# *Text Amendment #2015-0005 – Sign Regulations*

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| **Issue:** Consideration of (A) initiation of a Text Amendment, and (B) Text Amendment to amend the Zoning Ordinance Article IX regarding signs on public rights-of-way. | Planning Commission Hearing: | January 5, 2016 |
| | City Council Hearing: | January 23, 2016 |
| **Staff:** Alex Dambach, AICP, Division Chief – Land Use<br>Nancy Williams, Principal Planner<br>Joanna Anderson, Assistant City Attorney | | |

**PLANNING COMMISSION ACTION, JANUARY 5, 2016:** On a motion by Commissioner Macek, seconded by Vice Chairman Dunn, the Planning Commission initiated and recommended approval of Text Amendment #2015-0005 – Sign Regulations as amended. The motion carried on a vote of 7 to 0.

Reason: The Planning Commission agreed with the staff analysis and found that there is a strong planning rationale for the text amendments to the Zoning Ordinance, City Code, and the *Wayfinding System Design Guidelines Manual* as proposed in Attachments #1-3 provided with the staff report. The Commission had considerable discussion of alternative language provided in the staff report that was proposed by some members of the Ad Hoc Committee on Signage, but it determined that the complete prohibition of non-governmental signs in the rights-of-way was the appropriate way to address the US Supreme Court Decision in *Reed v. Town of Gilbert* while maintaining a good quality of life and orderly layout of streets and public spaces.

Commissioner Macek, who is also the Chair of the Ad Hoc Committee on Signage, summarized the findings of the Group, the alternative language some members of the Group had proposed, and issues for the Commission to consider such as the use of public space for private messaging, the ability of condo and apartment residents to convey political messages, and the ability of new political candidates to convey messages if they are unable to convince property owners to host their signs. Generally, Mr. Macek proposed that it is more appropriate to leave the public rights-of-way as an area without non-governmental signs as opposed to opening entire rights of way to all types of signage during specific times of the year.

Commissioner Brown presented an analysis he had provided that would allow political signs in the right of way if a less risk-averse legal interpretation is used for the recent Supreme Court decision, but he felt that the proposal to not allow any non-governmental signs in the right of way is a more appropriate and more legally justifiable approach.

Vice Chairman Dunn provided an interpretation of the Supreme Court Decision and asked several questions of one of the speakers who was challenging the proposed text amendment. Mr. Dunn explained that the first amendment rights affected by that decision and by signage regulations are critically important, but he also stated that the City should take the risk-averse interpretation of the Decision and approve the text amendment as proposed. He also explained that the vast majority of municipalities in Virginia do not permit non-governmental signage in public rights-of-way. Mr. Dunn also proposed an amendment to language relating to banners that cross public streets to ensure that such banners are only associated with a Special Event.

Commissioner Lyman asked about the logistics of enforcing the Ordinance if there is an allowance for non-governmental signs in rights-of-way during special times of the year, and recommended that such enforcement would be very difficult and would be taxing on City resources. She recommended that the proposed text amendment without non-governmental right-of-way signage would be preferable.

Commissioner Koenig stated that he was reluctantly supporting the proposed text amendment although he felt there would be a loss of a popular method of political speech. He stated, however, that this was the best alternative available considering the Supreme Court Decision, and he preferred it to the status quo.

Commissioner Wasowski also stated that she reluctantly supported the text amendment considering it the best option because of the Supreme Court Decision, but she wished there was another way to provide political speech.

Chairperson Lyman stated that she reluctantly supports the text amendment as being the best alternative considering the Decision.

Commissioner Macek added more comments stating that he was more enthusiastic in his support than others, because this text amendment also addresses issues such as wayfinding signs for side-street businesses in Old Town and other A-Frame sign issues. He also stated that this proposal would reduce clutter on public streets.

<u>Speakers:</u>

Jeff Reid, N. Overlook Drive, spoke in opposition of the proposed text amendment stating that less political speech does not benefit the public. He cited the risk-averse nature of this proposal, and gave his interpretation of the Supreme Court Decision stating it could possibly allow the City to differentiate content in its sign regulations.

David From spoke regarding the alternate allowance of signs in rights-of-way during specific times and expressed concerns about the logistics such provisions. He also asked about the publicity of the Ad Hoc Group meetings. He also made comments about the wayfinding signs along King Street.

Phillip Matteus spoke in favor of the proposed text amendment saying that it would reduce clutter and clean up the City. He offered additional suggestions that there be a prohibition against people locking their bicycles to wayfinding signs and that unused wayfinding signage area be used to convey historical information to the public.

William Hobbs, N. Cameron Street, spoke in opposition to the proposed text amendment stating that the City was using an overbroad interpretation of the Supreme Court Decision. He also said the political signs in medians and along public rights-of-way at election time add a 'festive air' to the atmosphere, and public speech in rights-of-way is a generally good thing and informs voters about upcoming elections. He opposes the entire text amendment and argued that the ordinance as it now is written is adequate, and the City could respond if the current ordinance is legally challenged.

## I. Issue

The recent US Supreme Court ruling in *Reed v. Town of Gilbert* (June 2015) created the need for the City of Alexandria to revise its sign ordinance such that the regulations would be purely content neutral. This is a comprehensive project that is best managed in phases. The first phase, proposed herein, addresses regulations for signage in the public right-of-way, particularly political campaign signs, sidewalk A-Frame signs, and other signs that are placed outside private property. The second phase will address signs on private property. The last phase will focus on any additional changes that may need to be made to the sign regulations in historic districts to the extent they are not already addressed in phase 1 and phase 2.

The Phase 1 proposal includes text amendments to the Zoning Ordinance, City Code, and the *Wayfinding System Design Guidelines Manual*, to prohibit any non-governmental signage in the right-of-way unless an encroachment is provided. This proposal would remove the regulation of right-of-way signage from the Zoning Ordinance and instead integrate right-of-way signage regulations fully into the Streets and Sidewalks section of the City Code.

## II. Background

Zoning Ordinance and Current Policy

The Zoning Ordinance began regulating signage in 1951, and the current Sign Ordinance was adopted in 1988. Regulations specifically for political signs were last updated by Ordinance No. 4355 in 2004. The Zoning Ordinance generally prohibits signs in the right-of-way. The key exceptions are for political signs and for the King Street A-Frame Sign Program.

Political signs, under current regulations, are allowed on public rights-of-way for up to 90 days before the election and until 15 days after the election. The current regulations allow signs to be installed in public rights-of-way with restrictions on the size and location of the signs and with the posting of a bond.

The King Street A-Frame Sign Program (King Street Wayfinding) is a special wayfinding program established in November 2008. It allows restaurant and retail oriented establishments in the Central Business District that are located on side streets to collectively design and place a single, portable A-Frame sign at their nearest street corner along King Street in order to direct pedestrians to their businesses. This program's current policy was established in the 2010 *Wayfinding System Design Guidelines Manual*, and regulations were added in 2011 to the Zoning Ordinance. This program has been very popular with side street businesses, and nearly every King Street intersection has retail wayfinding signs accordingly.

*Reed v. Town of Gilbert* Decision

In June 2015 the US Supreme Court made a ruling in the case titled *Reed v. Town of Gilbert* which caused a significant change in approach to sign regulations than had previously been used in Alexandria and many other localities across the country. The case involved a sign ordinance in the Town of Gilbert, Arizona that regulated signs differently according to content-based sign types such as directional signs, church signs, and political signs. A church appealed the City's regulations because they were limited to certain size signs that they used to direct parishioners to their church, yet signs with other messages were allowed to be much larger. They argued that if the visual clutter is the concern being addressed with sign regulations, then the message on the sign should not make a difference and all types of signs should be treated fairly.

The Supreme Court took a conservative view and held that any regulation that distinguishes signs based on what they say is considered to be content based, and content based regulations are legally subject to strict scrutiny and are thus only allowed if they are narrowly tailored to serve a compelling governmental interest and other avenues of communication are available for the user of the sign. Aesthetic and safety justifications are not enough of a reason for a sign regulation to survive strict scrutiny. The ruling basically says "if you have to read the sign to know if it complies with zoning, the regulation is invalid." Based on this ruling, regulations need to be content-neutral and should be based on location, size, number, and other non-content factors.

As a result, the City's sign regulations will need to be completely revised in order to make them content neutral in accordance with the Court's ruling. Staff proposes to base a revised ordinance on a model ordinance prepared by the Local Government Attorneys of Virginia (LGA), which will also be used by other Virginia jurisdictions to ensure consistent compliance with the Court's ruling.

Specifically in regard to signs in the right-of-way, the City will no longer be able to limit the allowed signs by the type of sign. If any signs are allowed in the right-of-way, all signs including commercial signs, would also be required to be allowed in the right-of-way.

Related Issues

Staff encountered some problems with the current regulations over the years. City staff gets numerous complaints about the overabundance of campaign signs and the resulting clutter during each election period. The sign installations also create difficulty for street maintenance staff when they need to mow medians and planting strips. The King Street Wayfinding program has issues resulting from lack of sign maintenance by the collective groups of businesses that own each sign, lack of sign adaptability when businesses open or close, and problems with signs easily getting knocked over or moved such that they block pedestrian travel.

Ad Hoc Group - Policy Development

At the time of the Supreme Court Ruling staff had already been working on a solution to the issue of other types of right-of-way signs that are prohibited by the Zoning Ordinance. In the mid-to-late-2000s many individual businesses along pedestrian-oriented streets, such as King Street and Mt. Vernon Avenue, began placing their own A-Frame signs in front of their stores and restaurants, even though these signs were not permitted. Generally, public response to these installations was neutral at first, and because that time period was a major recession, enforcement against these signs was not a high priority, and was only handled on a complaint basis. Complaints about these signs were rare. Some in the business community began to support the idea of making these types of signs permissible under the Zoning Ordinance. In the summer of 2015, the City organized a 16-member Ad Hoc Group On A-Frame & Digital Signage (Group) to develop policies relating to A-Frame signs for individual businesses, improvements to the current King Street A-Frame wayfinding program, and policies for electronically changeable signage, which is also generally not permitted. The Group held numerous meetings in the summer and fall, and developed final policy recommendations on these topics, and it continues to meet as this project goes through its later phases.

The Group's policy recommendations for A-Frame signage both for individual businesses and for the King Street Wayfinding program are as follows:

Individual Business A-Frame Signage:

1. The Group considered possible ways to permit A-Frame signs in front of individual businesses along King Street and other commercial streets in Old Town, but found that the visual clutter, pedestrian travel disruptions, and maintenance challenges make individual business A-Frames in Old Town impractical.
2. The Group concluded that A-Frame signs should not be permitted in historic districts and instead should become permitted outside of regulated historic districts (outside Old Town) and only on private property with these requirements:
    a. A-Frame signs on private property should be limited to within a specific distance (15 feet) from the building face of a commercial building.
    b. A-Frame signs must be prohibited from blocking walkways and vehicle cartways on private property.
    c. There needs to be a permitting process for businesses to put out A-frame signs on their property.
    d. Safety standards are needed to avoid A-Frames falling over. This should include requirements of a minimum weight of 20 pounds; bracing to prevent the signs from flattening and falling; and durable materials such as slate, marker board, stainless steel, aluminum, aluminum composite,

laminate plastic, or medium density overlay plywood painted with enamel paint.

e. Existing maximum size limits of 42 inches in height and 24 inches in width should be maintained for A-Frame signs, and A-Frame signs should not have their size area counted as part of the area allowed for wall, hanging, or window signage on businesses.

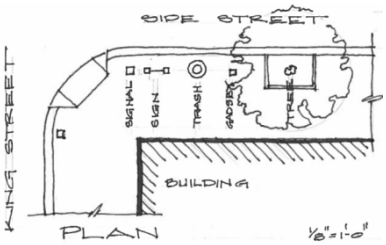
f. A-Frame signs would be prohibited in the Old and Historic Alexandria District and the Parker-Gray District

King Street Wafinding Policy Recommendations:

1. The existing King Street wayfinding A-Frame signage program has been very valuable in directing pedestrians to side street businesses and this type of program is essential to maintaining a healthy business district. A business wayfinding program should not be eliminated.
2. The current King Street A-Frame program needs improvement to avoid the current program's problems with signs that frequently fall over, are poorly maintained, get moved into walkways and block walking areas or handicap ramps, and are difficult to update when businesses open or close.
3. The Group found that an alternative sign type is needed to the current program sign model.
4. While the Group initially considered various alternative signs designs, including light-pole mounted signs, it now recommends a flat, 2-sided, sidewalk-mounted monument-style design with spaces for individual business sign panels to be inserted or removed as needed. Each business's sign panel would either be slid into a sleeve or bolted onto a track. This program would be operated and managed by the City instead of collectively by groups of businesses. Each business would apply and pay an annual fee to have their signage installed on the appropriate monument sign. Based on current usage trends found along King Street, the Group finds that there should be panel installation spaces on each sign for either 6 or 12 panels based on the number of

Sample drawing of a 12-panel sign

Sample drawing of a 6-panel sign



businesses in the vicinity, with smaller panels to be used for the 12-panel signs.

5. The Group also recommends expanding this program beyond King Street to other pedestrian-oriented shopping streets including Mt. Vernon Avenue, Washington Street, and possibly other areas, where appropriate. These other business districts would be strengthened with a similar program.
6. The new monument signs should have a maximum height of 42 inches and a maximum width of 24 inches. Locations for these signs shall take into account the need for vehicle vision clearance and pedestrian safety.

Because of the Supreme Court ruling and other policy recommendations necessitate a very thorough set of amendments to signage regulations, the recommendations made by the Ad Hoc Group will be integrated into the overall revision of the sign regulations during each appropriate phase. The first phase integrates many of the above listed policy recommendations of the Ad Hoc Group, particularly relating to the wayfinding program and the reinforcing of the prohibition of A-Frame signs on the public right-of-way. The Group's other recommendations regarding A-Frame signs on private property will be addressed as part of the second phase that will address signs on public and private off street property.

When this project of revisions to the sign regulations was expanded to include compliance with the US Supreme Court ruling, the Ad Hoc Group's role was also expanded to assist and advise staff in further revising the Zoning Ordinance and City Code in this regard. The Group met on November 11, 2015 and again on December 7, 2015 and will continue to meet to discuss these additional changes. The Group proposes the following policy recommendations for this first phase directly in relation to the Court ruling:

1. References to signage in the right-of-way should be removed from the Zoning Ordinance
2. The City Code should be amended to include regulations restricting signs in the right-of-way to governmental signage. The King Street wayfinding signage is governmental signage.
3. Half of the Group members proposed that there should be an allowance for signs to be placed in the right-of-way only during times of elections, however, the time periods of allowance should be shorter than the currently allowed 90 days before an election and 15 days after, and there should be more restrictions on these signs than currently exist in the Zoning Ordinance. The other half of the Group membership proposed that signs should not be permitted in the right-of-way, even during election times. The Group supporting election-time signs in the right-of-way proposed the following restrictions:
    a. Signs in the right-of-way should be allowed up to 30-days before and up to 7-days after a local, state, or federal election.

b. There should be an application fee and appropriate bond deposit to cover City costs for managing right-of-way signs during an election time, and there should be limit on the number of signs allowed to be installed for each election.
c. If possible, there should be distance limits for placement of signs and designated areas of the City where signs should be prohibited.

## III. Discussion of Proposed Text Changes

The *Reed v. City of Gilbert* ruling has had a significant effect on Alexandria's Zoning Ordinance, as it has affected zoning ordinances for most cities around the nation. Because of this ruling, many aspects of the current Zoning Ordinance for signage have become unenforceable. While amendments are needed for all components of the signage regulations that relate to sign content or content-based sign categories, a pressing issue is that of signs in the public right-of-way. Because the City specifically allows signs in the right-of-way in the Zoning Ordinance, which governs the land uses primarily of private parties, the City can no longer limit signage installations in the right-of-way to only political campaign signs and the King Street Wayfinding program, which are both content-based regulations. As a result, the City has been limited in its ability to enforce proliferations of other types of signs that have recently been placed in roadway medians and along the sides of streets. Because the City currently allows certain signs in the rights-of-way, it effectively has to allow all signs in the rights-of-way and is only able to regulate size and placement locations but only for traffic safety purposes. **The issue before the Planning Commission and City Council now is whether to continue to allow all types of signs in the right-of-way at all times, only at certain times (such as just before and after an election), or not at all. Staff recommends that City ordinance no longer permit any private signs in the right-of way, for several reasons.**

<u>Analysis and Remedy – Text Change</u>

The City's existing sign ordinance is a reflection of the importance that citizens place on the quality of their built environment. Signs are an important element of the streetscape, and the City has long recognized that a well-designed and harmonious streetscape provides benefits to those who experience it. One of our urban design principles is that the streets serve as important public spaces in the same ways as parks, plazas, trails and other open spaces.

Private right-of-way signs are not designed to be harmonious with their surroundings but instead to attract the attention of motorists. They generally do not display high standards of design. To overcome size limitations, multiples of the same sign are often placed in a series. They are not likely to be durable or well-maintained after the initial placement. The result is the potential for considerable visual clutter.

Private signs in the right-of-way essentially consist of turning over a portion of the public sphere to private enterprise. The City has taken steps to ensure the quality of signs on

private land that are visible from the right-of-way (which will be further addressed in the next phase of this project) including, for example, moving away from pole-mounted signs to monument signs. Staff believes it would not be workable to develop and implement a right-of-way sign program that achieves the same goals as our regulation of signs on private land without a considerable additional investment in an approval and regulatory process.

Private signs in the right-of-way, even in locations away from intersections, are a distraction for drivers and compete for their attention when they need to be focused on navigation.

Proposed are text changes to the Zoning Ordinance, the City Code, and the the *Wayfinding System Design Guidelines Manual*, which dictates policy for governmental wayfinding signage, to integrate many of the suggestions of the City's Ad Hoc Group for A-Frame and Digital Signage and to integrate staff-generated amendments based on the *Reed v. Town of Gilbert* Supreme Court ruling. For the Zoning Ordinance, the text amendments are primarily deletions of the sections that relate to public rights-of-way along with the addition of Section 9-103 (F) clarifying that right-of-way signage would not be regulated under Zoning. This is necessary in order to develop a clear delineation between signage serving a governmental purpose in the right-of-way, and signage on property the land use of which is regulated and restricted by the Zoning Ordinance. Additionally, a new Section 9-204 is added to replace the existing Section 9-108, which are the Political Sign regulations that are considered content-based, and thus, should be removed. This new section permits additional temporary signage to be added to private property only during a time period that is 90 days before an election and 15 days after an election. This new section in no way dictates the content of that signage, but only dictates the time period when that signage can be used.

Section 9-202 (F) of the Zoning Ordinance is also proposed to be removed. This is the Zoning Ordinance section that was added to support the King Street Wayfinding program. Because staff finds that wayfinding signage, even if it contains commercial information, is governmental signage it, should be governed by the City Code and by City policy documents. Accordingly, amendments are also proposed for the *Wayfinding System Design Guidelines Manual*, which governs the City's wayfinding signage program, to integrate the recommended signage changes from the Ad Hoc Group.

For the City Code, text is proposed to be added for items such as street-crossing banners, which require a City permit, and clarifying that signs in the right-of-way are encroachments on public property and should be treated as such. It also changes the penalty structure for installation for signs in rights-of-way, increasing the fines, adding the ability of the City to recover removal and enforcement costs, and making signage installation a Class IV Civil Violation. This is an important change, in that it allows enforcement activity to be taken not only by Zoning enforcement staff but by other City officers, and the fine structure becomes high enough that difficult enforcement efforts against violations such as 'bandit sign' installations (for example "We buy Junk Cars" signs), which require extensive investigatory work, become cost-effective. Also, this

amendment permits removal of such signage without the sign owner assuming any legal right to the continued presence of that sign or to any remedy for the removal of the sign.

Alternative to the Staff Recommendation – A Window (Time Period) Allowing All Signs Before and After an Election

The included text amendments would fully remove the ability for private parties, unless acting on the government's behalf, from installing any signage in the public right-of-way. Some members of the Ad Hoc Group and other have expressed concern that this amendment would remove the ability for political campaigns to place any signage on public rights-of-way, thus removing an avenue of political speech that has been quite popular in Alexandria. Half of the Ad Hoc Group membership felt that, while changes to the current political signage polices are necessary, it is also necessary to allow signs during an election time period to be placed in the right-of-way, especially to enable people who live in apartments or condominiums to have a place to post political signs. Based on these recommendations, staff is providing alternative text that could be added to the City Code if the Planning Commission and/or City Council consider it necessary to provide an avenue for limited signage allowance during the times of elections. If political signs are permitted, all other signs would have to be permitted as well.

If this alternative is selected, Ad Hoc Group members recommend that the "window" for the placement of signs before an election be limited to 30 days before an election and 7 days after. Staff is also suggesting that the total number of signs be limited to 1,500. The 1,500 number is not the result of analysis but rather informal discussion with members of the public who have been involved in placing political signs over the years and who have indicated that 1,500 signs provides sufficient, but not necessarily blanket, coverage of the City.

The window of 30 days before the election was selected because there are years with multiple elections – primaries and general elections – and long time periods could result in much of the year being open for sign placement. Neighboring Arlington County's pre-election window is 30 days.

***Sec. 5-2-172. - Exceptions.***

**(a) This article shall not apply to the following signs:**

**(1) Regulatory, traffic, or informational signs established or posted by or at the direction of an authorized City department.**

**(2) Signs required to be posted pursuant to State, local, or Federal laws.**

**(3) Temporary signs placed in the right-of-way ____ (__) days prior to and ____ (__) days after a National, State or Local Election with the following standards:**

a) **Such signs may be mounted on the ground only in the grass portion of the public right-of-way, adjacent to a street, road, highway, alley or sidewalk.**

b) **No such sign may be posted in any public garden or landscaped area.**

c) **No such sign may be placed within the public right-of-way of Washington Street, or the George Washington Memorial Parkway.**

d) **No such sign shall be placed within 15 feet of any point at which the curb or curb line of any two intersecting streets meet, within 15 feet of the end of any street median, or within any traffic channelization island.**

e) **Any sign erected or displayed within the public right-of-way shall be free standing, shall have no part of the sign or support thereof extending more than 42 inches above ground level, and shall be supported by no more than two supports, each support having dimensions of no more than one inch by two inches. The width of the sign shall be no more than 24 inches, and its thickness shall be no greater than 1 inch. Such sign is permitted to be 2-sided.**

f) **Prior to the display of any sign within the public right-of-way, a cash bond in the amount of $200.00 shall be deposited with the City Manager. The bond will be refunded unless there has been a violation of the provisions of this article, in which case the City shall retain the entire amount of the bond to defray the cost of enforcing the provisions of this article.**

g) **Signs, including sign posts or stakes, shall be removed within 7 days after the National, State or Local election.**

**(b) An application and fee shall be submitted for the installation of signs in the right-of-way. There shall be an application fee of $100 dollars. An applicant shall be permitted to post no more than one-thousand-five-hundred (1,500) signs with this application and fee payment.**

**(c) Nothing in this division shall apply to the installation of a plaque, plate, statue, or other commemorative monument or marker in accordance with permission from an authorized City Department with the approval of the City Council.**

## IV. Recommendation

Staff and the Planning Commission recommend that this text amendments contained in Attachments 1, 2, and 3 be approved in order to allow for signage in the public right-of-way to continue to be controlled in an orderly manner and to abate the current circumstances where signage in the right-of-way is generally permitted subsequent to the *Reed v. City of Gilbert* decision.

Staff: Alex Dambach, AICP, Division Chief – Land Use
Nancy Williams, Principal Planner
Joanna Anderson, Assistant City Attorney

Attachments:
1. Proposed Zoning Text Changes
2. Proposed City Code Text Changes
3. Proposed *Wayfinding System Design Guidelines Manual* Text Changes
4. Ad Hoc Group on Digital Signs and A-Frame Signs Membership Roster

**Attachment #1**

*Proposed Zoning Ordinance Changes*

ARTICLE IX. - SIGNS, MARQUEES AND AWNINGS

***Sec. 9-100 - General provisions.***

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*9-102 - Definitions.*

For purposes of this Article IX, the following words and phrases shall have the meanings ascribed to them below, unless the context otherwise indicates:

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~~**(E) Banner. Any sign appended on or from a staff, pole, wire, frame or similar support, extending across the entire width of any street, road, highway or alley.**~~

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~~**(U) Motor vehicle sign. Any sign on or attached to a motor vehicle which is being used primarily for the purpose of displaying advertising and is not being utilized in the normal business or work of the vehicle owner.**~~

*9-103 - Scope of article.*

(A) This Article IX governs the erection and display of all signs, marquees and awnings in the City, except those erected and displayed by the City, the Commonwealth of Virginia and the United States in furtherance of their governmental responsibilities and those required by law to be erected and displayed.

(B) It shall be unlawful to erect or display, on any building, structure or real property, any sign, marquee or awning unless it is expressly authorized by, is in accordance with and, where applicable, a permit authorizing it has been obtained pursuant to the provisions of this Article IX.

(C) All rights and privileges acquired under the provisions of this Article IX are mere licenses revocable at any time by the director upon a violation of any applicable provision of this Article IX.

(D) The provisions contained in this Article IX shall be considered separate from, supplemental to and additional to the provisions contained elsewhere in this

ordinance or other City ordinances. Nothing contained in this Article IX shall excuse any person from compliance with all other applicable provisions of this ordinance or the City code.

(E) Wherever authority is to be exercised under this Article IX by the City Manager or the director, the authority may also be exercised by his or her designee.

**(F) <u>This Article shall apply to signs, marquees, and awnings on property not used for public right-of-way. Under no circumstances shall any provision herein authorize placement of a sign on any public right-of-way.</u>**

*9-104 - Prohibited signs, marquees and awnings and exceptions.*

The following signs, marquees and awnings are prohibited or are permitted only as specified below, regardless of their location in the City:

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(E) Signs, marquees and awnings encroaching upon a public right-of-way. No sign, marquee or awning, or any part thereof, or any part of the foundation or support thereof, may be erected or displayed on, over or across any street, road, highway, alley, sidewalk or other public right-of-way, unless an ordinance authorizing such encroachment has been enacted by City Council; ~~**provided, however, that any banners authorized pursuant to section 9-104(F), political signs authorized by section 9-201(A)(10), signs, marquees and awnings specifically authorized by city council in a commercial zone authorized by section 9-202(B)(4), 9-202(B)(8), and 9-202(F) and curb signs shall not be subject to this section 9-104(E).**~~

~~**(G) Banners. No banner may be erected or displayed, except (1) across a street, road or highway in a commercial zone for up to ten days pursuant to special authorization provided by city council, and (2) across an alley pursuant to a permit issued by the city manager upon a finding that the banner poses no danger to the safety of the public.**~~

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~~**(I) Motor vehicle signs. No such signs may be erected or displayed.**~~

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(J) Signs affixed to certain property. No sign may be painted, marked, written, posted or displayed on, or otherwise affixed to, any **<u>private</u>** street sign, bus stop sign or traffic sign, sidewalk, crosswalk, curb, curbstone, street, lamp post, hydrant, railroad trestle, electric light or power pole or telephone pole or wire appurtenance thereof, fixture of the fire alarm system~~**, public bridge,**~~ drinking

fountain, natural features such as trees, shrubs, rocks or tree stakes or guards; ~~**provided, however, that curb signs and signs posted for the purpose of identification of a structure or for safety may be erected and displayed; and provided further, that political signs authorized by section 9-201(A)(10) may, with the owner's permission, be affixed to street lamp posts, electric light or power poles and telephone poles**~~.

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~~**9-108. - Political signs.**~~

~~**Political signs are permitted in the following locations, and for the following periods of time, subject to the following limitations:**~~

~~**(A) Private property. Political signs may be posted on private property with the permission of the property owner or lawful occupant of the property. Such signs shall not exceed the size of the largest sign permitted on such property pursuant to section 9-200.**~~

~~**(B) Public right-of-way. Political signs may be posted within the public right-of-way subject to the following rules:**~~

~~**1. Such signs may be posted in the grass portion of the public right-of-way, adjacent to a street, road, highway, alley or sidewalk.**~~

~~**2. No such sign may be posted in any public garden or landscaped area.**~~

~~**3. No such sign may be placed within the public right-of-way of Washington Street, or the George Washington Memorial Parkway.**~~

~~**4. No such sign shall be placed within 15 feet of any point at which the curb or curb line of any two intersecting streets meet, within 15 feet of the end of any street median, or within any traffic channelization island.**~~

~~**5. Any political sign erected or displayed within the public right-of-way shall be free standing, shall have no part of the sign or support thereof extending more than 42 inches above ground level, and shall be supported by no more than two supports, each support having dimensions of no more than one inch by two inches.**~~

~~**6. Prior to the display of any political sign within the public right-of-way, a cash bond in the amount of $100.00 shall be deposited with the city manager. The bond will be refunded unless there has been a violation of the provisions of this article, in which case the city shall retain the entire amount of the bond to defray the cost of enforcing the provisions of this article.**~~

~~**7. No political sign shall be erected or displayed within the public right-of-way more than 90 days prior to the nomination or election to which it pertains. Signs, including sign posts or stakes, shall be removed within 15 days after the announced results of the nomination, or primary, special or general election to which the sign pertains. Successful candidates in nominations or primary elections may continue to display their signs during the interval between the nomination or primary, and the ensuing special or general election, and without posting any additional bond, except where the interval exceeds 90 days.**~~

***Sec. 9-200 - Signs, marquees and awnings permitted in various zones.***

*****

*9-202 - Commercial zones.*

*****

~~**(F) A-frame signs. Notwithstanding any provision to the contrary in this ordinance, A-frame signs may be permitted on King Street for businesses within the Central Business District, as defined by Section 8-300, provided they comply with the following provisions:**~~

~~**(a) Application and approval process. An application for an A-frame sign permit shall be submitted and shall include a plan reasonably depicting the location, size, text, appearance and method of installation of the proposed sign to be located in the public right of way, and such additional information as the director may reasonably require. The director may approve the application after determining that the proposed sign plan will be reasonable, attractive and promote pedestrian and retail vitality in the Central Business District, and that there is adequate space remaining within the public right of way to facilitate safe circulation of pedestrian traffic. No material change to the approved plan shall be made without prior written approval by the director.**~~

~~**(b) King Street locations. A maximum of four signs may be located on any one intersection of King Street and each intersecting street, one on each corner.**~~

~~**(c) Eligible businesses. For each sign, eligible businesses include restaurants, retail uses, and retail oriented businesses, which include restaurants and retail and personal services uses, as those terms are defined by this ordinance, located on adjacent blockface on a street within the Central Business District, which street intersects with or**~~

~~**is parallel to King Street. Eligible businesses shall not include banks, savings and loans, credit unions and contractor or other offices.**~~

~~**(d) Number of signs. A maximum of one A-frame sign is permitted for all eligible businesses on any eligible blockface.**~~

~~**(e) Size of sign. Signs may not exceed 42 inches in height and 24 inches in width.**~~

~~**(f) Illumination. Illuminated signs are prohibited.**~~

~~**(g) Pedestrian safety. Pedestrian safety shall be preserved through the placement and securing of signs so as to permit safe and adequate pedestrian throughway along the sidewalk, crossing of streets, entry and alighting from cars and buses, and access to curb ramps.**~~

~~**(h) Temporary signs. All signs, including installation materials, placed in the right of way shall be temporary and shall be readily removable without any damage to the surface of the right of way.**~~

~~**(i) Compliance with law. All signs shall comply with all applicable city, state and federal laws and regulations.**~~

~~**(j) Director requirements. Signs shall comply with such additional reasonable terms and conditions as the director may require and include in the permit.**~~

*********

**<u>9-204 – Signs Permitted in All Zones</u>**

**(A) <u>Additional temporary signs no larger than the largest sign allowed on the property pursuant to Section 9-200 are permitted on any property with the permission of the property owner for no more than ninety (90) days prior to and fifteen (15) days after a National, State or Local election.</u>**

***Sec. 9-400 - Administration and enforcement.***

*********

~~**9-402 - Liability insurance coverage.**~~

~~**(A) Coverage required. No person may erect, display, construct, reconstruct or alter any sign, marquee or awning for which a permit is required under section 9-401 and which lies on, over or across any street, road, highway, alley, sidewalk or other public right-of-way unless and until a liability**~~

~~**insurance policy meeting the requirements of this section 9-402 has been obtained and approved by the city attorney. Said policy shall name the city as an "additional insured" and shall protect and hold harmless the city and its agents and employees from and against any suit, action, claim, cause of action, damages, losses, liability and expenses (including court costs and attorneys' fees) resulting from, arising out of or incident to the construction, reconstruction, alteration, maintenance, repair, removal, presence, falling or collapse of the sign, marquee or awning. In addition, the minimum bodily injury protection of said policy shall be $100,000.00 per person and $300,000.00 per occurrence, and the minimum property damage protection of the policy shall be $50,000.00 per occurrence. The city may require additional insurance or other security if the sign, marquee or awning relates to a public right-of-way which supports a high level of vehicle or pedestrian traffic.**~~

~~**(B) Notice of cancellation. The insurance policy required by section 9-402(A) shall remain in force and effect during the life of the sign, marquee or awning. The owner of the sign, marquee or awning shall notify the building official of any change in the insurance policy, including any change in amount, carrier or of coverage conditions. Failure to maintain the policy in full force and effect shall be due cause for the city manager to order the removal of the sign, marquee or awning.**~~

**Attachment #2**

*Proposed City Code Changes*

TITLE 5 - Transportation and Environmental Services

*****

CHAPTER 2 - Streets and Sidewalks

ARTICLE A - General Provisions

*****

*Sec. 5-2-29 - Street encroachments.*

Any encroachment into a public street, alley, sidewalk or other right-of-way may be authorized only by a special ordinance adopted by City Council, unless the encroachment is authorized pursuant to one of the following exceptions or is otherwise authorized by this code or the City of Alexandria Zoning Ordinance:

(a) Steps. Steps not more than 12 feet in length, including the required landings, may project beyond the street lot line up to five feet on streets with a right-of-way width of 100 feet or more, up to four feet on streets with a right-of-way width between 66 and 100 feet, up to three feet on streets with a right-of-way width between 50 and 66 feet and, notwithstanding the above, up to 20 inches on Union Street and on King Street between the Potomac River and the R.F.&P. railroad right-of-way. The term "steps" in this subsection includes ramps and similar structures necessary to provide access to the handicapped.

(b) Architectural decorations. Belt courses, lintels, sills, architraves, pediments and similar architectural decorations may project up to four inches beyond the street lot line when less than 10 feet above the curb level, and up to 10 inches beyond the street lot line when 10 feet or more above the curb level.

(c) Signs. A sign may be erected or displayed flat against a building wall or at an angle thereto, so long as the sign does not project more than four feet from the building wall or within one foot of an established curb line and the bottom of the sign is at least eight feet above a sidewalk or parking area and at least 14.5 feet above an alley.

(d) Canopies, awnings and marquees. Canopies, awnings and marquees suspended from a building or structure with no ground supports, having a clearance of at least eight feet above a sidewalk, extending no more than four feet beyond the front property line, and extending to no more than one foot from the established curb line, may be erected.

(e) Nonpermanent planters. Planters which are nonpermanent may be located in a right-of-way subject to the following:

(1) A permanent planter is one which is attached in any permanent manner to a public right-of-way or to a building, building appurtenance or any other structure, or which rests on a foundation or substructure other than a sidewalk. A permanent planter requires a building permit and an encroachment ordinance. Above-grade permanent planters located in an historic district also require approval by the board of architectural review.

(2) A nonpermanent planter is a portable container that is light enough to be transported by two people when empty of soil and plants.

(3) A nonpermanent planter may not project into a public right-of-way more than steps would be allowed to project under subsection (a) above and may not exceed 30 inches in height. There is no limit to the number of planters permitted as long as the conditions of this subsection (e) are complied with and the planters are maintained in good condition.

(4) A nonpermanent planter must be located so as to maintain a path for public travel at least five feet in width at all points, along any adjacent sidewalk.

(5) A permit for a nonpermanent planter must be obtained from the department of transportation and environmental services. The permit application shall include the address of the planter, adequate location drawings, and a sketch, photo or dimensions of the planter. Visual inspection by the director of transportation and environmental services or his designee may be substituted for drawings if the location and description of the planter are recorded on the permit application. After a permit has been granted, it may be revoked and the planter removed from the right-of-way by the director or his designee whenever the applicant fails to comply with any permit conditions. A permit application will be reviewed to determine compliance with the following:

a. The location of the planter shall not unduly obstruct the public right-of-way.

b. The planter shall be of such design and construction, and the contents shall be of such nature, so as not to constitute a nuisance or public hazard.

c. The planter shall be of a design, material and color which are generally recognized as intended for and suitable for the display of plant materials on the public right-of-way in an urban environment and, if located in an historic district, are compatible with the streetscape in the district and are consistent with the applicable design guidelines adopted by the board of architectural review.

d. The owner of the planter shall agree to move the planter whenever the City requires access to the planter location.

(f) Benches. Benches and similar street furniture may be placed in a public right-of-way, subject to the following:

(1) The bench or street furniture shall be located immediately adjacent to the closest building wall, shall touch the wall along the length of the bench or street furniture, and shall not project from the wall more than 30 inches.

(2) The bench or street furniture shall not be used as part of a business for advertising, or for making sales or providing services to customers, and shall be available for use by the general public.

(3) The director of transportation and environmental services or his designee shall review any bench or street furniture proposed for a right-of-way and its location, and approve it if he finds that it will not interfere with pedestrian access and safety, will not be an attractive nuisance and will promote the health, safety and welfare of the City.

(4) The director of planning and zoning or his designee shall review any bench or street furniture proposed for a right-of-way and shall approve it if he finds that its design is compatible with the character of the surrounding area.

(g) Rental bicycles. Bicycles offered for rent may be displayed and rented from areas of right-of-way pursuant to section 7-2400 of the zoning ordinance and this section 5-2-29.

(h) Parker-Gray Historic District front fences. Within the Parker-Gray Historic District, retaining walls less than two feet in height above the lower adjacent grade or fences at the height and location otherwise permitted in a front yard may be constructed in the public right-of-way.

**(i) <u>Street or Alley Crossing Banner. With a special event permit pursuant to City of Alexandria Special Event Policy and Procedures approved by the City Council on January 23, 2010 as the same may be amended, the permittee may place a banner across a public street or alley for up to ten (10) days upon a determination made by the City Manager that the sign does not pose a danger to the safety of the public.</u>**

(~~i~~ j) Encroachment requirements. In addition to any other restrictions or requirements imposed by this code or the City of Alexandria Zoning Ordinance, the owner of any sign, canopy, awning or marquee, nonpermanent planter, bench, bicycle display or similar street furniture that encroaches into a public right-of-way pursuant to this section shall also comply with the following:

(1) Liability insurance. The owner shall obtain and maintain a policy of general liability insurance in the amount of $1,000,000 which will indemnify the owner (and all successors in interest), and the City as an additional named insured, against all claims, demands, suits and related costs, including attorneys' fees, arising from any bodily injury or property damage which may occur as a result of the encroachment.

(2) Removal of encroachment. The owner or any successor in interest shall remove the encroachment if the City determines that the encroachment interferes with public access or is otherwise inconsistent with the public welfare. In such case, the City shall provide the owner or successor in interest with written notice of the need to remove the encroachment at least 10 days prior to the date on which the removal must be completed. If the owner or successor in interest cannot be found, or fails to remove the encroachment within the time specified, the City shall have the right to remove the encroachment, at the expense of the owner or successor, and shall not be liable for any loss or damage to the encroaching structure that may occur as a result of the removal.

***ARTICLE G: Posting of Signs in the Right-of-way***

***Sec. 5-2-170. - Definitions.***

**The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:**

***Fixture* means a pole; streetlight; tree; tree box; tree stake; fire hydrant; fire alarm box; trash receptacle; stand; wire; rope; public bridge; railroad trestle; drinking fountain; life buoy or any other lifesaving equipment; standard serving as a base or support for a directional sign, traffic regulation or control signal, sign or device; and any other fixture or structure, whether publicly or privately owned or whether permanently or temporarily placed in, on or over a public way. But the term shall not include a fixture permanently attached to a building, structure, pole or standard on private property serving as a base or support for a sign and projecting over a part of a public way installed and maintained in accordance with law.**

***Public way* means a street, sidewalk, alley, road, highway, bridge, viaduct, subway, underpass, park, parkway, playfield, playground and any other similar place in the City opened to and used by the public.**

***Sign* means a sign, placard, banner, flag, bulletin and any other device of any kind posted for the purpose of communication.**

***Sec. 5-2-171 - Unlawful conduct.***

**It shall be unlawful for any person to paint, mark or write on or post or otherwise affix to or upon a public way or fixture thereon any sign. It shall furthermore be unlawful for any person to cause or, with knowledge, permit such actions to be taken on such person's behalf.**

**Willful interference with a person who is engaged in abatement under Section 5-2-173 shall also constitute a violation of this article.**

***Sec. 5-2-172. - Exceptions.***

**(a) This article shall not apply to the following signs:**

**(1) Regulatory, traffic, or informational signs established or posted by or at the direction of an authorized City department.**

**(2) Signs required to be posted pursuant to State, local, or Federal laws.**

**(b) Nothing in this division shall apply to the installation of a plaque, plate, statue, or other commemorative monument or marker in accordance with permission from an authorized City Department with the approval of the City Council.**

***Sec. 5-2-173. - Removal and collection of costs.***

**Any violation of this article is hereby declared to be a nuisance. No person shall have any legal right to the continued presence of a sign in a public way in violation of this article, nor shall there be any legal remedy against any person solely for the removal from a public way of a sign which is in violation of this article. Any person may abate the nuisance created by a violation of this article without liability for doing so. If abatement is made by the City, the reasonable costs incurred in removal may be assessed against any person responsible for or benefited by the violation, and such costs shall be collected in the same manner as City taxes. For a willful violation, the City shall be entitled to recover costs, the reasonable value of attorney's fees, and punitive damages in any proceeding which it may bring to enjoin future violations.**

**Sec. 5-2-174. - Penalty for violation.**

**Violation of this article shall be a class four civil violation which shall be enforced through the levying of a civil penalty pursuant to section 1-1-11 of this code, provided, that the penalty for the first violation shall be $100, for a second violation of the same regulation or requirement the penalty shall be $250, and for each additional violation of the same regulation or requirement the penalty shall be $500. Each individual sign shall be deemed a separate offense. Each day during which any such violation is continued may be treated for all purposes as a separate offense.**

**Attachment #3**

Proposed text amendment to Section PD.3 (page 53) of the *Wayfinding System Design Guidelines Manual* that had been approved by the Planning Commission on September 7, 2010. The amendment would read as follows:

## PD.3 Pedestrian Directional

~~a-frame~~ Pedestrian-Oriented Retail Shopping Street Wayfinding Signs

### Rationale

~~A-frame~~ Small, installed signs along major pedestrian-oriented retail shopping streets ~~signs~~ such as King Street, Mt. Vernon Avenue, and other similar streets, are a component of and coordinate fully with the design character of the wayfinding program, and allow increased visibility for shopping and dining on pedestrian-oriented side streets. The City will coordinate the fabrication and management of these signs as part of the governmental wayfinding program. Eligible businesses ~~may partner together to~~ apply ~~for a group A-frame sign permit~~ to have a small sign plate added to a pedestrian directional sign structure located at the closest corner along the major shopping street in their neighborhood. Business owners are responsible for ~~coordinating with other eligible businesses, fabricating and~~ applying to participate in this program, designing an insertion that fits into the sign structure, and paying ~~for the~~ necessary fees for participation in the sign~~s~~. These business must~~, and~~ comply~~ing~~ with City ordinances and guidelines related to signage and administered by the Department of Planning and Zoning and/or the Department of Transportation and Environmental Services. This program would replace the King Street A-Frame Sign Program.

### Locations

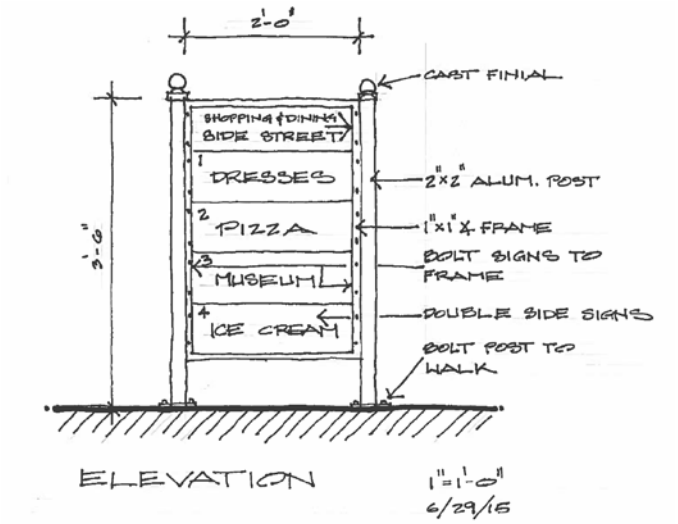
Placed at street corners of the main pedestrian-oriented retail shopping streets in their districts (The Central Business District along King Street, the commercial zones that border Mt. Vernon Avenue, etc.) to direct pedestrians to businesses on those side streets. Approved locations shall comply with ADA and pedestrian access. Pedestrian safety shall be preserved through the placement and securing of signs so as to permit safe and adequate pedestrian throughway along the sidewalk, crossing of streets, entry and alighting from cars and buses, and access to curb ramps. A maximum of four signs may be located on any one intersection, one on each corner. For each sign, eligible businesses include restaurants, retail oriented businesses, and personal services.,

### Content and Design

Typeface, flourishes and arrows are standard to the wayfinding system and must be matched. “Shopping and Dining” message may change depending on which services are available on a given street. The live area in the center of the sign ~~may be subdivided into~~ shall be designed as an area for inserting individual sign strips to accommodate ~~however many businesses will~~ ~~appear~~ up to a six or twelve businesses, depending on the sign location and that location’s number of affected businesses, to ensure readability. Sign components installed by each business may not exceed the space available for installation as determined by the Director of Transportation and Environmental and Services and the Director of Planning and Zoning. The sign structure shall not exceed 42 inches in height and 30 inches in width.

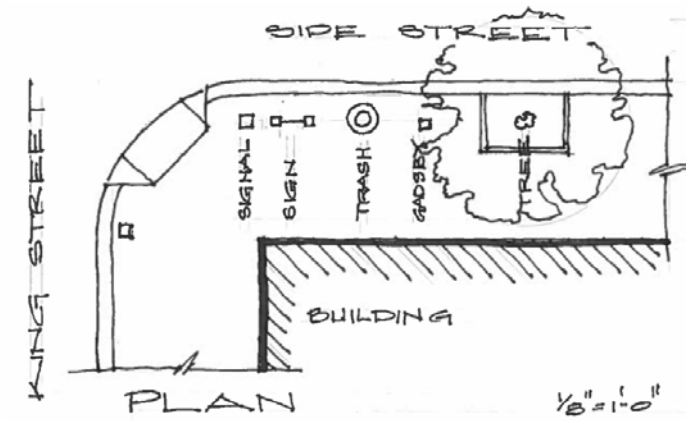
### Material

Solid painted black metal posts mounted onto the sidewalk with a supporting frame keep the sign rigid and stable. A top piece contains directional information and is ~~P~~painted black. ~~m~~Metal sign panels, of a minimum thickness, highlight individual business and are inserted into the frame. ~~Of minimum thickness and stability perm program requirements sufficient to keep the sign face figit in the frame and to prevent tipping.~~ *See illustration of sign framing design and example of placement location:*




Structural design for sign

Sample drawing of a 12-panel sign




Placement design for sign

Sample drawing of a 6-panel sign

Attachment #4

**CITY OF ALEXANDRIA, VA: AD HOC GROUP ON DIGITAL SIGNS AND A-FRAME SIGNS MEMBERSHIP ROSTER 4.7.2015 Update**

| |
|---|
| Mr. Michael Porterfield<br>Alexandria Economic Development Partnership (AEDP) Representative<br>Tel: 703. 836.6555; Mike@tartanproperties.com |
| Ms. Danielle Romanetti<br>Alexandria Chamber of Commerce Representative<br>Tel: 703.664.0344; Danielle@fibrespace.com |
| Mr. Steve Milone<br>Alexandria Federation of Civic Associations Representative<br>Tel: 703-986-8536; Steve.milone@longandfoster.com |
| Mr. Pete Benavage<br>Beauregard Urban Design Advisory Committee<br>Tel: 703-820-9312; Raglan1854@verizon.net |
| Mr. Peter Smeallie<br>Board of Architectural Review (BAR) Representative<br>Tel: 703.683.1808; Smeallie@verizon.net |
| Mr. Bill Blackburn<br>Del Ray Business Association Representative<br>703.822.5699; TheBillBlackburn@yahoo.com |
| Mr. Jay Nestlerode<br>Del Ray Citizens Association (DRCA) DRCA Citizen Representative<br>Tel: 202.577. 7274; JNestlerode@gmail.com |
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| Ms. Barbara Belmont<br>Old Town Civic Association (OTCA) OTCA Citizen Representative<br>703-518-8980; Barbara.Belmont@gmail.com |
| Mr. Fernando Torrez<br>Old Town Civic Association (OTCA) OTCA Citizen Representative<br>Tel: 571.920.4585; Fernando@nanotechcomputers.net |
| Mr. Nate Macek (Chair)<br>Planning Commission Representative<br>Tel: 202.365.2927; Natemacek@hotmail.com |

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| **CITY OF ALEXANDRIA, VA: AD HOC GROUP FOR DIGITAL SIGNS AND A-FRAME SIGNS MEMBERSHIP ROSTER 4.7.2015 Update** |
| |
| Ms. Amy Rutherford<br>Visit Alexandria Representative<br>Tel: 703-838-0355; Amy@redbarnmercantile.com |
| Mr. Charles Sumpter<br>Eisenhower West Steering Committee – Landmark Gateway<br>Tel: 212-444-2316; Charles.sumpter@gmail.com |
| Ms. Lynn Bostain<br>Seminary West Civic Association<br>Tel: 703 379-2629; Lynnbostain@yahoo.com |
| Ms. Lillian Chao-Quinlan<br>Owner of SportRock Climbing Center at 5308 Eisenhower Avenue<br>Tel: w-703-212-7625, c-703-975-2697; Lillian@sportrock.com |

**STAFF**

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|---|
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| Nancy J. Williams, Principal Planner<br>Neighborhood & Community Dev. , P&Z Department, 301 King Street, Room 2200, Alexandria, VA 22314<br>Phone: 703.746.3858; Nancy.williams@alexandriava.gov<br>Kristen Walentisch, {Ŝy⁄⁄2⁄⁄ tfl·y⁄y⁄⁄y∃ ¢ŜŎKy⁄⁄Ŏ⁄⁄l·y⁄<br>.2l·⁄⁄Řă l·yŘ /2Y⁄Y⁄⁄ăă⁄⁄2yã ¦y⁄⁄ú, P&Z Department, 301 King Street, Room 2100, Alexandria, VA 22314<br>Tel: 703.746.3806; Kristen.walentisch@alexandriava.gov |

Statement of Michael E. Hobbs
for the
Planning Commission
January 5, 2016

Chairman Lyman and members of the Commission, my name is Michael Hobbs, and I live at 419 Cameron St. Thank you for this opportunity to testify on the question of political signs.

The staff recommends that you adopt an absolute ban on any political signs in public spaces—at any time, at any place, of any size or materials, in any number, or for any duration—and, indeed, that you banish all other non-governmental speech via signs from the public realm, as well. You are advised that the Supreme Court decision in the *Reed v. Town of Gilbert* decision requires this result—but that is a perverse and unnecessary application of that case.

To many of us who have chosen to make our homes here, one of the most appealing things about Alexandria is our tradition of broad, vibrant and enthusiastic citizen participation in the governmental and political process of our city. We who live here may take that process too much for granted. We shouldn't. Many of us, for example, moved here from right next door in the District of Columbia, where the citizens would be overjoyed to have the freedoms that we enjoy here.

We should be grateful for those freedoms. We should cherish and nourish them—not seek to limit or abridge them out of a misguided aspiration for order.

In particular, I would urge you not to give any endorsement or encouragement to this proposal to retreat from the vital and energetic role that signs play in our political free speech.

This is not, and should not be, a partisan political issue. But proposals to restrict and regulate political signage seem to return every several years, often not long after the conclusion of one of our local elections. I remember another occasion, in the late 1990's, when a complete ban was proposed. The two major parties, joined by the League of Women Voters and the Virginia Civil Liberties Union, testified of their abiding conviction that the display of political campaign signs is an essential and central characteristic of the electoral process in Alexandria. I was one of those testifying, but I would have to concede that the best and most succinct statement of the case came from the Alexandria Democratic Party's "sign captain," who said that

> At the least, signs alert voters to the coming election and create the festive air that is a part of the celebration of our political system. While irritating to some, the signs attract interest and alert voters to a coming election. Moreover, the sign campaigns involve volunteers in the political process, which is good for our society and our system of government.

This Commission had the proposition before it most recently in 2004. It voted to strengthen enforcement of the requirement to remove signs after the election, but rejected proposals to further limit the time and places where signs are allowed, or their number; indeed, the

Commissioners expressed (without dissent) their general distaste for the recurrent effort to curtail or eliminate political signs—particularly when (as then, and now) one political party enjoyed a monopoly of the seats on the governing body.

Now, however, you are advised that the *Reed* decision "create(s) the need for the City of Alexandria to revise its sign ordinance such that the regulations would be purely content neutral" (p.2); that "The ruling basically says 'if you have to read the sign to know if it complies with zoning, the regulation is invalid'" (p. 3); but, conversely, that it is alright for the City to curtail political signs if "other avenues of communication are available for the user of the sign."

Set aside the intricacies of the arguments—which only the lawyers could love—and consider the essence of what is being proposed here.

The decision in the Arizona case sought to protect a "small, cash-strapped" church against an overbearing local sign regulation which imposed unreasonable and inequitable restrictions on its ability to post temporary directional signs to its weekly worship services, as contrasted with the greater latitude afforded to "ideological" or "political" signs.

Under the text suggested here, Alexandria would cure that discrimination against the church—by banishing its signs <u>completely</u> from the public realm!—along with the political signs or any other signs. The only category of expression that would still be protected would be advertising on A-frame signs—by the expedient of having the City take over administration of the program, converting it to "government speech" which is immune from the strictures of the First Amendment.

It would be hard not to conclude that the City considers the A-frame advertising to be so compelling and important a public purpose that extraordinary measures should be taken to protect and preserve it. But the widest possible citizen participation in the election of our government, which campaign signs help to encourage? Not so much.

Would outlawing political campaign signs in the public realm betray a hostility to free speech? We would like to think it could not happen here. But the present proposal is in many respects a renewal of an effort that began shortly after the Virginia gubernatorial election of 1997. At a City Council meeting days before that election, one Councilman shared his exasperation that

> …the other night my wife and I were driving somewhere and we saw a big banner…the same banner we've seen everywhere, a sign just larger, "No Car Tax Vote Gilmore," and I said that I thought this was one of the most discouraging moments that I think I've ever had in public office to realize that someone was campaigning on that slogan….Let's give the devil his due. It's been a marvelous campaign issue in terms of being able to condense the campaign for the highest office in Virginia to a three-word road sign….

And shortly after the election, the same Councilman's motion initiated the process to amend the zoning ordinance to limit and restrict political campaign signs.

Please do not join those who find this or any other form of political speech annoying, distasteful, discouraging or unsightly and would like to suppress it. Please do not stand with those who would subject our political free speech to "aesthetic cleansing." Please stand instead with those like our former Alexandria neighbors, Supreme Court Justices Hugo Black, William Brennan, and William O. Douglas, who were among our nation's boldest and most articulate champions of the First Amendment guarantee of free speech.

Thank you for your attention, and for your thoughtful consideration of this important question.

**MEMORANDUM**

**TO: Commissioners, Karl Moritz, Alex Dambach, Nancy Williams, Joanna Anderson**

**FROM: Dave Brown**

**SUBJECT: January Docket # 6, Text Amendment to Sign Regulations**

**DATE: January 1, 2016**

I met with staff on Monday and outlined my concerns with the staff recommendation that the Commission initiate and recommend Council approval of a text amendment to the sign ordinance. I have not had an opportunity to discuss my concerns with Joanna, so it is possible my present inclination to oppose the text amendment could change between now and our meeting on Tuesday. Nevertheless, I believe I would be remiss if I did not set forth my objections in some detail for your consideration in advance of the meeting.

Preliminarily, I believe the staff has done a commendable job of describing problem areas in enforcement of the ordinance, such as sign proliferation, and I do not oppose any amendments addressed to those concerns. I also believe that the amendments addressed to obviating the litigation risk emanating from the Supreme Court decision in *Reed v. Town of Gilbert,* if adopted, would be quite successful in their aim: the City would be facing almost zero risk of a meritorious claim that, as applied in the public right-of-way, the ordinance is defective under the First Amendment. Nevertheless, I am not willing to support the text amendment, for several reasons.

First and perhaps most fundamentally, I do not agree with staff's description of the *Gilbert* decision. It did not hold that "[a]esthetic and safety justifications are not enough of a reason for sign regulations to survive strict scrutiny," Memo at 3. Nor did the Court hold that regulations must always be "content neutral" or that "if you have to read the sign to know if it complies with zoning, the regulation is invalid." Id. The case concerned only certain aspects of the Gilbert, Arizona sign ordinance, not sign ordinances everywhere, and certainly not Alexandria's. On the challenged portions of the Gilbert ordinance, the Court found the regulations to impose content-based restrictions, which could stand under the First Amendment only if they survive "strict scrutiny," which means they must pass two tests: (1) they serve a compelling governmental interest; and (2) they are narrowly tailored to achieve that interest. *Gilbert,* slip opn. P. 14. In that case, the Court assumed that the Town's identified statutory purposes, traffic safety and preservation of the Town's aesthetic appeal, were compelling governmental interests. Id. at 15. The Court went on to explain why the Gilbert ordinance failed the second test—it found "the Code's distinctions hopelessly underinclusive." Id.

What should Alexandria regard as the impact of *Gilbert* on its sign ordinance? I see three distinct possibilities:

1. The minimalist approach is to read the decision as simply making a ruling on one part of one ordinance in a distant state, and since our ordinance is different there is no impact. In

support of this approach, I have attached a copy of section 9-101 of our ordinance, which details, more broadly and fulsomely than did the Gilbert ordinance, its public purposes, which include those the Court assumed in *Gilbert* were compelling governmental interests. In addition, section 9-101(c) takes the position that the regulations that follow "advance these significant governmental interests and are the minimum necessary to achieve them." The staff did not take this approach.

2. The intermediate approach is to recognize that, as in *Gilbert*, we have content-based regulations that are grounded in the compelling governmental interests set forth in section 9-101, and that a fresh examination is warranted of whether those regulations mirror the fault found in *Gilbert*—that they are "hopelessly underinclusive." The staff did not take this approach, either.

3. The most drastic approach is to assume all content-based regulations must be eradicated from the ordinance because, despite serving a compelling governmental interest, they can never be defended as narrowly tailored to that end. This is the approach the staff took, at least as to regulation of the public right-of-way (with changes to the regulation of signs on private property to follow in a second phase text amendment).

I disagree with this approach to the ordinance. It is for the Council to decide if the legitimate public purposes being served by content-based regulations are to be subordinated to the reduction or elimination of risk that one or more of such regulations might be found in violation of the First Amendment in a court challenge to an enforcement action by the City. I also would not support the first option. We have an obligation to support and uphold the federal constitution, and I see that as including remedying obvious constitutional defects in our laws when they become apparent, rather than wait until the courts tell Alexandria there is a problem with the ordinance.

This leaves the intermediate approach, which I recommend we follow. Maybe the Council would decide that narrowly tailoring the content-based regulation of signs is an impossible task, but the Council should first be given a forceful, detailed explanation why that is so, and why it is that the public purposes long served by the ordinance must be subordinated to First Amendment considerations. Instead, the staff recommendation is one of complete surrender on those public purposes without even acknowledging the possibility that some content-based regulations might survive "strict scrutiny." We should not be forwarding a recommendation to Council that does not evaluate whether and to what extent our ordinance can be defended as not "hopelessly underinclusive."

To put my concern in sharper practical focus, consider the approach taken by staff on the regulation of political signs in our rights-of-way. Staff recommends deletion of section 9-108(B), which allows, with certain locational constraints, political signs of a specified size and structure, for a specified period around an election. As an alternative, in service to content neutrality, staff suggests allowing **any kind of sign** in the right-of-way during the specified election season. Memo at 3 ("If any signs are allowed in the right-of-way, all signs including commercial signs, would also be required to be allowed in the right-of-way."). In other words, the only choice we

have, according to staff, is abandonment of our long-established practice of political signs in the right-of-way, or opening the floodgates to everyone during the election season. ["Floodgates" may not be an overstatement. Staff proposes that any applicant would be able to place 1500 signs in the right-of-way for $100, i.e., considerably less than a dime apiece.]

I do not believe we must present this Hobson's Choice to the Council. Perhaps it would be prudent to amend section 9-101(B) to add that the promotion, for an appropriately limited period, of public awareness of upcoming elections and of the candidates for public office, is one of the purposes of the ordinance. Beyond that, however, subject to minor tinkering on enforcement issues (such as imposing a higher bond for the cost of signs not removed by the deadline), it seems to me that section 9-108(B) is already narrowly tailored to serve a compelling governmental interest. If the staff believes otherwise, it has not explained why.

The *Gilbert* case does not foretell the doom of the current section 9-108(B). While that case did involve an ordinance that treated political signs more favorably than other signs (temporary directional signs), it also treated political signs less favorably that some other signs (ideological signs). Id. at 2-3. There is no such multi-level hierarchy in section 9-108(B); only political signs are favored, and this exception is narrowly and rationally limited the election season. Apart from this distinguishing feature, as a practical matter, it is for the Council to (a) assess, perhaps with guidance from staff, the likelihood that anyone would mount a court challenge to the prohibition of non-political signs in the right-of-way, just to have the right to post signs for a limited period during election years, and (b) balance that risk against the goals well served by the existing section 9-108(B).

My recommendation is that staff be asked to go back to the drawing board and evaluate all existing content-based restrictions in the ordinance and advise us whether they are, or can be, narrowly tailored to survive strict scrutiny. I also do not recommend this work be done in phases; the entirety of the ordinance, as applied to public and private property should be evaluated at the same time. I do not see the urgency of a piecemeal approach to this issue.

ARTICLE IX. (excerpt)

- **9-101 - Purpose of article.**

(A)

Signs constitute a separate and distinct use of the land upon which they are placed and affect the use of adjacent streets, sidewalks and other public places and adjacent private places open to the public. The unregulated construction, placement and display of signs constitute a public nuisance detrimental to the health, safety, convenience and welfare of the residents of the city.

(B)

The purpose of this Article IX is to establish reasonable and impartial regulations for all exterior signs and those interior signs designed to attract the attention of persons located outdoors in order to: reduce the traffic hazards caused by such unregulated signs which may distract and confuse, and impair the visibility of, motorists and pedestrians; ensure the effectiveness of public traffic signs and signals; protect property values by insuring the compatibility of property with that surrounding it; provide an attractive visual environment throughout the city; protect the character and appearance of the various neighborhoods in the city; attract tourists to the city; protect the public investment in streets, highways and other public improvements; and protect and improve the public health, safety, and general welfare.

(C)

The regulations contained in this Article IX advance these significant governmental interests and are the minimum amount of regulation necessary to achieve them.

**Kendra Jacobs**

**From:** Dunn, Stew <SDunn@ipbtax.com>
**Sent:** Sunday, January 03, 2016 1:06 PM
**To:** dwbapc@gmail.com; Mary Lyman; Maria Wasowski; Nathan Macek; mindylyle@comcast.net; Stephen Koenig; Karl Moritz; Alex Dambach; Joanna Anderson; Nancy Williams
**Subject:** RE: Attached is a Memorandum reflecting my views on the proposed sign ordinance text amendment. I welcome your thoughts and comments before the meeting on Tuesday.

Dear Dave,

In responding to your substantive and thoughtful memo of Nov. 1, I start by commending you on your initiative and your careful study of this important matter and then meeting with staff and sharing your analysis and concerns with us in advance of our Jan. 5th P. C. hearing. I, too, focused on Docket Item 6 and have read all of the opinions in the Reed v. Town of Gilbert. My focus is from the civil liberties prospective ( I have been extremely active in the ACLU for many decades; e.g. I have been on the Board of the ACLU of Virginia since 1991 and Board of the ACLU of the National Capitol Area since 1981 ).

Your seem to want to preserve the present sign ordinance exception for political signs that allows posting of certain political signs during election periods. You would seek to accomplish this by pursuing the second of the three courses set forth in your memo. My approach is to determine what alternative would be most consistent and supportive of good planning for Alexandria. I have little difficulty in concluding that this exception for certain political signs that produces a plethora of signs in the public rights of way at each election are not good planning. Therefore the question for me is whether this exception should be or can be defended on First Amendment principles. Even before the Reed decision, it has been clear that there is no First Amendment right to post signs on public right of ways or other public property. The Reed decisions makes it difficult, if not impossible, for a government at any level to allow such signs that are not content neutral.

I see Reed as an opportunity to delete this exception. If I were on the Council, I would welcome this opportunity that will be well received by most Alexandrians. I repeat as planners, this is clearly preferable.

Briefly I note the following relevant points:

1. In the third paragraph on page 3 of the staff report it states the staff is following the model ordinance prepared by the Local Government Attorneys of Virginia, which will be used by other Va. jurisdictions to ensure consistent compliance with the Court's ruling. This makes it difficult for Alexandria to adopt your approach.
2. Your approach could lead to costly litigation.
3. You, the staff and I do not recommend the alternative of allowing all signs doing the exception period; that could produce a nightmare.
4. While not mentioned by you or emphasized by staff, I believe we must take great care with proposed Sec. 5-2-29 (i)-Street or Alley Crossing Banner. This could cause unintended consequences.

Best to you and Happy New Year to all. Stew

**From:** Brown [mailto:dwbapc@gmail.com]
**Sent:** Friday, January 01, 2016 4:32 PM
**To:** Mary Lyman; Dunn, Stew; Maria Wasowski; Nathan Macek; Mindy Lyle; Stephen Koenig; Karl Moritz; Alex Dambach; Joanna Anderson; Nancy.Williams@alexandriava.gov
**Subject:** Attached is a Memorandum reflecting my views on the proposed sign ordinance text amendment. I welcome your thoughts and comments before the meeting on Tuesday.
David

**Kendra Jacobs**

**From:** dwbapc@gmail.com
**Sent:** Sunday, January 03, 2016 4:54 PM
**To:** Mary S. Lyman
**Cc:** Dunn, Stew; Maria Wasowski; Nathan Macek; mindylyle@comcast.net; Stephen Koenig; Karl Moritz; Alex Dambach; Joanna Anderson; Nancy Williams
**Subject:** Re: Attached is a Memorandum reflecting my views on the proposed sign ordinance text amendment. I welcome your thoughts and comments before the meeting on Tuesday.

Stew,
Thanks for your views on the sign ordinance. You are right in assessing my perspective on the current ordinance--which allows ROW signs only for those seeking elective office. I am assuming this choice already does reflect the public policy of the City, whether it be thought of as a planning policy or not (not obvious to me that it is a planning policy). You seem to be saying that our long-standing practice of allowing election signs in the ROW during election season is bad planning policy. If it is because there are too many signs or because they linger after the election, I agree those are planning related concerns, but they can be addressed with tweaks in the law without banning election signs altogether.

In any case, you have had many more years of wrestling with this than I have, so I am certainly not prepared to say you are mistaken. But if you are right, I am puzzled why the situation has gone uncorrected for so long. Certainly we did not need the stimulus of a Supreme Court decision to amend the ordinance to outlaw ROW signs of any kind, at any time--which is where I see you heading. Do you have a sense of how receptive the Council will be to the change? Freshly elected, some of them might think it would not look too good if one of their first enactments was to make things more difficult for non-incumbents in the next election to achieve name recognition before the vote. On the other hand, there is no denying that the Gilbert case has increased the litigation risk of maintaining the current policy, and, as you noted, tying the change to that now-enhanced risk may be an effective way of getting the change enacted.

While the sign ordinance is in the zoning ordinance, staff is already recognizing that it raises issues that transcend zoning and planning. I welcome the opportunity for us to discuss on Tuesday what we should advise the Council on the planning and zoning implications of the proposed changes.
Best regards,
Dave

On Sun, Jan 3, 2016 at 12:27 PM, Mary S. Lyman <mslyman@verizon.net> wrote:

Thank you for your thoughts, Stew. I find the perspective of a resolute defender of the First Amendment, as I know you to be, extremely helpful in this matter. And thank you, Dave, for the time and effort you have put in to make sure we think about this decision very carefully.

Mary

# City of Alexandria, Virginia

## MEMORANDUM

DATE: JANUARY 5, 2015

TO: CHAIRMAN AND MEMBERS OF THE PLANNING COMMISSION

FROM: KARL MORITZ, DIRECTOR,
DEPARTMENT OF PLANNING & ZONING

SUBJECT: REVISION TO DOCKET ITEMS #6 (Text Amendment #2015-0005 Sign Regulations)

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This memorandum contains a revision to the proposed text amendment language for Docket Item 6, Sign Regulations. This revision is recommended by the City Attorney's Office and has also been suggested by one of the Planning Commissioners. The proposed language addresses the issue of banners that could get installed across public rights of way, which currently are permitted only if the City Manager finds that they do not pose a danger to the safety of the public. The recommended revision would add that such signs should only be permitted when a Special Event Permit has been issued in correspondence with the sign. Staff supports this revision, and recommends that the text amendment be adopted with the language for Section 5-2-29 (i), Street Encroachments, of the City Code to instead read as follows:

**(i) Street or Alley Crossing Banner. A sign may be placed across a public street or alley for up to ten (10) days upon a determination made by the City Manager that the sign does not pose a danger to the safety of the public *and that a Special Event Permit pursuant to the City of Alexandria Special Event Policy and Procedures approved by the City Council on January 23, 2010 as the same may be amended, has been issued.***

# Text amendment #2015-0005

TA2015-0005
Additional Materials

## Michael Ford <ha.ford123@me.com>

Tue 1/5/2016 6:55 AM

To: PlanComm <PlanComm@alexandriava.gov>;

Dear Planning Commissioners,

I am writing I support of docket item 6, text amendment #2015-0005, which will be considered at the 5 January public hearing. Staff's recommendations for prohibiting signs in the public right of way are sound recommendations that will reduce litter and improve the appearance of our city. It will also bring Alexandria in line with the practices of surrounding counties.

Respectfully,
Heidi Ford
Alexandria, Virginia

Sent from my iPad