Memorandum 12-008 Amending City Sign Code

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MEMORANDUM 12-007

TO: MAYOR AND CITY COUNCIL MEMBERS

FROM: THOMAS F. KLINKNER

RE: SUBSTITUTE ORDINANCE AMENDING CITY SIGN CODE

CLIENT: CITY OF HOMER

FILE NO.: 506,742.521

DATE: JANUARY 4, 2012

Presented among ordinances for introduction at the January 9, 2012 Council meeting is an ordinance that makes numerous amendments to HCC 21.60, the City's sign code. The Homer Advisory Planning Commission developed these amendments with the advice and assistance of the Planning Department and the City Attorney. Accompanying this memorandum is a substitute ordinance amending the sign code, which includes the following changes that I recommend to the ordinance recommended by the Commission.

1. Definition of window sign (Section 1, page 4, lines 146-149). This definition is revised to delete language that is redundant with the definition of "sign" in the same code section and to clarify that the definition does not apply to a sign that is visible only within a building.

2. Section 4, table and annotations. This table (page 6) and the annotations to this table are revised as follows:
• Freestanding/Other. The correct annotation reference letter is "i" rather than "j".
• Freestanding/Incidental. The "c" annotation reference under "INS" is redundant and is deleted.
• Building/Marquee and Building/Suspended. The former "g" annotation (page 7, lines 196-200), which imposed a liability insurance requirement for certain marquee and suspended signs, has been deleted, so the "g" annotation reference for these two rows also should be deleted.
• "b" annotation (page 7, lines 188-189). The last part of this annotation conflicts with the definition of "residential sign" in HCC 21.60.040, and should be deleted.
• Former "j" annotation (page 7, lines 207-208). This annotation applied to "portable signs", a category of sign that has been combined with temporary signs in the revised sign code, and should be deleted.

3. Section 7, page 9, lines 234-236. The deletion of the language stricken through was omitted inadvertently from the ordinance.
4. Section 10 (page 11, line 292). As part of my advice to the Commission on the development of this ordinance, I recommended that the Commission eliminate the separate regulation of "electoral signs" in HCC 21.60.095. HCC 21.60.040 defined "electoral sign" as "any sign used for the purpose of advertising or promoting a political party, or the election or defeat of a candidate, initiative, referendum or proposition at an election." The Commission declined to follow this advice, instead proposing an amendment to HCC 21.60.095(d) in Section 10 of the ordinance that would reduce the permitted area of an electoral sign from 32 to 16 square feet.

In the substitute ordinance I have reinstated the repeal of HCC 21.60.095 and the deletion of the definition of "electoral sign" in HCC 21.60.040. As the definition of electoral sign in HCC 21.60.040 demonstrates, this regulation categorizes and regulates signs based on their content, i.e., the category of message that they communicate—promoting a political party, or the election or defeat of a candidate, initiative, referendum or proposition at an election. Courts subject regulations of speech based on the content of the message to extremely

stringent scrutiny under the First Amendment to the U.S. Constitution, and rarely approve them.

An additional problem with the regulation of electoral signs in HCC 21.60.095 is that HCC 21.60.095(b) limits the time when an electoral sign may be displayed to within 60 days before an election. Several cases have held that a 60-day time period is too restrictive; the case law does not identify any longer period as being legally sufficient.

Moreover, other content-neutral provisions of the sign code confer the same public benefits that would arise from specifically regulating electoral signs. Most electoral signs are “temporary signs” as that term is defined in HCC 21.60.040. HCC 21.60.130(a)(3) requires that a temporary sign whose message pertains to a specific date, event, or time period shall not be displayed for more than seven days after that date or the conclusion of the event or time period. With very limited exceptions that would not apply to electoral signs, the amended sign code permits only permanent signs on public property, including public rights-of-way. Thus, under the substitute ordinance, electoral signs would be permitted only on private property as non-commercial temporary signs under HCC 21.60.130(c).

5. Section 20, page 14, line 449. The effective date of the ordinance should be March 1, 2012.

I will be available at the January 9, 2012 Council meeting to answer questions about the substitute ordinance and this memorandum.

cc: Jo Johnson
Rick Abboud

Related Ordinances**Memorandum - Related Ordinances:** Ordinance 12-01(S)(A) Amending the Sign Code

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