



AGENDA REQUEST

<u>AGENDA HEADING:</u> Unfinished Business	<u>COMMISSION MEETING DATE:</u> December 7, 2015	<u>AGENDA ITEM NO:</u> VI.1.		
BY City Attorney	Robert Fournier	City Attorney Fournier and Assistant City Attorney Mladinich		
<u>Originating Department</u>	<u>Department Head</u>	<u>Presenter</u>		
<u>SUBJECT:</u> Adoption Re: Proposed Ordinance No. 15-5146 establishing a portable sign pilot program to allow placement of portable signs within sidewalk right of way in downtown Sarasota.				
<u>COMMISSION PRIORITIES:</u> Business Requirement				
<u>EXPLANATION:</u> (see next page for additional explanation) On October 20, 2014, the City Commission heard a presentation from Ron Soto regarding the “Downtown Cares” program sponsored by the Sarasota Downtown Merchants Association (SDMA). One aspect of the program involved the placement of A-frame message boards in the public rights-of-way downtown. The message on the A-frames urged passerby not to "give in to panhandlers" because 93 cents out of every dollar given would go to purchase alcohol or drugs as per Dr. Robert Marbut. These A-frame message boards were installed without sign permits from the City because the Director of NDS determined that they did not fall within the definition of “sign” found in the Zoning Code. The Vice President of the ACLU of Florida, Michael Barfield, disagreed with the message on the SDMA A-frames and attempted to get the City to order their removal. When those efforts failed, Barfield began posting his own controversial signs with messages urging shoppers to take their business elsewhere, and announcing that Sarasota was the “World’s Meanest City.”				
<u>ADMINISTRATION'S RECOMMENDATION:</u> As determined by the City Commission.				
<u>APPROVAL SUMMARY:</u>				
Approval	Required	Date Completed	Completed By	Status
Department Head Approval	Y	11/30/2015	Robert Fournier	APPROVED
City Auditor and Clerk Approval	Y	11/30/2015	Pamela Nadalini	APPROVED



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ADDITIONAL EXPLANATION:

On November 17, 2014, the issue was brought before the City Commission, which voted 4-1 to amend the Zoning Code to include an ordinary everyday definition of the word “sign” for purposes of the section prohibiting signs in the public right of way. This effect of this amendment was to prohibit both SDMA’s “Downtown Cares” signs and Michael Barfield’s “World’s Meanest City” signs. On May 18, 2015, the ordinance amending the definition of “sign” was passed on second reading by a 5-0 vote. Prior to the adoption of this ordinance, other less controversial A-frame signs, such as signs advertising sales and specials had been placed in the sidewalk by downtown merchants, but had garnered little notice, even though they had always been prohibited under the Zoning Code. Michael Barfield then turned his attention to these comparatively innocuous signs and demanded that the City enforce its Zoning Code and eliminate these signs. On April 6, 2015, the City Commission requested the City Attorney to report back on whether portable signs might be allowed in front of businesses in the public right-of-way during business hours. On June 15, 2015, the City Attorney presented on the issue and numerous merchants and citizens spoke in favor of allowing such signs. The City Commission voted unanimously to direct the City Attorney to prepare a draft regulation for discussion purposes. On July 6, 2015, the City Attorney presented a draft regulation for discussion and the City Commission directed the preparation of an ordinance to be scheduled for first reading and public hearing. Proposed Ordinance No. 15-5146 creating a six-month pilot program to allow portable signs in rights of way subject to time, place and manner restrictions was unanimously passed by the City Commission on November 16, 2015. Direction was given to place the proposed ordinance under "Unfinished Business" for second reading so that certain revisions could be reviewed.

ADDITIONAL ADMIN RECOMMENDATION:

FUNDING SOURCE:

AMOUNT:

HOUSING IMPACT (Per House):

NEW CONSTRUCTION:

REHABILITATION:

\$ 0

\$ 0

SUPPORT DEPARTMENTS:

City Auditor and Clerk - Pamela M. Nadalini

Neighborhood and Development Services -
Timothy Litchet

City Attorney - Robert Fournier



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AGENDA DISPOSITION

COMMISSION ACTION:

Final Action Motion: _____

Motion By: _____ Second By: _____

Vote: _____

ORDINANCE NO. 15-5146

AN ORDINANCE OF THE CITY OF SARASOTA, FLORIDA TO BE ENTITLED "PORTABLE SIGN PILOT PROGRAM"; ALLOWING PORTABLE SIGNS TO BE PLACED ON PUBLIC RIGHTS-OF-WAY IN DOWNTOWN SARASOTA; ESTABLISHING REASONABLE TIME, PLACE, AND MANNER RESTRICTIONS FOR PLACEMENT OF SIGNS ON PUBLIC RIGHTS-OF-WAY; PROVIDING FOR PROHIBITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR READING BY TITLE ONLY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section VII-109 of the City of Sarasota Zoning Code prohibits signs in the public rights-of-way other than those signs installed by a governmental agency; and,

WHEREAS, Section VII-108(4) of the Zoning Code allows businesses to place one temporary A frame sign on private property during the hours the business is open; and,

WHEREAS, the Downtown Core (DTC) and Downtown Bayfront (DTB) zone districts contain numerous businesses located in buildings with a front façade on the front property line or with insufficient front setbacks to allow for the posting of the signs authorized by Section VII-108(4) on private property; and,

WHEREAS, at the June 15, 2015 regular City Commission meeting the City Commission heard a request to allow downtown merchants to temporarily place freestanding portable signs within the public rights-of-way so as to attract the attention of pedestrians and promote their businesses; and,

WHEREAS, several merchants and citizens spoke in favor of the request and expressed a desire to be allowed to place freestanding portable signs in the public rights-of-way; and,

WHEREAS, the City of Sarasota has significant governmental interests in promoting the economic vitality of downtown Sarasota, ensuring traffic safety, preserving aesthetics, and protecting the City from liability caused by the negligence of others; and,

WHEREAS, by the adoption of this pilot program, the City Commission desires to promote the economic vitality of the Downtown Core (DTC) and Downtown Bayfront (DTB) zone districts; and,

WHEREAS, although this ordinance originates from a request to allow merchants to display freestanding portable signs in the public rights-of-way to advertise their business to pedestrians; the City Commission recognizes the rights of all citizens to engage in free speech protected by the First Amendment, regardless of whether they are also merchants; and,

WHEREAS, the City of Sarasota has a significant governmental interest in protecting itself from the negligent acts or omissions of others; thus, has an interest in requiring freestanding portable sign owners to indemnify and hold harmless the City from their own negligence in relation to their portable signs; and,

WHEREAS, the City of Sarasota has a significant governmental interest in preserving aesthetics and the limitation of one sign per natural person or legal entity serves the purpose of preserving aesthetics through curbing the proliferation of signs in the public rights-of-way in the Downtown Core (DTC) and Downtown Bayfront (DTB) zone districts; and,

WHEREAS, because some sidewalks are considered a traditional public forum, most limitations on the content of the portable signs allowed in such an area would subject the ordinance to judicial "strict scrutiny" if the ordinance were challenged on this basis in court, which could result in the invalidation of the ordinance; and,

WHEREAS, consequently, the City Attorney's Office has recommended that the pilot program ordinance to allow portable signs in the public rights-of-way contain content neutral time, place and manner restrictions only which would serve the aforementioned significant governmental interests, without subjecting the ordinance to strict scrutiny; and,

WHEREAS, the City Commission desires to respond to the needs of its constituents by allowing downtown merchants to place signs promoting their businesses in the public right-of-way while simultaneously upholding the rights of all other citizens to engage in free speech protected by the First Amendment.

NOW, THEREFORE BE IT ENACTED BY THE PEOPLE OF THE CITY OF SARASOTA, FLORIDA:

Section 1. PORTABLE SIGN PILOT PROGRAM

Notwithstanding Section VII-109 of the City of Sarasota Zoning Code, freestanding portable signs are allowed in the public rights-of-way of the Downtown Core (DTC) and Downtown Bayfront (DTB) zone districts, subject to the following restrictions:

1) Time:

- a. Freestanding portable signs may be placed between the hours of sunrise and 10:00 p.m.

2) Place:

- a. Within the public rights-of-way along designated primary streets in the Downtown Core (DTC) and Downtown Bayfront (DTB) zone districts, freestanding portable signs may be placed in the area between the curb and the edge of the sidewalk, (also known as the "amenity zone", "verge", "curb strip", "berm" or "tree lawn"), in such a manner that the portable sign does not interfere with the free and unobstructed use of the sidewalk, leaving a minimum sixty (60) inch swath of unobstructed sidewalk for pedestrian travel.
- b. Within the public rights-of-way along designated primary streets in the Downtown Core (DTC) and Downtown Bayfront (DTB) zone districts, freestanding portable signs may be placed on the sidewalk within thirty (30) inches of the building façade, provided the sidewalk is at least ninety (90) inches wide, leaving a minimum sixty (60) inch swath of unobstructed sidewalk for pedestrian travel.
- c. This ordinance shall not be applied to allow portable signs within alley rights-of-way or within rights-of-way owned or controlled by the Florida Department of Transportation or Sarasota County.

3) Manner:

- a. The dimensions of freestanding portable signs allowed by this ordinance shall not exceed sixty (60) inches in height by thirty (30) inches in width.
- b. Only one freestanding portable sign in the public right-of-way is allowed per natural person or legal entity. That is, each natural person or legal entity shall be allowed to place only one sign in the public right-of-way.

- c. Prior to the placement of the sign, each natural person or legal entity shall execute an Indemnification and Hold Harmless Agreement in favor of the City regarding the sign owner's own actual willful or negligent acts or omissions related to their placement of the freestanding portable sign. See Exhibit "A". Indemnification and Hold Harmless Agreements may be obtained and notarized free of charge at City Hall.

Notwithstanding paragraphs a through c above, no portable sign allowed by this ordinance shall:

- d. Directly or indirectly create a traffic or fire hazard or interfere with the free and unobstructed use of streets or sidewalks.
- e. Be erected or maintained at any location in such a manner as to obstruct free and clear vision at the intersection of any streets, drives or other public or private vehicular access ways.
- f. Be attached to or placed against a building in such a manner as to prevent ingress or egress through any door or window of any building, nor shall any sign obstruct or be attached to a fire exit or fire escape.
- g. Be attached or affixed in any manner to another object, including but not limited to light poles, beams, benches, trees, shrubs, or pottery.
- h. Be erected or maintained at any location where, by reason of its position, illumination, shape, or color, it may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal, or device.
- i. Be directed at drivers or occupants of motor vehicles.
- j. Contain any speech or message which is not protected by the First Amendment, including but not limited to: obscenity, true threats, defamation, fighting words, incitement to imminent lawless action, or criminal solicitation.

- 4) The City Manager, or his designee, is hereby authorized to remove and dispose of any freestanding portable sign located in the public rights-of-way in violation of this ordinance.

5) Nothing in this ordinance shall affect other alternative channels of communication, including but not limited to, signs worn or carried by individuals, which are not subject to the restrictions contained herein.

6) Freestanding portable sign owners shall have five (5) business days from the enactment of this ordinance to comply with subsection (3)(c).

7) Sunset provision: This ordinance shall automatically terminate and have no further force or effect at the date which is six (6) months after its final adoption on second reading. However, the City Commission may by the adoption of a subsequent ordinance extend the duration of this pilot program or alternatively terminate this pilot program prior to the expiration of six (6) months from its effective date.

Section 2. It is hereby declared to be the intention of the City Commission that the sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be deemed severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

Section 3. This Ordinance shall take effect immediately upon second reading.

PASSED on first reading by title only, after posting on the bulletin board at City Hall for at least three (3) days prior to first reading, as authorized by Article IV, Section 2, Charter of the City of Sarasota, Florida this ____ day of _____, 2015.

PASSED on second reading and finally adopted this ____ day of _____, 2015.

City of Sarasota, Florida

Willie Charles Shaw, Mayor

ATTEST:

Pamela M. Nadalini, MBA, CMC
City Auditor & Clerk

____ Willie Charles Shaw, Mayor

____ Suzanne Atwell, Vice Mayor

____ Commissioner Liz Alpert

____ Commissioner Susan Chapman

____ Commissioner Shelli Freeland Eddie



INDEMNIFICATION & HOLD HARMLESS AGREEMENT

In consideration of the City of Sarasota allowing the placement of a freestanding portable sign in the public right-of-way, the undersigned, _____, does hereby

(Print name)

agree to indemnify and hold harmless the City of Sarasota, its agents, and employees from any and all liabilities, losses, or damages for personal injury or property damage, resulting from the placement of said portable sign in the public right-of-way. However, such indemnification and hold harmless shall extend only to liabilities resulting from or caused by the actual willful or negligent acts or omissions of the undersigned with regard to placement of the freestanding portable sign. The undersigned's portable sign can be described as follows:

(Describe the sign or attach photo)

located at _____
(Insert street address)

Optional: In the event the freestanding portable sign requires removal, the undersigned may be contacted at the following to retrieve the sign:

Name: _____
Address: _____
Phone number: _____
Email address: _____

Dated this _____ day of _____, 20__.

STATE OF FLORIDA
COUNTY OF SARASOTA

Signature

Print name

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification.

Notary Public
My Commission Expires:

EXHIBIT "A"