
CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG
Mayor



DEPARTMENT OF LAW
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September 10, 2019

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 19-0432 – Campaign Signs in Residential Areas – Repeal
of Earliest Date Requirement

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0432 for form and legal sufficiency. The bill would repeal part of Subtitle 46 in Article 19 of the City Code concerning political signs.

Since the entire Subtitle is not legally enforceable because it is an unconstitutional regulation of speech, the bill to repeal part of the Subtitle is legally sufficient. *Reed v. Town of Gilbert Arizona*, 135 S.Ct. 2218, 2230 (2015) (signs that treat political speech differently from other speech are presumptively unconstitutional and subject to strict scrutiny requiring the government to prove the restriction is narrowly tailored to meet a compelling government interest); *accord Wagner v. City of Garfield Heights*, 675 Fed. Appx. 599, 606-07 (6th Cir. 2017) (unreported) (struck down town's political sign ordinance as not meeting strict scrutiny standard because it was underinclusive: town could not explain why restrictions placed on political signs but not signs with other messages furthered government interest); *see also American Association of Political Consultants, Inc., v. Federal Communications Commission*, 923 F.3d 159 (4th Cir. 2019) (explaining that in "conducting a strict scrutiny review, we are obliged to examine the speech restriction for an infirmity that is commonly referred to as 'underinclusiveness.' An 'underinclusive' restriction is one that covers too little speech, thereby leaving 'appreciable damage to the government's interest unprohibited.' An underinclusive restriction thus fails a strict scrutiny review.") (citations and quotations omitted); *see also Fusaro v. Cogan*, 930 F.3d 241, 253 (4th Cir 2019) ("First Amendment requires courts 'to guard against undue hindrances to political conversations and the exchange of ideas'") (citations omitted); *Central Radio Co., Inc. v. City of Norfolk, Va.*, 811 F.3d 625, 634 (4th Cir. 2016) (City's sign restrictions were unconstitutional because they regulated based on content of message displayed).

Not only are the content restrictions in Subtitle 46 of Article 19 of the City Code unconstitutional and therefore unenforceable, the size and display of outdoor signs is now governed by Title 17 of Article 32 of the City Code concerning zoning. Title 17 of that zoning code impliedly repealed Subtitle 46 of Article 19 because Title 17 is a later enactment that dictates

attributes of permissible signs in each zoning district. City Code, Art. 32, § 17-101, *et. seq.*; see e.g., *Blackstone v. Sharma*, 461 Md. 87, 143 (2018) (“if two statutes contain an irreconcilable conflict, the statute whose relevant substantive provisions were enacted most recently may impliedly repeal any conflicting provision of the earlier statute.”) (citations omitted).

For clarity, the Law Department recommends that the entirety of Subtitle 46 of Article 19 be repealed. An amendment to effectuate that repeal is attached. However, failure to enact this bill or to amend it will not change the fact that the entirety of Subtitle 46 of Article 19 is unenforceable.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Matthew Stegman, Mayor’s Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalá, Chief Solicitor
Ashlea Brown, Assistant Solicitor

AMENDMENTS TO COUNCIL BILL 19-0432
(1st Reader Copy)

Proposed by: Law Dep't

On page 1, in line 2, delete “OF EARLIEST DATE REQUIREMENT”

On page 1, in lines 3 and 4, delete “a prohibition on erecting campaign signs on residential property prior to a certain date; and conforming and clarifying related provisions” and subtitle “Subtitle 46 of Article 19 of the Baltimore City Code”

On page 1, in line 5, delete “and re-ordaining, with amendments”

On page 1, in line 7, delete “Section(s) 46-1” and substitute “Subtitle 46”

On page 1, in line 15, insert a “[” before “§”

On page 1, in line 15 delete “[” before “When” and delete “]” after “displayed”

On page 1, in line 15 delete “SIGN REMOVAL”

On page 1, delete all brackets in lines 16, 17, 19 and 21.

On page 1, in line 21 delete “SIGNS FOR CANDIDATES SEEKING ELECTED PUBLIC OFFICE”

On page 1, in line 22, delete “FROM THE EXTERIOR OR THE YARD OF ANY DWELLING IN BALTIMORE CITY”

On page 2, after line 2, insert:

§ 46-2. Where and how displayed.

(a) In general.

All signs:

- (1) shall be confined within private property; and
- (2) may not be placed so as to obstruct the vision of operators of motor vehicles.

(b) Required relocation.

The Police Commissioner or the Commissioner’s agent may require that a sign be relocated:

- (1) if he or she reasonably determines that its placement may obstruct the vision of operators of motor vehicles; or
- (2) for other public safety reasons.

§ 46-3. Maximum size.

(a) In general.

No sign erected under this subtitle may exceed an area of 16 square feet.

(b) Computing area.

A sign's area shall be computed as provided in Baltimore City Zoning Code Title 17, Subtitle 3 {"Sign Dimension Measurement Methodology"}.

§ 46-4. Permitted inferences.

For purposes of enforcing this subtitle, the presence of a violative sign permits, but does not require, an inference that it was placed or erected at the direction of or with the consent of the candidate whose name appears on the sign.

§ 46-5. Enforcement by citation.

(a) In general.

In addition to any other civil or criminal remedy or enforcement procedure, this subtitle may be enforced by issuance of:

- (1) an environmental citation under City Code Article 1, Subtitle 40 {"Environmental Control Board"}; or
- (2) a civil citation under City Code Article 1, Subtitle 41 {"Civil Citations"}.

(b) Process not exclusive.

The issuance of a citation to enforce this subtitle does not preclude pursuing any other civil or criminal remedy or enforcement action authorized by law.

§ 46-6. Penalties.

(a) In general.

Any person who violates any provision of this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$100 for each offense.

(b) Each day a separate offense.

Each day that a violation continues is a separate offense.]