

From: Stephen Kenney, Chairman Planning Commission

To: Vienna Town Council

Meeting Date: September 9, 2020

Re: Proposed Amendments to Chapter 18 – Zoning, Article 19 – Nameplates and Signs relating to Temporary Sign Regulations

Overview

The Town Council directed the Planning Commission to review the aforementioned zoning section as it relates to temporary signage within the Town. The Planning Commission held two work sessions to review and discuss these proposed amendments prior to our public hearing.

We received a single email comment from a citizen on these amendments. The comment related to the limitations set on window signs (listed as the lesser of 25% of the window area or 10sf). The resident felt some homes have very small windows and may unfairly limit some residents use of window signs vs other homes.

PC Action and Concerns

At the guidance from the Town Attorney the PC attempted to view the temporary signage requirements without consideration of the content (ie. Content neutral). However, we did review in general terms what these revisions mean to various signage types. For election signage, for example, we felt yard signs limited to 12sf for any one sign was sufficient and reasonable. We recommended removing the limitation on total area and quantity as some residents prefer to allow all candidates in an election cycle to advertise on their property. Likewise, a limitation on quantity and/or total area could hinder the congratulatory and event (Happy Birthday, Anniversary, Graduation celebration) signage which has become popular in recent months. The PC spoke to a local vendor of such yard signs. Typical displays can span 16 linear feet and stand up to 36" in height. However, such signs are usually limited to a one-day rental period. Staff has advised they view such signage displays an individual signs by each letter, where the omission on the limitation on total area also benefits such displays.

Motion was made by Commissioner Miller and seconded by Commissioner Gelb.

Motion passed 9-0.

A defeated amendment to the proposed language is listed below. This failed on a 2-7 vote.

Commissioner Patariu had suggested adding a section prohibiting hate speech.;

7. Signs meant to communicate an intent to commit an act of unlawful violence to a particular individual or group of individuals, or directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death. [FN1]

[FN1] The United States Supreme Court has recognized certain "historic and traditional" categories of expression do not fall within the protections of the First Amendment, and content-based restrictions with regard to those recognized categories of speech have been upheld. These categories include (1) advocacy intended, and likely, to incite imminent lawless action; (2) obscenity; (3) defamation; (4) speech integral to criminal conduct; (5) fighting

words; (6) child pornography; (7) fraud; (8) true threats; (9) and speech presenting some grave and imminent threat the government has the power to prevent. *United States v. Alvarez*, 567 U.S. 709, 717 (2012) (plurality opinion). The First Amendment permits a State to ban a “true threat.” *Watts v. United States*, 394 U.S. 705, 708 (1969); accord, *R.A.V. v. City of St. Paul*, 505 U.S. 377, 388 (1992) (“[T]hreats of violence are outside the First Amendment”). “Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.” *Virginia v. Black*, 538 U.S. 343, 359-60 (2003) (emphasis added).

The measure failed as the majority felt, based on Town Attorney and the Director’s input, that hate speech seems to be covered under the Virginia State Code and is not appropriate to be included within the zoning code at this time. Some members thought the hate language that was defeated could be appropriate in some other part of town code as a law enforcement matter rather than a zoning matter. However, since we did spend a fair amount of time reviewing and discussing this aspect the Chairman felt it important to include this information for Town Council’s consideration.