

"B"

Memorandum



Date: April 17, 2012

To: Commissioner Barbara J. Jordan
District 1

From: R. A. Cuevas, Jr.
County Attorney

Subject: County Sign Code

You have asked a number of questions regarding Chapter 33, Article VI of the County Code regarding signs ("County Sign Code"). The County Sign Code is found in Divisions 1 through 7 of Article VI of Chapter 33 (Sections 33-82 – 33-121.31). A copy of your request is attached as Attachment 1.

I. SIGNS UTILIZING LED TECHNOLOGY

Section 33-85 of the County Sign Code provides:

Only those signs that are specifically authorized by this sign code shall be permitted. Those that are not listed or authorized shall be deemed prohibited.

(See Ordinance No. 85-59). The County Sign Code is silent about signs using LED ("light emitting diode") technology. You ask whether such signs are authorized.

The County's prior Planning & Zoning Director opined that point of sale signs using light emitting diode (LED) technology are allowable as "automatic electric changing signs" under Section 33-96.1. In reaching this conclusion, the Director wrote:

The ACS [Automatic Electric Changing Signs] regulations were adopted during a time when incandescent lighting was the predominant technology but they do not preclude the use of more modern technology such as light-emitting diode (LED).

(See Attachment 2). Under Florida law, the construction of an ordinance by the department charged with its enforcement and interpretation is entitled to great weight, and courts should not depart from that construction unless it is clearly erroneous. The Director's interpretation falls within his area of interpretive expertise and is legally defensible.

II. DUAL JURISDICTION OF CITY AND COUNTY OVER SIGNS LOCATED WITHIN MUNICIPALITIES

The balance of the questions you ask pertains to the applicability of the County Sign Code to various types of signs located within municipalities.

COMMISSIONER BARBARA J. JORDAN
OFFICE
RE:

The County Sign Code applies throughout the entire County as a minimum standard, including the incorporated areas of the County, and imposes responsibility on municipalities to enforce the Code within their boundaries.¹ That responsibility, however, is not exclusive, as the County retains the power to assure that the Code is uniformly interpreted and applied throughout the County, including within municipal boundaries. (See Section 33-82).²

Given the foregoing policy, the County Commission can direct the Mayor to review a municipality's enforcement or lack thereof and determine, based on technical and administrative expertise, whether the municipality is properly interpreting and applying the County Sign Code. The Mayor may also undertake such a review on his own initiative. If it were determined that a municipality is not properly interpreting or applying the Code, the County Commission or the Mayor could authorize that appropriate action be taken to require any city permitted or authorized signs not in compliance be made to comply with the Code or be removed.

a. Municipal opt-out of the Sign Code's proscription against signs within six hundred feet of an expressway

Division 5 of the County Sign Code historically prohibited signs, with certain limited exceptions, within six hundred feet of an expressway (the "protected area"). In 2007, the Board amended Division 5 to allow municipalities to opt out of this proscription and to allow signs within six hundred feet of an expressway within their municipality. (See Ordinance No. 07-84).

Other Divisions of the County Sign Code contain regulations applicable to the various types of signs, e.g., point of sale signs, outdoor advertising signs, etc. Thus, while municipalities that have opted out of Division 5 may allow signs within six hundred feet of an expressway, such signs remain subject to other Divisions of the County Sign Code regulating the size and other characteristics of the type of sign that is allowed.

The County's prior Planning & Zoning Director specifically opined that signs located within the protected area pursuant to municipal opt-out remain subject to Section 33-96.1 (Automatic Electric Changing Signs) of the County Sign Code, and that the standards governing illumination contained therein continue to apply. (See Attachment 2 – February 17, 2011 Letter to Barbara K. Bisno, Esq.). I concur with that reading of the County Sign Code.

b. Regulations governing programmable signs within municipalities

You note:

Many programmable signs have been installed in recent years on billboard

In order to assure fulfillment of this responsibility, the Board directed the County Manager in 2004 to undertake discussions with the city managers for each municipality within the County regarding enforcement of the County Sign Code within their respective municipal boundaries. (See Resolution No. R-370-04).

See Attachment 3 – June 25, 2010 Memorandum to Commissioner Carlos A. Gimenez.

Commissioner Barbara J. Jordan

11/11/11

11/11/11

faces, some of which are located along arterial or even minor roadways. Each land area for all of those billboards with programmable sign faces is smaller than ten (10) acres in gross size.

You also note that few, if any, of these signs advertise products and services that are available where these signs are located. You ask if such signs are allowed by the County Sign Code.

The County Sign Code mentions “billboards” only in the context of Class C signs, which are not point of sale signs (*See* Section 33-84(h) and Section 33-107). A point of sale sign (Class B) is a “sign advertising or designating the use, occupant of the premises, or merchandise and products sold on the premises” and must “be located on the same premises whereon such is situated or the products sold.” (Section 33-84(g)). The only provision of the County Sign Code that may allow programmable electronic signs is Section 33-96.1, which governs automatic electric changing signs. That section provides that the use of automatic electric changing technology “shall apply to Class B (Point of Sale) signs only” (Section 33-96.1(a)), and requires, among other criteria, “[a] minimum of ten (10) gross acres improved land area” (Section 33-96.1(f)). As explained in section IIa. of this memorandum, these regulations apply to all signs in Miami-Dade County, including those that are permitted near expressways by municipalities that opted out of Division 5.

The County’s prior Planning & Zoning Director determined that the “County’s sign code does not provide for digital (automatic changing) technology for billboards” (*See* Attachment 2). Thus, digital technology is only permissible for point of sale signs on properties of 10 or more acres. I concur with his reading of the County Sign Code.

c. Digital signs on city-owned properties

You ask whether legislation in the City of Miami to allow digital signs on certain City-owned properties, presumably located within the City’s boundaries, would be consistent with the County Sign Code if applied to property that is smaller than 10 acres or to signs that advertise goods and services not available for purchase on site. As noted above, the County’s automatic electric changing sign regulations limit such signs to point of sale signs, and only permit them to be installed on properties with a minimum lot size of 10 acres. These provisions of the County Sign Code apply in both the incorporated and unincorporated areas and therefore govern signs on City-owned properties.

d. Media mesh sign located on the American Airlines Arena

I have previously advised that, if it were determined that the City has not properly interpreted or applied the County Sign Code as to this particular sign, the County could take appropriate action to require that such a city-permitted sign be made to comply with the Code or be removed (*See* Attachment 3). My opinion on this issue is unchanged.

You ask whether the media mesh sign at the American Airlines Arena would be operating in a manner consistent with the County Sign Code if it were to advertise goods and services not available for purchase on site. The County’s prior Planning & Zoning Director has addressed this issue (*see*

Attachment 2) and determined that the Arena media mesh sign is permitted only as a point of sale sign. I concur with this determination.

e. Fines

You inquire as to the maximum fines that the County could assess for violations of the County Sign Code. As detailed in Section 8CC-10 of the County Code, the civil penalties that the County may impose without court action vary depending on the specific violation. For example, a violation of Section 33-96 on illumination carries a civil penalty of \$100, the unlawful erection of a Class C sign subject to Section 33-107 carries a civil penalty of \$1,000, and the unlawful erection of a sign in a protected area subject to Section 33-121.21 carries a civil penalty of \$2,000. If the violation constitutes a "continuing violation," meaning that the violation remains uncorrected, then additional penalties would apply. Section 8CC-4 provides that "[f]or each day of continuing violation after the time for correction has run, an additional penalty in the same amount as that prescribed for the original violation shall be added," with a maximum total penalty of 20 times the original penalty amount, except that for illegal murals, the maximum total penalty is 30 times the original penalty amount.

Finally, you request information concerning "the last time a fine was assessed against a sign in each of those categories [Class C billboard, Class C mural, and programmable sign]." My office has been involved in litigation since 2008 over the Class C mural signs at the City Inn Hotel located next to I-95 at NW 81st Street. The County filed a lawsuit asking a court to order the owner to remove the signs and to impose penalties of up to \$25,000 per day per violation. The owner has removed the signs but continues to challenge the County's authority. The case remains pending. There has been no assessment or collection of fines or penalties to date. With regard to enforcement actions and penalties with which my office may not be involved, I have forwarded your request to the appropriate County staff and have asked them to respond on an expedited basis.

III. CONCLUSION

Given that the County retains the power to assure that the County Sign Code is uniformly interpreted and applied throughout the County, including within municipal boundaries, the County could take enforcement action with respect to signs located within municipal boundaries that are not in compliance with the County Sign Code. The County Commission or the Mayor could authorize such action.

atts. (3)

c: Hon. Chairman Joe A. Martinez
and Members, Board of County Commissioners
Hon. Carlos A. Gimenez, Mayor
Charles Anderson, Commission Auditor
Christopher Agrippa, Division Chief, Clerk of the Board