

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

ITEM NUMBER: 31

DATE: January 16, 2007

STAFF: Steve Roy

SUBJECT

Second Reading of Ordinance No. 210, 2006, Amending Various Provisions of the City Code Pertaining to Unattended Displays on City Property.

RECOMMENDATION

Staff recommends approval of the Ordinance on Second Reading.

EXECUTIVE SUMMARY

This Ordinance, adopted on First Reading on December 19, 2006, by a vote of 6-1 (Nays: Kastein), prohibits all unattended displays other than newsracks. One amendment is being made on Second Reading to remove the fixed amount of the fee required for an encroachment permit for newsracks.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - December 19, 2006.

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 29 A-B

DATE: December 19, 2006

STAFF: Darin Atteberry/
Steve Roy

SUBJECT

Items Relating to Signs and Displays in the Public Right-of-Way.

RECOMMENDATION

Staff recommends approval of each of the Ordinances on First Reading.

EXECUTIVE SUMMARY

- A. Second Reading of Ordinance No. 210, 2006, Amending Various Provisions of the City Code Pertaining to Unattended Displays on City Property.
- B. First Reading of Ordinance No. 211, 2006, Amending Certain Provisions of the City Code Pertaining to Signs in the Right-of-Way.

These ordinances address the placement of signs, displays and other encroachments in the public rights-of-way and on other property owned by the City. The first prohibits all unattended displays other than newsracks. The second deals with the City's ability to remove illegally placed signs from public property and destroy them.

BACKGROUND

Ordinance No. 210, 2006, Amending Various Provisions of the City Code Pertaining to Unattended Displays on City Property.

This Ordinance clarifies in writing the City's policy regarding the placement on City property of signs and other displays that may constitute constitutionally protected speech. Essentially, the policy is that any such unattended displays are prohibited, with the exception of newsracks, which must, under the relevant case law, be allowed in the public rights-of-way. The Ordinance amends various sections of the City Code that deal with this subject in different contexts such as sidewalks, parks and natural areas. It also establishes an expedited right of appeal from the denial of a parks or natural areas permit whenever the activity or event for which a permit is sought involves speech or other behavior protected by the First Amendment.

Ordinance No. 211, 2006, Amending Certain Provisions of the City Code Pertaining to Signs in the Right-of-Way.

This Ordinance combines two sections of the Code dealing with the placement of signs in the public right-of-way. Such signs are prohibited by Section 24-1 of the Code, subject to several exceptions. There is another section of the Code (Section 17-42) that also deals with the posting of signs on publicly owned property.

These two provisions of the Code differ as to the way in which signs and handbills that violate these provisions may be removed by the City and subsequently destroyed. Section 24-1 states that notice must be sent to the sign owner, if known, and the owner has ten days to retrieve the sign. If the owner cannot be ascertained or if he or she fails to collect the sign after notice, the City may dispose of the sign in addition to issuing a citation.

Section 17-42 establishes a more expeditious process for removing and disposing of signs. Under that provision, the person whose business, interests or activities are advertised, furthered or promoted by a sign posted in violation of the section must, within 24 hours after being notified by the City, remove the sign or else it will be summarily removed and destroyed without further notice. The person who illegally posted the sign and/or failed to remove it after notice can be cited for violation of this Code section.

Staff believes that the more summary process contained in Section 17-42 is preferable for these kinds of violations because it does not require the City to remove and keep the illegal signs pending a response by the responsible party. Therefore, staff is recommending that this process be consistently used for the removal of all signs illegally posted on public property and this Ordinance would make that change. In addition, the Ordinance would provide that, if an illegally posted handbill or illegally placed sign is found on public property and the person responsible for the handbill or sign has been contacted within the preceding ten days for a similar violation, the City may summarily remove and dispose of the handbill or sign without further notice.

The Ordinance would also clarify that Section 17-42(d) prohibits the placement of advertising fliers on motor vehicles without the owner's consent, and it would also prohibit the fastening of advertising materials to residences if the owner or occupant of the residence has instructed a particular company to discontinue such practice.

COPY

ORDINANCE NO. 210, 2006
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING VARIOUS PROVISIONS OF THE CODE OF THE CITY
OF FORT COLLINS PERTAINING TO UNATTENDED DISPLAYS
ON CITY PROPERTY

WHEREAS, the City has historically not allowed on City property any private, unattended signs or other displays with a few exceptions such as newsracks, neighborhood entry signs, and signs permitted as part of a special event; and

WHEREAS, the City Council wishes to reduce its policy on this subject to writing and revise the encroachment permit provisions of the City Code to clearly state that, with limited exceptions as described in the Code, private, unattended displays designed or intended to communicate a meaning or message are not permitted on City property, including public streets, sidewalks and other rights-of-way; and

WHEREAS, the Council recognizes that some such displays may constitute constitutionally protected speech; and

WHEREAS, ample alternating means exist for communicating such messages on City property, such as speech making, distributing flyers and carrying signs; and

WHEREAS, to further safeguard the First Amendment rights of those asking to engage in speech related activities on City property, the Council wishes to allow for an expedited right of appeal from the denial of a parks or natural areas permit when the activity or event for which a permit was sought involves speech or other behavior protected by the First Amendment; and

WHEREAS, this policy regarding unattended displays is intended to apply only to City-owned property and not to public property owned by other governmental entities.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 23-81 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-81. Permit required; application.

Any person desiring to place or erect a building, fence, barrier, post or other obstructions or encroachments within any City-owned property or any street, avenue, alley, sidewalk, highway, or public right-of-way in the City shall file a written application for a permit upon a form prepared and provided by the City. The provisions of this Division shall not apply to special events as defined in § 23.5-2 of this Code.

Section 2. That Section 23-82(b)(2) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-82. Contents of application.

...

(b) If the proposed encroachment is for the purpose of serving food and/or beverages for consumption within the encroachment area as an extension, accessory or complement to an adjoining business, the application shall also contain:

...

(2) A statement that the applicant is the fee owner of the real property directly adjoining the property upon which the encroachment is sought, or, if the applicant is not the fee owner of such real property, then the adjoining property owner's written consent to the encroachment

Section 3. That Sections 23-83(a), (c) and (e) of the Code of the City of Fort Collins are hereby amended to read as follows:

Sec. 23-83. Investigation of application information; fee; permit modification and revocation.

(a) The application shall be made to the City Manager. The City Manager shall make or cause to be made an investigation of the information contained in the application and prior to the issuance of a permit. In order for an application for an encroachment for the purpose of serving food and/or beverages as referenced in Subsection 23-82(b) to be approved, the applicant for the proposed encroachment, obstruction or other structure must be the fee owner of the real property directly adjoining the property upon which the encroachment is sought, or must have obtained and submitted with the application the written consent of such fee owner. In order for an application for an encroachment for wireless telecommunication equipment or facilities (as those terms are defined in Article 5 of the Land Use Code) to be approved, the applicant must show to the satisfaction of the City Manager that the applicable criteria contained in Section 3.8.13 of the Land Use Code have been met. Additionally, the proposed encroachment, obstruction or other structure shall not, in the judgment of the City Manager, constitute a nuisance or destroy or impair the use of property by the public or constitute a traffic hazard. No permit shall be issued unless the City Manager determines that the foregoing criteria have been met. In investigating the application, the City Manager may consult with such City departments as he or she deems necessary to determine whether the application should be approved. If the City Manager determines that the property proposed for the encroachment permit is not needed for use by the public and that all submittal requirements of the application are complete, the City Manager may issue the permit

for such duration and upon such other terms and conditions as the City Manager determines are necessary to protect the public welfare. As a condition of the issuance of any permit for the purpose of serving food and/or beverages, as referenced in Subsection 23-82(b), the permittee shall annually provide to the City Manager proof of uninterrupted liability insurance coverage in the amount required in said Subsection, naming the City as an insured party.

...

(c) At the time of issuance of a permit hereunder, and at the time of any modification of such permit, the applicant shall pay a fee to help defray the costs incurred by the City in processing and administering the permit including, without limitation, the cost of inspecting the premises that are the subject of the application. The amount of said fee shall be determined by the City Manager, pursuant to the provisions of Article I of Chapter 7.5; ~~provided however, that the amount of the fee for encroachments for newsracks shall be fixed at ten dollars (\$10.) per year.~~

...

(e) If the encroachment is for newsracks the City Manager's decision whether to issue or deny issuance of the permit shall be made within fifteen (15) days following the date that a complete application was submitted to the City. With the exception of newsracks, no privately owned, unattended displays designed or intended to convey a meaning or message shall be permitted as encroachments under this Division.

Section 4. That Section 23-193(d)(12) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-193. Prohibited acts; permits.

...

(d) Except as authorized by a permit obtained for such use from the Service Area, it shall be unlawful to:

...

(12) Post a notice or sign, including fastening, displaying or depositing cards, posters, or other written materials in a natural area, or to erect a display in a natural area, unless such items are incidental to another ongoing permitted activity and are specifically authorized by the permit for such activity.

...

Section 5. That Section 23-194(c) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-194. Natural Areas Permit Process.

...

(c) A permit decision by the Director under Subsection (b) above may be appealed to the City Manager pursuant to the appeals procedure set forth in Article VI of Chapter 2 of this Code. If a permit is denied for an activity or event consisting of speech or other expressive conduct that may be protected by the First Amendment to the United States Constitution, the permit applicant shall have the right to seek immediate judicial review of such denial without first appealing such denial to the City Manager.

Section 6. That Section 23-203(d) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-203. Prohibited acts; permits.

...

(d) Except as authorized by a permit obtained for such use from the Service Area, it shall be unlawful to:

- ...
- (11) Post a notice or sign, including fastening, displaying or depositing cards, posters, or other written materials in a recreation area, or to erect a display in a recreation area. Even when the posting or displaying of such items is authorized by a permit, no such items shall be left within the recreation area between the hours of 11:00 p.m. and 5:00 a.m.
- ...

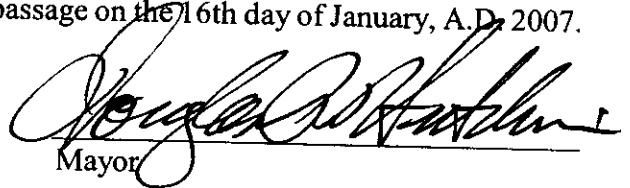
Section 7. That Section 23-204(c) of the Code of the City of Fort Collins is hereby amended to read as follows:

...

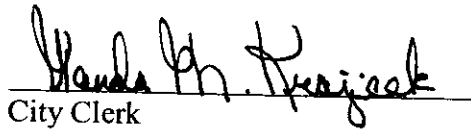
(c) A permit decision by the Director under Subsection (b) above may be

appealed to the City Manager pursuant to the appeals procedure set forth in Article VI of Chapter 2 of this Code. If a permit is denied for an activity or event consisting of speech or other expressive conduct that may be protected by the First Amendment to the United States Constitution, the permit applicant shall have the right to seek immediate judicial review of such denial without first appealing such denial to the City Manager.

Introduced, considered favorably on first reading, and ordered published this 19th day of December, A.D. 2006, and to be presented for final passage on the 16th day of January, A.D. 2007.


Mayor

ATTEST:


City Clerk

Passed and adopted on final reading on the 16th day of January, A.D. 2007.

Mayor

ATTEST:

City Clerk