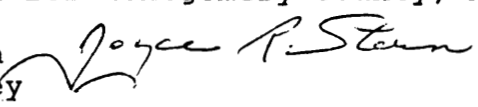


M E M O R A N D U M

February 27, 1992

TO: William E. Hanna, Jr., Chairman
Planning, Housing and Economic Development Committee
County Council for Montgomery County, Maryland

FROM: Joyce R. Stern 
County Attorney

RE: Zoning Text Amendment 91002, Political Campaign Signs

Our office has reviewed Zoning Text Amendment 91002 with a focus on the provision that purports to exempt political campaign signs from compliance with §§49-17 and 49-18 of the Montgomery County Code 1984, as amended. For the following reasons, a separate amendment to Chapter 49 is necessary to achieve the proposed result.

The legal authority vested in the County to effect changes to the County Code derives from State law, Maryland Annotated Code Article 25A, the Express Powers Act, while the authority to enact or amend the Zoning Ordinance derives from another State law, Maryland Annotated Code Article 28, the Regional District Act. Although the County Council may amend the Montgomery County Code, it must sit as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, when it amends the text of the Zoning Ordinance.

The County Council, when sitting as the District Council, may not perform functions other than those provided by the Regional District Act. Thus, while the District Council may enact amendments to the Zoning Ordinance, it may not amend other portions of the Montgomery County Code, because those sections must be amended by the County Council, as authorized by Maryland Annotated Code Article 25A. Based on this separation of authority, the reference to §49-17 and §49-18 of the County Code contained in ZTA 91002 serves only as a cross-reference to other applicable sections within the County Code, but cannot serve as an exemption from compliance with other sections. To accomplish the desired purpose, a separate amendment to Chapter 49 reflecting the proposed exemption must be enacted by the County Council.

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In addition, the responsibility for enforcing the Zoning Ordinance and Chapter 49 of the Montgomery County Code rests with two different departments of Montgomery County. The Department of Transportation enforces the provisions of Chapter 49, while the Department of Environmental Protection enforces the provisions of the Zoning Ordinance. This situation further illustrates the need for clear provisions in the County Code to avoid conflict between the two agencies when trying to enforce these provisions.

The inclusion of a clear reference in Chapter 49 (specifically §49-19) exempting political signs from the restrictions of Chapter 49 would provide more effective notice to the public. Absent such a provision, anyone consulting Chapter 49 would not have any notice that an exemption of political signs exists and would see nothing to direct their attention to the Zoning Ordinance.

I hope these comments have clarified the difficulties created by including the notation in the Zoning Ordinance that purports to exempt political signs from the provisions of Chapter 49. If I can be of further assistance, please do not hesitate to contact me. Karen Federman Henry, Associate County Attorney, will continue to attend the work sessions regarding this Zoning Text Amendment.

cc: Karen L. Federman Henry, Associate County Attorney
Ralph D. Wilson, Montgomery County Council

JRS:kh
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