

ORDINANCE No. 2007-05-111

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING CHAPTER 33, "ZONING," ARTICLE VI, "SIGNS," DIVISION 1, "TITLE, APPLICABILITY, PURPOSE AND DEFINITIONS," SECTION 33-83 "PURPOSE," AND SECTION 33-84 "DEFINITIONS," AND DIVISION 2, "GENERAL PROVISIONS", SECTION 33-95, "PROHIBITED SIGNS," OF THE MIAMI-DADE COUNTY ZONING CODE, AS MADE APPLICABLE TO THE CITY OF MIAMI GARDENS' CODE OF ORDINANCES, BY PROHIBITING OFF-PREMISES SIGNS (BILLBOARDS) WITHIN THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 8.3 of the Charter, the City of Miami Gardens ("City") regulates zoning and land use through the Miami Dade County Zoning Code, and

WHEREAS, the City is concerned that an uncontrolled proliferation of off-premises signs (Billboards) within the City would result in a negative visual impact, and

WHEREAS, the City finds and determines that in order to maintain and improve the aesthetics, quality of life, and safety of the City and its residents, the City must adopt the following regulations prohibiting Billboards,

WHEREAS, implementing sign regulations to advance the governmental purpose of aesthetics has long been upheld by state and federal courts, and

WHEREAS, the Courts in Berman v. Parker, 348 U.S. 26, 33 (1954), and State v. Miami Beach Redevelopment Agency, 392 So.2d 875 (Fla. 1980) held that the concept of the public welfare is broad and inclusive; that the values it represents are spiritual as well as physical, aesthetic as well as monetary; and that it is within the power of the City Council to determine that the community should be beautiful, healthy, spacious, as well as clean, well-balanced and carefully patrolled, and

WHEREAS, in City of Lake Wales v. Lamar Advertising Ass'n of Lakeland, Florida, 414 So.2d 1030 (Fla. 1982), the Florida Supreme Court held that sign regulations have been held to advance aesthetic purposes and advance the public welfare, and

WHEREAS, the City Council finds and determines that the City has consistently adopted severability provisions in connection with its Code of Ordinances, and that the City wishes to assure that its severability provisions will be applied to its land development regulations, including Billboards, and

WHEREAS, the City Council desires that there be a record of its intention that the severability clauses it has adopted related to Billboard regulations shall be applied to the maximum extent possible, even if less speech would result from a determination that any exceptions, limitations, variances or other provisions are invalid or unconstitutional for any reason whatsoever, and

WHEREAS, the City Council desires that its prohibition of Billboard signs be given full effect, regardless of the invalidity or unconstitutionality of any or all of the City's other regulations, and

WHEREAS, the City Council further intends to allow noncommercial speech to appear wherever commercial speech appears, and codifies this intention through the adoption of a substitution clause that expressly allows non-commercial messages to be substituted for commercial messages as set forth in the body of this Ordinance,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA as follows:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. AMENDMENT TO SIGN REGULATIONS: The sign regulations contained in Sections 33-83 "Purpose," 33-84 "Definitions," and 33-95, "Prohibited Signs," are hereby amended as follows:

. . .

Sec. 33-83. Purpose, Scope and Substitution.

(a) *Purpose.* This Ordinance adopted under the Zoning Authority of the City.

The purpose of this chapter [article] is to permit signs that will not, because of size, location, method of construction and installation, or manner of display:

- (1) Endanger public health, safety, and welfare of the citizens of the City; or
 - (2) Create distractions that may jeopardize pedestrian or vehicular traffic safety; or
 - (3) Mislead, confuse, or obstruct the vision of people seeking to locate or identify uses or premises; or
 - (4) Destroy or impair aesthetic or visual qualities of Miami-Dade County or the City of Miami Gardens which is so essential to tourism and the general welfare;
- and

~~(b)~~ The purpose of this article is also to permit, regulate and encourage the use of signs with a scale, graphic character, and type of lighting compatible with buildings and uses

in the area, so as to support and complement land use objectives as set forth in the Comprehensive Development Master Plan. In the event of any conflict between this Ordinance and any declaration of covenants, bylaws, or other restrictions applying to any property within the City, the language affording the more restrictive interpretation shall apply.

(b) Scope. The provisions of this Ordinance shall govern the number, size, location, and character of all signs which may be permitted either as a main or accessory use under the terms of this Ordinance. No signs shall be permitted on a plot or parcel either as a main or accessory use except in accordance with the provisions of this Ordinance.

(c) Substitution of Noncommercial Speech for Commercial Speech.
Notwithstanding any provisions of this article to the contrary, to the extent that this article permits a sign containing commercial copy, it shall permit a noncommercial sign to the same extent. The noncommercial message may occupy the entire sign area or any portion thereof, and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to noncommercial messages, or from one noncommercial message to another, as frequently as desired by the sign's owner, provided that the sign is not prohibited, and the sign continues to comply with the requirements of this article.

Sec. 33-84. Definitions.

For the purposes of this Ordinance the following words and phrases are hereby defined as provided in this section, unless the context clearly indicates otherwise.

Where there is a question as to the correct classification or definition of a sign, it shall

be the prerogative of the Director to place said sign in the strictest category and/or classification.

ILLEGAL BILLBOARD. A billboard that was constructed in violation of the regulations that existed at the time it was built.

NONCOMMERCIAL SIGN. A sign containing only noncommercial copy. "Noncommercial" shall mean not for profit or commercial gain. Regardless of the content of the copy, a noncommercial sign shall be construed to be an off-premises sign.

NON-CONFORMING SIGN. A sign located within the City limits on the effective date of this ordinance or existing in an area annexed by the City after the effective date of this ordinance (or amendments hereto) which, by its height, type, area, design, colors, materials, location, use, or structural support, conformed to the Code of Ordinances prior to the effective date of this ordinance, but does not now conform to the requirements of the Code of Ordinances. This shall include signs that had been granted variances that were approved, and signs that were issued a construction permit by Miami-Dade County prior to the effective date of this Ordinance.

OFF-PREMISES SIGN. A sign that directs attention to a commercial business, commodity, service, product, or activity not conducted, sold, offered, or available on the premises where such sign is located, the copy of which may be intended to be changed periodically. It may also be referred to as a billboard or Class C sign. This definition includes a sign displayed on a trailer or the bed of a truck that advertises something other than the identity of the truck, the driver or its contents.

Sec. 33-95. Prohibited signs.

(k) From and after the effective date of this Ordinance, it shall be unlawful for any person to erect, place or use within the City, any Class C, Off-premise or Billboard sign, and no new Class C, Off-premise or Billboard sign shall be erected within the corporate limits of the City. Except for non-conforming signs, all such signs are prohibited in the City. Class C, Off-premise or Billboard sign erected after the effective date of this Ordinance, as amended, shall be removed at the sole expense of the sign owner and shall be subject to code enforcement proceedings as provided by the City's Code of Ordinances.

SECTION 3. SEVERABILITY:

(1) *Generally.* If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Ordinance is declared unconstitutional by the final and valid judgment or decree of any court of competent jurisdiction, this declaration of unconstitutionality or invalidity shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this article. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

(2) *Severability where less speech results.* This subsection (2) shall not be interpreted to limit the effect of subsection (1) above, or any other applicable severability provisions in the Code of Ordinances or any adopting ordinance. The City Council specifically intends that severability shall be applied to these regulations even if the result would be to allow less speech in the City, whether by subjecting currently exempt signs to permitting or by some other means.

(3) *Severability of provisions pertaining to prohibited signs.* This subsection (3) shall not be interpreted to limit the effect of subsection (1) above, or any other applicable severability provisions in the Code of Ordinances or any adopting ordinance.

(4) *Severability of prohibition on off-premises signs.* This subsection (4) shall not be interpreted to limit the effect of subsection (1) above, or any other applicable severability provisions in the Code of Ordinances or any adopting ordinance. If any or all of this Article or any other provision of the City's Code of Ordinances is declared unconstitutional or invalid by the final and valid judgment of any court of competent jurisdiction, the City Council specifically intends that that declaration shall not affect the prohibition of off-premises signs in Section 33-95(k).

SECTION 4. INCLUSION IN THE CODE: It is the intention of the City Council that the provisions of this Ordinance shall become and made a part of the City of Miami Gardens Code of Ordinances; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

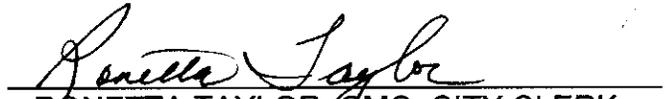
SECTION 5. EFFECTIVE DATE: This Ordinance shall be effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 10th DAY OF JANUARY, 2007.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 24th DAY OF JANUARY, 2007.

ATTEST:


SHIRLEY GIBSON, MAYOR


RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA K. DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY O. CREW, CITY MANAGER

MOVED BY: Vice Mayor Braynon
SECONDED BY: Councilwoman Watson

VOTE: 6-1

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|--------------------------------|---------------------|--------------------|
| Mayor Shirley Gibson | <u> x </u> (Yes) | <u> </u> (No) |
| Vice Mayor Oscar Braynon, II | <u> x </u> (Yes) | <u> </u> (No) |
| Councilman Melvin L. Bratton | <u> x </u> (Yes) | <u> </u> (No) |
| Councilman Aaron Campbell, Jr. | <u> x </u> (Yes) | <u> </u> (No) |
| Councilman André Williams | <u> </u> (Yes) | <u> x </u> (No) |
| Councilwoman Sharon Pritchett | <u> x </u> (Yes) | <u> </u> (No) |
| Councilwoman Barbara Watson | <u> x </u> (Yes) | <u> </u> (No) |



City of Miami Gardens

1515 NW 167th Street, Bldg. 5, Suite 200
Miami Gardens, Florida 33169

Mayor Shirley Gibson
Vice Mayor Oscar Braynon II
Councilman Melvin L. Bratton
Councilman Aaron Campbell
Councilwoman Sharon Pritchett
Councilwoman Barbara Watson
Councilman André Williams

MEMORANDUM

To: The Honorable Mayor and City Council Members
From: Jay Marder, AICP, Development Services Director
Thru: Dr. Danny O. Crew, City Manager
Date: January 24, 2007
Re: Ordinance to Prohibit Billboards and Other Off Premise Advertising

Summary

Applicant: City of Miami Gardens
Area: City Limits
Requested Action(s): Ordinance to Amend the Zoning Code to Ban Additional Billboards and other Off-Premise Advertising

Background

The City has taken several actions to consider matters related to billboards and other off-premise advertisement. On June 14, 2006, the City enacted Ordinance 06-12-93 as a temporary, 180-day billboard moratorium. That moratorium was set to expire approximately mid-December. On December 13, 2006 the City adopted Ordinance 2006-23-104 to extend the billboard moratorium. Copies of the ordinances are attached.

The City Council held a special workshop to discuss billboards on November 14, 2006. A copy of the staff report provided to the City Council is attached. The report outlined existing billboards in the City, existing billboard regulations, the City's Vision and plans related to signs, and various alternatives to regulating billboards. In addition, the City Attorney provided a memorandum which discussed the legal implications of prohibiting billboards. These materials are attached. Prior to the workshop, correspondence addressed to all known billboard companies informed them of the workshop. Copies of such correspondence are attached. Several representatives of billboard companies attended the workshop meeting and provided comments. After due consideration and discussion, the City Council decided to pursue a policy of banning new, additional billboards within Miami Gardens.

**I-3) ORDINANCE
2ND READING
BILLBOARDS & OTHER OFF
PREMISE ADVERTISING**

Recommend that the City Council adopt an ordinance to prohibit and otherwise ban new billboards and other off-premise advertisements within the City of Miami Gardens.

Attachments:

Ordinance 06-12-93
Ordinance 2006-23-104
Staff Report for November 14, 2006 Workshop
Memorandum Dated November 11, 2006 from City Attorney
Letters to Billboard Companies
Ordinance