CITY OF TALLAHASSEE

Agenda Item Details

Meeting	Sep 22, 2014 - City Commission Meeting
Category	15. 6:00 P.M. PUBLIC HEARINGS
Subject	15.02 First and Only Public Hearing on Ordinance No. 14-O-35; Amending the Sign Code to Exempt "Sense of Place" Banners on Public Property; and Approval of Amendments to Commission Policy 704 -- Lewis Shelley, City Attorney
Access	Public
Type	Public Hearing

Public Content

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Statement of Issue

The City's Sign Code establishes standards to protect and promote the health and safety of persons within the City as well as avoid an environment that encourages visual blight. Included in the Sign Code are provisions related to banners. The City receives several requests each year from citizens, business entities, non-profit organizations, and others to erect banners promoting an event, season, school, place, area, etc. Many of the requests are to put banners on the City's utility poles.

The City regulates banners on public and private property through the City's sign code and two policies. (Attachments 1, 2 and 3) The regulations allow banners for City co-sponsored public events for a certain length of time; but, in recent years, banners celebrating "Sense of Place" areas have been approved by the City without a requirement for a specific "event". Banners, for private purposes unconnected with a City co-sponsored public event, are not permitted by existing regulations. The issue of whether the regulations should be revised to allow such banners to be placed on utility poles by private entities and individuals was presented for consideration to the Long Range Community Planning Target Issue Committee. Staff review has raised concerns about allowing private banners on public infrastructure such as the utility poles. The Electric Utility is concerned about damage to poles that were not manufactured to support banners, and the Legal Department is concerned about creating a public forum where one does not now exist.

This issue was presented to the Long Range Target Issue Committee on April 23, 2014. The target issue committee recommended that public utility poles not become a public forum for expression and that they continue to be utilized generally for a public utility purpose. The Committee did recommend that the City Manager's authority to install banners on public property reflecting a "sense of place" or sense of community be clarified in Section 7-32(6), Exempt Signs, Tallahassee Land Development Code (Attachment 1) under the conditions as prescribed in Commission Policy 704 (Attachment 3). The City Attorney's Office has drafted Ordinance No. 14-O-35 (introduced on September 10, 2014) and a proposed amendment to Commission Policy 704 to accomplish that purpose. The policy amendment would additionally address a requested modification of Commission Policy 704 to authorize the installation of banners for no more than 14 days rather than the current "no more than 10 days" prior to the public event. This timeframe is more in line with the installation requests of co-sponsors in maximizing notice of the event.

Ordinance No. 14-O-35 is before the City Commission for public hearing and action. Amendments to Commission Policy 704 are before the City Commission for action; a public hearing is not required.

Recommended Action

Option 1. Conduct the first and only public hearing, adopt Ordinance No. 14-O-35, and approve amendments to Commission Policy 704.

Fiscal Impact

No immediate impact expected.

Supplemental Material/Issue Analysis<

FAMU Homecoming Parade
FSU Homecoming Parade
FSU Seven Days of Opening Nights, now called Opening Nights
Gubernatorial Inauguration Parades
LeMoyne Chain of Parks Art Festival
New Year's Eve- DMBA
Red Hills Horse Trials
Spring Time Tallahassee Parade
St. Patrick's Day Parade and Festival
Veterans Day Parade and Festival
Pops in the Garden

As mentioned above, other events sponsored by a City department are also exempt from permitting requirements. (Attachment 2)

City Commission Policy 704 (Attachment 3), adopted February 26, 2003, governs Banners for City-Sponsored Events Located within Public Rights-of-Way. This policy governs requests for banners to be placed in rights-of-way for specific events no more than 10 days before each event and to be removed no more than 5 days after the end of the event (unless specifically allowed otherwise). Banners to be placed on utility poles are limited to 15 square feet in area, with no dimension greater than five feet. Banners on utility poles must be reviewed and approved by the Electric Department; and must meet installation guidelines in the policy. The policy allows for exceptions granted by the City Manager in cases which demonstrate the need for an exception.

Neither the Sign Code nor the policies address permanent banners installed by private entities intended to promote the entity - not a specific City-sponsored event. These banners would be considered to be commercial speech; and, if installed on utility poles, would be commercial speech in City rights-of-way. The banners now found in the downtown area, on Apalachee Parkway, on Gaines Street, and in Midtown were installed with the approval of the City Manager's Office; the banners promote a public purpose – a sense of place for each area.

Banners may not be placed on the City's utility poles without the approval of the Electric Utility. The Electric Utility's perspective on banners is from a practical viewpoint. They have no problem with banners as long as any banner placed on a utility pole meets certain requirements, as follows:

1. The banners are installed in a manner that does not adversely impact the operations of Electric's facilities (i.e.: far enough away from any wires to not present a safety issue, while still allowing access to Electric's and joint user facilities from either a bucket truck or climbing);

2. The poles are designed to meet the wind loading added by the banners;

3. Determination as to whether there would be a payment of a reasonable fee. Other joint users (i.e.: Comcast, Century Link, etc.) pay the City an attachment fee for each pole attachment. This pole attachment fee is essentially an annual rental payment for use of the pole. It does not include the cost of the attachment which is borne by the joint

user; and

4. As with joint users, the City would not be responsible for the installation or maintenance of the banners.

These requirements are similar to those that other joint users of the utility poles, such as cable companies or telephone companies, must meet. Electric does advise that lighting and power poles are not generally designed to meet wind loading that would occur from a banner, especially one that is attached at the top and bottom, being attached to the pole. As a result, it is anticipated that the majority of the poles within the Electric distribution system will not meet the wind loading associated with a banner attachment, especially one attached at the top and bottom. When this occurs with other joint users, the joint user has the opportunity to pay for replacement poles. This option could be afforded to those who want to attach banners to the City's poles. If the City approved opening up utility poles for banners, the Electric Utility may need additional funds to provide stronger utility poles.

The City Attorney's Office has reviewed the legal issues associated with broadening the banner policies, and has found reasons to be cautious in opening up utility poles to private entities and, therefore, to commercial speech. It is reasonable to expect that the City might want to review and approve messages that would be allowed on City-owned utility poles, but such a review would be governed by case law addressing First Amendment rights. Restrictions on commercial speech are governed by a four-part test announced in a case called Central Hudson Gas & Electric Corporation v. Public Service Commission of New York:

(1) The speech concerns lawful activity that is not misleading;
(2) The government interest is substantial;
(3) The regulation directly advances that interest; and
(4) The regulation is not more extensive than necessary.

447 U.S. 557, 566 (1980).

There is no traditional right of access to utility poles for purposes of communication. See a case called Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent, 104 S. Ct. 2118 (1984). A regulation restricting such access will withstand constitutional scrutiny if it serves a legitimate government interest, is viewpoint neutral and does not foreclose the availability of alternative channels of communication. Regarding a legitimate government interest, "municipalities have a weighty, essentially esthetic interest in proscribing intrusive and unpleasant formats for expression." Id.

If the City opens up utility poles for the public to use for commercial speech, any review would be limited to safety issues or aesthetics. The City could not limit the content of the banners. The City could not decline a request based on finding the message to be objectionable. The City would have a situation similar to what the State Capitol recently faced when it created an open public forum in the Capitol rotunda. It would have to be open to all points of view. In addition, if the utility poles were opened to public use, the City could very well receive requests all over the City. It would be difficult to say yes to some and no to others without definitive guidelines and procedures.

Before the City could authorize banners of private entities or individuals on utility poles, the Sign Code and the two policies discussed above would have to be amended to allow the banners and to establish guidelines and procedures. Based on the current state of the law, the City Attorney's Office is of the opinion that any guidelines could not include limitations on the content of the speech to be allowed on the utility poles. The Long Range Target Issue Committee recommended, with one clarification, that the current sign Ordinance related to banners remain unchanged - allowing banners promoting City-sponsored events. The current regulations avoid the need to balance the City's right to govern aesthetics with First Amendment rights. The Committee, however, additionally recommended that the City Commission clarify the City Manager's authority to approve permanent banners for the public purpose of recognizing a "sense of place" or sense of community. The proposed ordinance, introduced September 10, 2014, (Attachment 4) would accomplish this purpose. Also included for City Commission approval is the associated proposed amendment to Commission Policy 704, Banner Policy (Attachment 5) for adoption if the ordinance amendment is approved. The amendment would additionally address a requested modification of Commission Policy 704 to authorize the installation of banners no more than 14 days rather than the current "no more than 10 days" prior to the public event. This timeframe is more in line with the installation requests of co-sponsors in maximizing notice of the event.

Options

Option 1. Conduct the first and only public hearing, adopt Ordinance No. 14-O-35, and approve amendments to Commission Policy 704.

Option 2. Conduct the first and only public hearing, adopt Ordinance No. 14-O-35, and approve amendments to Commission Policy 704, as revised by the City Commission.

Option 3. Conduct the first and only public hearing, do not adopt Ordinance No. 14-O-35 and amendments to Commission Policy 704, and provide direction to staff.

Attachments/References

1. Sign Code provisions for banners
2. Administrative Policy and Procedures Manual, Policy 610
3. City Commission Policy 704
4. Proposed Ordinance No. 14-O-35
5. Proposed Amendment to Policy 704

ATT 1-Sign Code.pdf (4,255 KB) ATT 2-Admin Policy.pdf (1,050 KB)

ATT 3-Commission Policy.pdf (722 KB) ATT 4-Proposed Ordinance.pdf (39 KB)

ATT 5-Proposed Commission Policy.pdf (21 KB)

Administrative Content

City Commission Policy 704 – Banners for City-Sponsored Events and Sense of Place Recognitions Located Within Public Rights-of-Way or Other City-Owned Property

DEPARTMENT: Growth Management

DATE ADOPTED: February 26, 2003

DATE OF LAST REVISION: N/A

704.01 Authority: City Code of Ordinances, ~~Sec. 3-3 and 3-40(b)(6)~~Sec. 7-32.

704.02 Scope and Applicability: This policy covers banners to be placed in the public rights-of-way or other City-owned property for City-sponsored events, or sense of place recognitions as defined in ~~Sec. 3-40(b)(6)~~Sec. 7-32 of the City Code of Ordinances by individuals or groups other than by federal, state, county or municipal government.

704.03 Policy Statement: Banners allowed to be located in the public rights-of-way or other City-owned property per ~~Section 3-40(b)(6)~~Sec. 7-32, City Code of Ordinances must be reviewed and approved by the C~~c~~ity M~~m~~anager or his/her designee. The guidelines in this policy shall be used as a basis for approval of such banners.

704.04 Guidelines:

704.04.01 Time Limits: The request for approval must be received for review a minimum of 20 working days prior to the date the proposed banners are to be placed. With the exception of sense of place recognitions, t~~T~~he banners shall not be installed more than ~~10~~ 14 business days prior to the event for which the banner is being placed, and shall be removed within 5 business days after the end of the event unless specifically allowed otherwise. The City Manager or his/her designee shall specify the time limitations for sense of place recognitions.

704.04.02 Size Limitations: Banners requested to be mounted on utility poles (but not suspended across a street, avenue, or thoroughfare) shall be a maximum of 15 square feet in area, with no dimension greater than 5 feet. Such banners must be approved by the Electric Department.

Street banners that will be suspended across any street, avenue or thoroughfare shall be of a length not to exceed 60 percent of pavement width over which it is suspended. The height of the banner shall not exceed 4 feet. The minimum clearance from the bottom of the banner to the street surface shall be 18 feet.

704.04.03 Durability: The material and composition of the banner shall be such that the banner will not deteriorate and will remain in place for the time period for which it is approved. The approving authority may require documentation demonstrating the durability of the banner.

704.04.04 Installation: The installation of banners shall be done in such a manner as to not block pedestrian or vehicular traffic during either the placement or removal of the banners. All installations on electric utility poles or equipment shall be installed by a contractor approved by the Electric Department or pursuant to an agreement with the Electric Department, in which the applicant shall pay the cost of installation.

704.04.05 Content: The banners shall ~~not~~ contain ~~offensive~~ informational language about the event or a recognition of a sense of place or community only and shall be laid out in such a manner as to allow the message to be read without causing traffic issues. The banner must have a City of Tallahassee logo and lead sponsor logo as part of the banner.

704.05 Applications: Application forms for banners under this policy shall be approved by the Building Official. Applications shall be submitted on the approved forms to the Building Official, who shall review the applications and make recommendations to the City Manager, or his/her designee.

704.06 Banners on Rights-of-Way Not Owned by the City: Requests for banners on public rights-of-way owned by public entities other than the City must be approved by the public entity with jurisdiction over the right-of-way as well as by the City under this policy.

704.07 Exceptions: Exceptions to these guidelines may be granted by the City Manager or his/her designee in specific cases when the applicant demonstrates in writing the need for an exception and demonstrates that the exception will not create vehicular, pedestrian, or other safety issues.

704.08 Administration: This policy will be administered by the City Manager or his/her designee (Communications Department effective 2/26/03).