

Office of the City Manager

ACTION CALENDAR
July 8, 2003

To: Honorable Mayor and
Members of the City Council

From: Weldon Rucker, City Manager

Subject: Amendment to the Sign Ordinance Regarding Temporary Signs

RECOMMENDATION

Adopt first reading of an Ordinance amending Section 20.16.070 of the Berkeley Municipal Code, to require that temporary noncommercial signs on public property need not bear the name of the sponsor, and clarifying regulations applicable to temporary commercial signs on public property.

FISCAL IMPACTS OF RECOMMENDATION

Minimal. The proposed amendments will clarify and codify existing practice.

CURRENT SITUATION AND ITS EFFECTS

The City regulates signage through its Sign Ordinance, Title 20 of the Berkeley Municipal Code (BMC). Among other things, the Sign Ordinance regulates temporary signs on publicly owned property, primarily light-poles. (Signs on wooden telephone poles are prohibited for safety reasons by both state and local law.)

In general, the City's regulation of temporary signs on public property has reduced visual clutter and improved the appearance of the City's main streets. The proposed amendment refines the existing regulation.

BACKGROUND

Currently the Sign Ordinance (BMC Title 20) requires that all temporary signs posted on public property bear the name and address of the party responsible for posting and removing the sign, whether the sign is posted for commercial or non-commercial purposes. There is authority, however, that the government may not compel persons engaging in non-commercial speech to identify themselves. The U.S. Supreme Court has held that speakers of political speech have a First Amendment right to speak anonymously. There is no such right, however, for commercial speech, and cities may regulate commercial speech by requiring identification on signs posted on public property. Indeed, it is the essence of commercial speech to identify the speaker, because otherwise the proposed transaction could not be consummated. While the City has not enforced this requirement with respect to temporary non-commercial signs, the City Attorney advises that the identification requirement should be explicitly limited to temporary commercial signs on public property.

In addition, certain businesses have taken advantage of the City's tolerance of temporary commercial signs that refer to "events", to advertise themselves in general for long periods of time, by referring to "sales" or "promotions". The proposed amendment would clarify the term "event" as it is used in the definition of "temporary sign" to put an end to this practice.

Finally, the Sign Ordinance states that the expense of abatement of temporary signs "shall be a lien against the property on which such signs were maintained and a personal obligation against the property owners." As applied to signs on public property this makes no sense, The proposed amendment would clarify that this applies only to signs on private property.

RATIONALE FOR RECOMMENDATION

The proposed amendment would clarify Sign Ordinance provisions related to temporary signs, and codify existing practice that conforms to the First Amendment. The rationale is that ordinances should be properly drafted and reflect actual practice.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered two alternative amendments to the Sign Ordinance:

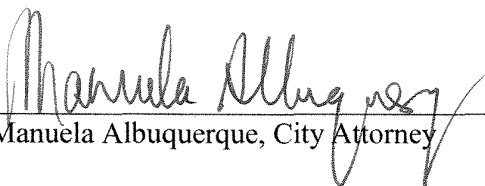
1. Require all persons posting temporary signs to identify themselves on the back of the signs; and/or
2. Adopt a provision similar to that of San Francisco, which requires parties to place a registration number on their signs-- whether commercial or non-commercial-- before posting them. Under the San Francisco approach parties obtain the registration numbers from the City.

Staff rejected these alternatives because they do not truly allow persons to post non-commercial messages anonymously. If persons were required to identify themselves on the back of non-commercial signs, the risk of identification would be likely if or when the signs were taken down. Additionally, were the City to require registration numbers on all signs, it is not clear this would meet constitutional muster, as the parties would still have to identify themselves to the City. Also, such a system would create a costly and possibly burdensome administrative scheme.

CONTACT PERSON

Zach Cowan, Assistant City Attorney 981-6950

Approved:


Manuela Albuquerque, City Attorney

AMENDING BERKELEY MUNICIPAL CODE SECTION 20.16.070 REGULATING
TEMPORARY SIGNS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 20.16.070 is amended to read as follows:

20.16. 070 Removal required—Time limits—Abatement of nuisance signs authorized when.

A. Except as otherwise provided in this section, temporary signs shall be removed thirty days after they are placed, erected or installed, or fifteen days after the event to which they refer, whichever, is later. As used herein, the term “event” does not include temporary promotions, or sales, conducted by commercial enterprises.

B. On-premises signs shall be removed within sixty days after vacation of the premises by the business or occupant.

C. Construction signs shall be removed upon completion of the construction project for which they were erected.

D. Real estate signs shall be removed within sixty days after the sale, lease, or rental of the premises.

E. All temporary signs on public property that propose a commercial transaction or promote a commercial enterprise must bear the name and street address, or equivalent, of the party responsible for posting and removing the sign, ~~or be Temporary signs which do not satisfy this requirement~~ are subject to immediate and summary abatement.

F. Temporary signs on private property that are not removed at the times herein specified shall be subject to summary abatement pursuant to Section 38773 of the Government Code of the State, and ~~the~~ expense of such abatement shall be a lien against the property on which such signs were maintained and a personal obligation against the owners of such property ~~owners~~.

Section 2. Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.