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MEMORANDUM

Planning & Development – PZ Memo No. 10-037

DATE: MARCH 26, 2010

TO: PLANNING AND ZONING COMMISSION

THRU: PATRICK MCDERMOTT, ASSISTANT CITY MANAGER *PM*
JEFF KURTZ, ASSISTANT PLANNING & DEVELOPMENT DIRECTOR *JK*
KEVIN MAYO, PLANNING MANAGER *KM*

FROM: JASON CRAMPTON, CITY PLANNER *JC*

SUBJECT: ZCA10-0004 NON-COMMERCIAL SIGNS

Request: City initiative to amend Chapter 39 (Sign Code) of the Chandler City Code, by amending Sections 39-2 (Interpretation of Chapter) and 39-3 (Definitions), defining 'non-commercial message' and permitting non-commercial messages on signs permitted by the Sign Code

Applicant: City of Chandler

RECOMMENDATION

Upon finding consistency with the Chandler General Plan and precedence established by court rulings on sign regulations related to the First Amendment to the U.S. Constitution, Staff recommends approval of a Sign Code amendment as set forth in the attached Draft Ordinance No. 4209 (Exhibit "A"), pertaining to non-commercial message.

BACKGROUND

The Chandler Sign Code defines an on-site sign as "A sign which correctly identifies a business, commodity, service or entertainment conducted, sold or offered on the same premises as those upon which the sign is located, whether an attached sign or freestanding sign, and which may include other nonchangeable information that further identifies the type of business, commodity, service, or entertainment offered therein, including addresses and phone numbers." This definition essentially limits on-site signs (all signs other than billboards and some temporary signs such as political signs) to only displaying commercial messages, such as a store or business name, while at the same time prohibiting non-commercial messages, such as political or religious ideals or other statements not associated with a business or service or product offered for sale.

However, the courts have consistently held that sign codes that ban non-commercial signs or give preference to commercial messages over non-commercial messages violate the Freedom of Speech clause of the First Amendment to the U.S. Constitution. In one landmark case, *Metromedia, Inc. v. City of San Diego* (1981), the U.S. Supreme Court deemed San Diego's sign code unconstitutional on its face because it placed tighter restrictions on non-commercial signs than on commercial signs. This ruling established the precedence that a Freedom of Speech violation occurs when a sign code regulates non-commercial messages differently than commercial messages. In later cases (*Outdoor Systems, Inc. v. City of Mesa* (1993) and *Whiteco Metrocom, Inc. v. City of Tucson* (1993)), the United States Court of Appeals upheld sign codes from the cities of Tucson and Mesa because each city's code contained a "substitution provision" that allowed non-commercial messages to be displayed on any sign permitted by their respective codes.

DISCUSSION

The attached proposed Ordinance would amend the Sign Code by defining a "non-commercial message" as "A message that does not propose a commercial transaction" (Section 39-3) and by adding a provision to allow non-commercial messages to be displayed on any sign permitted by the Sign Code (Section 39-2.C). This definition and "substitution provision" would make Chandler's Sign Code consistent with Freedom of Speech rulings made by the U.S. Supreme Court, protecting the Sign Code from litigation and the possibility of the Code being deemed unconstitutional and hence invalid. This "substitution provision" approach is utilized by the majority of municipalities in the Valley, including Tempe, Scottsdale, Mesa and Gilbert.

An additional provision in the proposed Ordinance would further protect the Sign Code with regard to freedom of speech issues (Section 39-2.D). This clause emphasizes the importance of freedom of speech and the Sign Code's attempt to conform to freedom of speech requirements. Additionally, it attempts to preserve the Sign Code in the event that a portion of the Code is found to be unconstitutional due to freedom of speech limitations. This approach is utilized by the City of Mesa.

NOTIFICATION

As required by the Arizona Revised Statutes, hearing dates for Planning Commission and City Council, as well as the complete text of the draft Code amendment, have been published in the newspaper at least fifteen days prior to the first public hearing for Planning Commission.

RECOMMENDATION

Upon finding consistency with the Chandler General Plan and precedence established by court rulings on sign regulations related to the First Amendment to the U.S. Constitution, Staff recommends approval of the Sign Code Amendment as set forth in the attached Draft Ordinance No. 4209 (Exhibit "A"), pertaining to non-commercial message.

PROPOSED MOTION

Motion to recommend approval of ZCA10-0004 NON-COMMERCIAL SIGNS, Sign Code Amendment pertaining to non-commercial message as set forth in Exhibit "A", as recommended by Staff.

Attachment

1. Draft Ordinance No. 4209 (Exhibit "A")

ORDINANCE NO. 4209

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING SECTIONS 39-2 AND 39-3 OF CHAPTER 39, CODE OF THE CITY OF CHANDLER; RELATING TO SIGN REGULATIONS.

WHEREAS, in accordance with A.R.S. 9-462 *et seq.*, the legislative body may adopt by ordinance, any change or amendment to the regulations and provisions as set forth in the Chandler Zoning Code and/or the Chandler Sign Code; and,

WHEREAS, this amendment, including the draft text, has been published as an 1/8-page display ad in a local newspaper with general circulation in the City of Chandler, giving fifteen (15) days notice of time, date and place of public hearing; and,

WHEREAS, a required public hearing was held by the Planning and Zoning Commission on April 7, 2010;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

SECTION 1. Section 39-2, Chapter 39 of the Chandler City Code is hereby amended by adding new subsections C and D, to read as follows:

C. Any sign permitted by this chapter may contain non-commercial copy in lieu of any other copy.

D. Any provision of this Sign Code that imposes a limitation on freedom of speech shall be construed in a manner that is viewpoint neutral and treats expressive speech either the same as or less restrictive than commercial speech. Any provision of this Sign Code that is found to be an unconstitutional limitation on freedom of speech by any court shall be severed from this Sign Code in a manner that preserves the Sign Code and protects freedom of speech.

SECTION 2. Section 39-3, Chapter 39 of the Chandler City Code is hereby amended by adding a new definition of “non-commercial message”, to read as follows:

Non-commercial message: A message that does not propose a commercial transaction.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2010.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ____ day of _____, 2010.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4209 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2010, and that a quorum was present thereat.

CITY CLERK

Approved as to form:

CITY ATTORNEY

Published: