

PLANNING COMMISSION AGENDA ITEM COVER SHEET

Meeting Date	Staff Contact	
6/2/2011	MARK GARDNER	
Subject:		
<p>Consideration of an ordinance amending the Bellingham Municipal Code, Title 20, to prohibit placement of signs in public rights-of-way median strips and roundabouts.</p>		
Attachments:		
1. Staff Memo		
2. Draft Ordinance		
3.		
4.		
5.		
Meeting Type	Category	
<input checked="" type="checkbox"/> Public Hearing	<input type="checkbox"/> Legislative	
<input type="checkbox"/> Public Meeting	<input type="checkbox"/> Quasi-judicial	
<input type="checkbox"/> Work Session	<input type="checkbox"/> Information Only	
<input type="checkbox"/> Briefing		
Clearances	Initials	Date
Previous Commission Meeting or Action:		
Recommended Action:		

Policy Memo

To: All Members, Bellingham City Council
From: Mark Gardner, Legislative Policy Analyst
CC: Joan Hoisington, Alan Marriner, David Webster, Clark Williams
Date: 3/10/11
Re: Regulation of Temporary Signs

Regulation of Temporary Signs in Rights-of-Way

According to a review of the political sign regulation issue by the King County Bar Association, "Courts have consistently acknowledged that the First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office. Political signs are also protected by RCW 29.84.040, which criminalizes the removal or defacement of lawfully placed political signs without authorization."¹

Despite broad protections, certain restrictions on signage can be deployed as long as they are not discriminatory in intent and still allow for ample display of political communication. Size restriction on signs, and to a more limited extent, restrictions on location, may pass legal muster if done carefully, especially if they deploy content-neutral criteria.

Litigation on this issue is limited in Washington. A lawsuit in Tacoma resulted from that city's limitation to 60 days within which signs could be posted before an election. The State Supreme Court in 1993 argued that the ordinance placed unfair limits on political speech, especially for lesser known candidates needing an early campaign start to gain name recognition. No other recent cases on this topic have been decided in Washington.

According to a brief on this topic by the Municipal Research and Services Center of Washington (MRSC), many public right-of-ways have traditionally been used for public and political communication, and any restrictions must be constructed carefully. In particular, rights-of-ways immediately adjacent to private properties are often considered to have a "traditional public forum" character for public communications, and acceptable restrictions are likely to be limited. In addition, in many cities, including Bellingham, the underlying ownership of rights-of-way is held by the abutting property owner, further limiting a jurisdiction's ability to restrict speech.

According to the MRSC, regulation of sign postings in the median strip section of rights-of-ways is likely to be acceptable, since this location is usually not considered part of a "traditional public forum," and is used for temporary signage much less frequently than curbside ROWs. According to MRSC, "...the courts would be more likely to uphold a prohibition of political campaign signs in the right-of-way if (1) the prohibition does not include the parking strip abutting private property.... and (2) the prohibition applies to all other temporary signs, such as real estate and garage sale signs."² Such restrictions have a health and safety element since proliferation of signage in the median can be distracting and may impair sight lines, strengthening the rationale for regulation. This justification is more defensible to the extent that all signs, and not just political signs, are similarly restricted.

Similarly, a review of the issue posted by the King County Bar Association states that "Although municipalities may not categorically ban campaign signs altogether, most local governments do regulate the non-communicative aspects (e.g., size, location and duration) of such signs. Common restrictions include forbidding vehicular or pedestrian traffic blockage, square footage requirements for each sign face, and prohibiting the display of campaign signs on public property beyond a specified post-election period. Regulations of this type address the physical attributes, as opposed to the content, of campaign signs."³ Similarly, according to MRSC, "Traffic safety and aesthetic considerations provide a sufficiently compelling justification to limit sign size in the right of way."⁴

MRSC also suggests that Cities require that sign posters ask permission from a property owner before political signs are posted immediately adjacent to private property. According to MRSC, "...it is advisable for a local government to indicate the need for permission in its sign ordinance, so that citizens have notice of the rules."⁵ This recognizes that ownership tempers the unrestricted forum characteristics of ROWs to some degree.

Regulations on political signs in Washington vary by jurisdiction. The following table summarizes some features of political sign regulation in seven Washington areas (Bainbridge Island, King County, Kitsap County, Poulsbo, Puyallup, Seattle, and Spokane). Regulation of political signs is often embedded in a larger set of regulations governing signs more generally. The table selects those elements applying specifically to political signage. Some commonalities emerge, which are summarized briefly below. Note that regulations vary widely, and some may be on the books but still vulnerable to challenge as overly restrictive.

A Review of Washington political signage regulations.

Time restrictions and removal requirements. Four of these areas require that signs be removed some number of days after the last relevant election. The time period for

removal varies from 10 to 14 days. Note that since the Tacoma case, it is clear that time restrictions before an election should be avoided.

Size and height restrictions. Four jurisdictions regulate the size of political signs and/or the maximum height of signs.

Regulation of placement in ROWs. Regulation in rights-of-ways varies substantially. King County does not allow placement of political signs in any rights of ways (with a few exceptions), perhaps reflecting that rural rights-of-ways in unincorporated areas have not had the same traditional use as a "public forum" when compared to more urbanized settings. This restriction has not been tested in court, however. Puyallup also has a prohibition against placements in the ROW. Bainbridge Island only prohibits signs on medians and roundabouts, and near crosswalks. Kitsap allows placement in all ROWs but regulates sign characteristics. Seattle prohibits placement in medians, along arterials or boulevards, and along streets fronting public property. Spokane allows signs as long as they do not create hazards or impede pedestrian or traffic flow.

Public property. Seattle, King County, and Poulsbo do not allow signs on public property.

Other locational restrictions. Bainbridge, King, and Kitsap do not allow placement on utility poles.

Additional features. For signs to be allowed on rights-of-ways adjacent to private property, both Bainbridge Island and Spokane require the permission of the adjacent property owner.

Regulation of Political Signage in Washington State: Some Examples				
Area	Medians and other ROW's	Other location restrictions	Size Restrictions	Sign removal required?
Bainbridge Island	Signs not allowed on medians or in roundabouts "to prevent impacts on sight lines and traffic safety." Signs not allowed near crosswalks.	Signs may not be placed on utility poles, traffic control lights, trees, shrubs, or any public building or structure.	Signs may be no more than six feet square in area and no more than five feet above the ground.	Must be removed within ten days following the relevant election date.
King County	Most signs and ads are not allowed in public right of way, with some exceptions.	Not allowed on utility poles. None on public property.		Ten days after election.
Kitsap County	Signs can be in ROW but cannot include any metal parts.	Not allowed on utility poles and signs.	Maximum of four square feet and no higher than thirty-six inches from ground to top of sign.	14 days after election.

Regulation of Political Signage in Washington State: Some Examples				
Area	Medians and other ROW's.	Other location restrictions	Size Restrictions	Sign removal required?
Poulsbo	Signs allowed in ROW's as long as they do not create a nuisance.	Not allowed on public property.		
Puyallup	Not allowed in public rights-of-way.		Signs must not exceed 8 sq. feet in area and 42 inches high.	Ten days
Seattle	Prohibits signs on all public property, including: medians, boulevards, parks or public golf courses, greenbelts, rights of way to arterials or freeways, bridges, overpasses, or planting strips that abut public property, such as schools, public buildings, parks or public golf courses	Prohibits signs on all public property.	Signs regulated according to zone, with 8 square feet max per lot in SF zones, and 24 sq. feet in other zones, except in when a lot has a multifamily property on it, where 8 sq. feet per occupant is allowed. Limitations may be exceeded for temporary periods (56 days total in a calendar year).	
Spokane	Allowed if do not create a traffic hazard or impede traffic or pedestrians.			

Existing Sign Regulation in Bellingham

While there are numerous regulations regarding signage in Bellingham City Code, the regulation of signs in medians and rights-of-way, particularly those that are applicable to temporary signage such as political signs, is relatively minimal.

One right-of-way regulation currently affecting all types of signage is the enforcement of safe "vision triangles" at intersections. One section of the code sets down general standards and others specifically regulate intersections in residential single, residential multi, and commercial zones.⁶ The regulations require the maintenance of an obstruction-free "vision triangle" of 20 feet on both sides of the lot corner, and prohibits buildings or other structures, vehicles, objects, signs, or vegetation over 36" in height in this zone. An exception may be granted by Public Works for one sign within the triangle if the bottom of the sign is at least 9 feet above the ground and there is no traffic hazard. An exception may also be allowed in commercial intersections that include stop lights. Limited exceptions for construction may also be granted if there is excess space in the right-of-way, or where there are one-way streets.

Other sections regulate temporary real estate signs. City code allows two open house directional signs of 8 feet square size on each face. The code stipulates that the signs must not obstruct vision or create a traffic hazard.⁷

Any proposal to regulate signs in the medians should exempt traffic signs and other signs erected by the City for traffic direction or safety. For example, the Samish Urban Village sign regulations provide exceptions to "1. Traffic signs installed by a government agency. 2. Directional, way finding program signs installed by a government agency if the signs are consistent with the provisions of the Samish Way Subarea Plan." This exemption language could be modified to apply more generally.

Because sign regulations generally reside within the land use section of the Bellingham code, changing the rules will require a "Type VI" legislative process. This entails notifying the State Department of Commerce of the proposed change, completing a SEPA review, having a proposal reviewed by the Planning Commission after a public hearing, and holding a public hearing in front of the Council after 30 days notice, before a vote on the proposal. This is likely to add a few months to the process from what it would otherwise take to consider and pass any new sign regulations.

A Summary of "Narrow" Restriction Options on Temporary Political Signage

According to this review, methods of political speech may be regulated if, as stated in the *Collier* ruling by the Washington State Supreme Court, "...the restrictions are content neutral, are narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels of communications."⁸ Accordingly, the following measures appear to be within the realm of such a narrow restriction, and also would be less restrictive than regulations currently in place in other Washington jurisdictions.

1. Restrict all temporary signs (except those approved by the City and necessary for public safety) in the right-of-way median strips in City streets.
2. Provide notice, in City ordinance, that individuals posting signs must get permission from private property owners immediately adjacent to rights-of-way before posting signs.
3. Restrict the size of political signs in rights-of-ways as long as such restrictions are applied equally to other signs, e.g. real estate signs.

Notes

¹ Zach Lell, *The Law of Political Signs*,

<http://www.kcba.org/scriptcontent/KCBA/barbulletin/archive/2004/04-09/article1.cfm>

² Bob Meinig, "Regulation of Political Campaign Signs in the Public Right-of-Way," *Municipal Research News*, Municipal Research and Services Center, Fall 2007, p. 3.

³ Zach Lell, *The Law of Political Signs*,

<http://www.kcba.org/scriptcontent/KCBA/barbulletin/archive/2004/04-09/article1.cfm>

⁴ MRSC p. 3.

⁵ MRSC p. 3.

⁶ See the following sections: BMC 20.12.060 (General standards), 20.30.120 (residential single), 20.32.130 (residential multi), 20.34.120 (commercial).

⁷ See BMC 20.12.040 (general), 20.30.090 (residential single), 20.32.100 (residential multi).

⁸ See Collier v. City of Tacoma, 1993.

DRAFT ORDINANCE NO. _____

AN ORDINANCE AMENDING BMC 20.12.040 TO PROHIBIT PLACEMENT OF SIGNS IN MEDIANS AND ROUNDABOUTS LOCATED WITHIN A CITY RIGHT—OF—WAY.

WHEREAS, Placement of signs in medians and roundabouts in rights-of-ways obstructs visual sightlines necessary for safe operation of vehicles of all types; and

WHEREAS, The activity of placing signs in medians and roundabouts itself may be a hazardous activity, frequently requiring movement across traffic lanes not managed via traffic control devices; and

WHEREAS, Medians and roundabouts have not been continually used as forums for public or commercial communication nor are they intended by the City to be used as such; and

WHEREAS, Numerous and plentiful venues remain for public communication of all types, including rights-of-ways immediately adjacent to City streets; and

WHEREAS, A review by the City's SEPA official has resulted in a declaration of non-significance [PENDING]; and

WHEREAS, A public hearing was held before the Planning Commission on June 2, 2011, and this ordinance has been reviewed by the Planning Commission and the Planning Commission has recommended [PENDING]; and

WHEREAS, The City Council held a public hearing on this proposed amendment to its sign code on July 6, 2011 [PENDING].

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Bellingham Municipal Code 20.12.040 shall be amended as follows.

20.12.040 - Signs

- A. **Development Handbooks.** [NO CHANGE]
- B. **Off-Premise Signs.** [NO CHANGE]
- C. **Nonconforming Signs.** [NO CHANGE]
- D. **Non-commercial Messages.** [NO CHANGE]
- E. **Billboard Standards.** [NO CHANGE]

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

1 **F. Signs Prohibited in Medians and Roundabouts.**

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3 1. Signs are prohibited citywide within any median or roundabout located within the City
4 right-of-way, regardless of use type, zoning, or neighborhood.

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6 2. Traffic signs installed by a government agency, and directional, wayfinding program
7 signs installed by a government agency, are exempt from this provision if the signs are
8 consistent with the provisions of any applicable neighborhood plan.
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10
11 **PASSED** by the Council this _____ day of _____, 2011.

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15 _____
16 Council President

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19 **APPROVED** by me this _____ day of _____, 2011.

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23 _____
24 Mayor

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26 **ATTEST:** _____

27 Finance Director
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29

30
31 **APPROVED AS TO FORM:**

32
33 _____
34 Office of the City Attorney
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36

37 **Published:**
38
39 _____
40

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270