any sign affixed to an automobile, truck, trailer, or other vehicle where such sign solicits patronage to a specific business by means of parking such a vehicle primarily for the purpose of advertising such business. The term portable sign shall also include a sign posted in or on a vehicle

parked on public or private property without written consent of the property owner, advertising that vehicle for sale.

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SECTION 3: Title 13, Chapter VIII, Table 13-115 (“Sign Regulations and Design Standards”), is hereby amended as follows:

	RESIDENTIAL ZONES	COMMERCIAL ZONES	INDUSTRIAL ZONES	INSTITUTIONAL ZONES
POLITICAL CAMPAIGN NON-COMMERCIAL PORTABLE SIGNS ON PRIVATE PROPERTY	5 sq. ft. maximum per sign/ maximum 3 foot height above grade	Subject to Section 13-123 .		
COMMERCIAL PORTABLE SIGNS WITHIN THE PUBLIC RIGHT-OF-WAY	Subject to Section 13-123.5 .			

SECTION 4: Title 13, Chapter VIII, Article 6, Political Campaign Signs, is hereby amended as follows:

ARTICLE 6. ~~POLITICAL CAMPAIGN SIGNS~~ **PORTABLE SIGNS WITHIN THE PUBLIC RIGHT-OF-WAY**

Sec. 13-123. ~~POLITICAL CAMPAIGN SIGNS~~ **NON-COMMERCIAL PORTABLE SIGNS**

(a) ~~Any person, party, entity, or group posting political campaign signs within the boundaries of the city shall first file a statement with the city clerk designating the person or entity responsible for posting the political campaign signs in the city and liable for the estimated actual cost of removal of the political campaign signs to ensure compliance with the provisions of this article, and such statement shall certify to the city clerk that consent has been obtained from the owners, lessees or occupants of non-publically owned real property prior to placement of political campaign signs thereon. Only one (1) political campaign sign statement is~~

~~required of any party or group, regardless of the number of individuals posting signs on its behalf.~~

~~(b) All political campaign signs shall be removed not later than ten (10) days following the date of any election to which they pertain, if any.~~

~~(c) No political campaign sign shall be placed or posted on any public property or utility pole, except on or within a public right-of-way pursuant to the provisions of [section 13-123.5](#), Portable Signs within Public Right-of-Way.~~

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- a. The sign may be placed in any landscaped parkway but not within the center median of any street or highway. Tree wells shall not be considered a landscaped parkway for the purposes of this section;
- b. The sign shall not overhang any street, curb, sidewalk, or driveway;
- c. The sign shall not be within 15 feet of any fire hydrant;
- d. The sign shall not be within 15 feet of the edge of any driveway nor within 15 feet of any intersection of an alley, street, or highway, as measured from the midpoint of the corner radius;
- e. The sign shall not be placed within the public right-of-way adjacent to any property zone I & R, or I & R-S;
- f. The sign shall not be affixed to traffic control devices, government signs, light standards, utility poles, bus shelters, or other structures, posts, fences, shrubs or trees.

(4) **Installation.** The installation of the non-commercial portable sign shall not cause damage to the public right-of-way.

(5) **Time Period.** In general, a non-commercial portable sign in the public right-of-way shall only be displayed during the time period between 6 am Friday to 6 pm Sunday of any week period. However, during the six-week period before any election of any level of federal, state, or local government that directly serves the residents of the City of Costa Mesa, non-commercial signs may be installed in the public right-of-way regardless of the day or time. Such signs are to be removed no later than 10 days following the date of such election.

(b) **Exceptions.** The requirements of this section shall not apply to a non-commercial portable sign with a total area of not more than five square feet that is carried by a person within the public right-of-way unless prohibited by Section 13-112.

SECTION 5: Article 6.5 of Chapter VIII of Title 13 of the Municipal Code is deleted, and existing section 13-123.5, currently within Article 6.5, is moved to be within Article 6. Section 13-123.5 is revised as follows:

~~**ARTICLE 6.5 PORTABLE SIGNS WITHIN PUBLIC RIGHT-OF-WAY**~~

Sec. 13-123.5 COMMERCIAL PORTABLE SIGNS WITHIN PUBLIC RIGHT-OF-WAY

- (a) **Standards.** A **commercial** portable sign may be placed on or within the public right-of-way without a permit, provided it complies with the following requirements:
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 - e. The sign shall not be placed within the public right-of-way adjacent to any property zone I & R, or I & R-S;
 - f. The sign shall not be affixed to traffic control devices, government signs, light standards, utility poles, bus shelters, or other structures, posts, fences, shrubs or trees.
 - (4) **Installation.** The installation of the **commercial** portable sign shall not cause damage to the public right-of-way.
 - (5) **Time period.** A **commercial** portable sign shall only be displayed during the time period between 6 am Friday to 6 pm Sunday of any week period.
 - (6) **Number.** The total number of **commercial** portable signs per owner or its agent pursuant to this section shall not exceed 10 signs in the city at any one time.
- (b) **Exceptions.** The requirements of this section shall not apply to a **commercial** portable sign with a total area of not more than five square feet that is carried by a person within the public right-of-way unless prohibited by Section 13-112.

SECTION 6: ENVIRONMENTAL DETERMINATION. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to CEQA Guidelines Section 15061(b)(3) (general rule), in that the City Council hereby finds that it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment as this regulation affects only temporary signage, the revisions caused by the ordinance are technical, rather than substantive in nature, and this ordinance authorizes that which is, for practical purposes, nearly the baseline condition.

SECTION 7: INCONSISTENCIES. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies and or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

SECTION 8: SEVERABILITY. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

SECTION 9: PUBLICATION. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this _____ day of _____ 2016.

Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

