

Statement of Michael E. Hobbs
for the
City Council
January 30, 2016

Docket Item #7 – Sign Regulations

Mayor Silberberg, Vice Mayor Wilson and members of Council, my name is Michael Hobbs, and I live at 419 Cameron St. Thank you for this opportunity to testify on the question of political signs.

You have before you a proposal that you adopt an absolute ban on any political signs in public spaces—at any time, at any place, of any size or materials, in any number, or for any duration—and, indeed, that you banish all other non-governmental speech via signs from the public realm, as well. You may have been given the impression that a recent Supreme Court decision requires that result; but that is a misstatement of that decision. The proposal to eradicate political signs would undermine an important public purpose. It is contrary to long established Alexandria public policy. It is not necessary to avoid the problems that are forecast. And it has been advanced through a deeply flawed public process.

The ability for candidates to place campaign signs in the public right-of-way has been an important and energetic contribution to our public discourse in Alexandria for decades. It promotes public awareness of our elections. It encourages broader citizen participation in those elections, which is a fundamentally important right and responsibility of our citizenship, and undergirds the validity and vitality of the government which we elect. It is particularly valuable and important to candidates who do not have the advantages and resources of incumbency (e.g., in Alexandria, to independent or minority party candidates; to newcomers or challengers in either party, or neither; and to candidates for “lesser” offices—such as the School Board—whose campaigns are far less likely to attract the kind of financial and volunteer resources that campaigns for “higher” office do.)

Our tradition of broad, vibrant and enthusiastic citizen participation in the governmental and political process of our city is one of the most appealing things about Alexandria. We who live here may take that process too much for granted; but we shouldn't. We should be grateful for that freedom. We should cherish and nourish it—not seek to limit or abridge it out of a misguided aspiration for order.

The Supreme Court decision in the case of *Reed v. Town of Gilbert* **DOES NOT REQUIRE THAT YOU AMEND YOUR ORDINANCE TO COMPLETELY PROHIBIT POLITICAL SIGNS IN THE PUBLIC RIGHT-OF-WAY**. If you have gotten that impression, I would hope that your Counsel could confirm that is not correct.

Our goal in Alexandria should be that, if a fundamental change to a public policy of such importance and such long standing is to be considered, such action should be preceded by broad and open public discussion and, if possible, a broad consensus about the wisdom of the change.

In the present case, however, there has been until very recently hardly any public notice or public awareness that a ban on political signs was being considered, and hardly any public discussion. The topic was assigned to the “Ad Hoc Group on A-Frame & Digital Signage”—hardly a clear notice that it was to consider a ban on political signs—and the Group may not have received and discussed the proposed Text and Code Amendments until one meeting in early December. The leadership of the two political parties was apparently not notified until a few days before Christmas. The specific subject of “political sign regulations” has never appeared on any of the Group’s agendas published on the City website.

Enactment of a complete ban at this time, with no further public discussion, would be an unnecessary and draconian conclusion; and the process by which it was brought forward would not have honored either the letter or the spirit of the Policy on Public Participation which you adopted at the conclusion of the “What’s Next, Alexandria” project just two years ago. It would be far better if you were to “hit the pause button” on this proposal now, and resume your consideration only after enhancing that process to assure that the proposition returns to you after a wide, transparent and robust debate in which all who wish to have a full opportunity to participate.

If, nonetheless, you felt compelled to act on this new political signs ordinance today, you should adopt alternative language for a Code amendment which would

- **Preserve** the core principle of Alexandria’s long-standing public policy: the ability of candidates to place political signs in the right-of-way.
- **Reform** the standards for sign placement to retain their positive value while reducing the negatives which critics warn of.

and

- **Strengthen** enforcement so as to optimize the positive goal while minimizing noncompliance.

A draft for an illustrative Code amendment is discussed in the memorandum attached to this statement. It is based on the draft language suggested by staff. **The very fact that staff offers such alternative language implicitly affirms that such an alternative—far from being forbidden by the *Reed v. Town of Gilbert* decision—would in staff’s opinion be entirely consistent with that decision.**

Please do not join those who find this or any other form of political speech annoying, distasteful, discouraging or unsightly and would like to suppress it. Please do not stand with those who would subject our political free speech to “aesthetic cleansing.” Please instead reaffirm and reinforce this fundamental contribution to public awareness and the broadest possible public participation in our democratic system of government.

Thank you for your attention.

January 25, 2016

Political Campaign Signs in the Public Rights-of-Way in Alexandria

Alexandria is moving forward rapidly with a proposal to eradicate political signs from the City's public rights-of-way, arguing that such action represents good planning practice and that it is required by a recent Supreme Court decision. The effort to abolish political signage, attributed to the *Reed v. Town of Gilbert* decision, misstates that decision, is not necessary to avoid the problems complained of, is contrary to long established Alexandria public policy, and has been advanced through a deeply flawed public process.

The Public Policy Interest in Political Signage

The ability for candidates to place political campaign signs in the public right-of-way has been an important and positive contribution to our public discourse in Alexandria for decades. It promotes public awareness of and encourages citizen participation in our local elections, which is a fundamentally important right and responsibility of our citizenship, and undergirds the validity and vitality of the government which we elect. It is particularly valuable and important to candidates who do not have the advantages and resources of incumbency (e.g., in Alexandria, to independent or minority party candidates; to newcomers or challengers in either party, or neither; and to candidates for "lesser" offices—such as the School Board—whose campaigns are far less likely to attract the kind of financial support that attaches to campaigns for "higher" office such as Mayor, City Council, etc.)

Candidates do not have an "absolute" First Amendment-protected "right" to place their campaign signs in public rights-of-way, any more than they would have a "right" to attach their signs to public buildings, school buildings, etc. The fact that Council arguably could prohibit political signs from the public right-of-way does not command that it should do so, however.

We should, rather, cherish and honor the core principle on which the First Amendment rests, and on which Alexandria's public policy should rest also: that freedom of belief, expression and speech is fundamental to liberty, one of the "unalienable rights" with which Americans are endowed by their Creator (not by their government), and that it should not be abridged: not by King George, the British Parliament, their agents—and not by any level of American government. Alexandria should champion the heritage of freedom of expression left to us by our Virginia forebears Thomas Jefferson, George Mason and James Madison—rather than looking for "loopholes" in the First Amendment through which our government can restrain or limit such expression.

Citizens' freedom to express their opinion and belief about the selection of their government, about its public policies and performance, and about the candidates who aspire to serve that stewardship is, in turn, a foundational principle of our democracy. It should be maximized, not constricted and constrained.

To that end, Alexandria has explicitly authorized candidates to place campaign signs in public rights-of-way since at least the 1980's. Council should not rescind that authorization—not because it has been given the erroneous impression that the Supreme Court requires it, and certainly not if that were because any might see this as an opportunity to tilt the playing field still further to the advantage of incumbents, or because they find challenging candidates' party affiliations or the content of their signs offensive, annoying, or "disruptive" and want to suppress it, or forbid it entirely.

Public Participation in Alexandria's Electoral Process

Alexandria has long believed it to be of the highest importance to encourage its citizens to participate to the fullest possible extent in the process of selecting their government—not only on election day, to be sure, but also in the process of public advocacy, discussion and debate that leads up to those elections. Candidates' campaign signs contribute to that process: calling the public's attention to the approaching election; identifying the candidates and the office they seek (and, often, their party affiliations); and advising voters of endorsements they may have received, from business, labor, education, civic, environmental, or other community groups. Delivery and placement of the signs encourages and involves volunteers in their campaigns. Prohibition of campaign signs in public spaces would substantially reduce that public information and that citizen involvement.^{1/}

Supreme Court Decision in *Reed v. Town of Gilbert*

In June 2015, the Supreme Court issued its ruling in the case of an Arizona town's sign ordinance which had been challenged as an unconstitutional abridgement of a church's free speech. In that case (*Reed v. Town of Gilbert*) a "small, cash-strapped church" which had no building of its own was told by the city that it could not place "temporary directional signs" directing worshippers to the location of its weekly services unless the signs were no more than six square feet in size, stated the date of the "event" (the worship service), were placed no more than twelve hours in advance of the service, were removed within an hour afterward, and were placed no more than four to any one property. These requirements made use of such signs by the church a practical impossibility, and were far more restrictive than the limitations placed on other types of signs, including "ideological" or "political" signs.

The Court ruled that a sign ordinance which abridged some categories of speech by imposing different limitations based on the content of such speech, would not satisfy the requirements of the First Amendment unless it could withstand "strict scrutiny"—i.e., that the differentiation was shown to serve a "compelling governmental interest" and that it was "narrowly tailored" to serve that interest: that the restriction of free speech was no more than necessary to accomplish that valid and important public purpose.

The Planning Commission was advised by the staff report for its January 5, 2016 meeting that:

The recent US Supreme Court ruling in *Reed v. Town of Gilbert*...created the need for the City of Alexandria to revise its sign ordinance such that the regulations would be purely content neutral....

that

...if you have to read the sign to know if it complies with zoning, the regulation is invalid....

1/ As Democratic "sign captain" Patrick Butler urged during an earlier discussion of this question:

At the very least, signs alert voters to the coming election and create the festive air that is a part of the celebration of our political system. While irritating to some, the signs attract interest and alert voters to a coming election. Moreover, the sign campaigns involve volunteers in the political process, which is good for our society and our system of government.

that

aesthetic and safety justifications are not enough of a reason for sign regulations to survive strict scrutiny....

and therefore that

...the City's sign regulations will need to be completely revised in order to make them content neutral in accordance with the Court's ruling.

In fact, the Court made no such rulings in the *Reed* case! At most, it ruled that an ordinance like the Town of Gilbert's, which restricted some among many categories of speech on the basis of their content, would have to meet the "strict scrutiny" test (regulation "narrowly tailored" to serve a "compelling governmental interest") in order to satisfy the First Amendment. **It did not rule that all "content-based" ordinances were automatically invalid and would have to be amended or repealed.**

The staff report and recommendation itself tacitly acknowledges that **the *Reed* decision does not require that Alexandria remove political signs from the public rights-of-way.** Staff suggests alternative ordinance language that could be adopted if Council, like half the members of the Ad Hoc Group, concluded that political signs serve an important public interest and should continue to be permitted. Staff's submission of such alternative language would obviously be improper if *Reed* required the removal of political signs altogether.

The Supreme Court in *Reed* sought to protect an Arizona church's speech against unwarranted and unnecessary governmental discrimination. It would be ironic, not to say perverse, for Alexandria now to seize on that decision as the justification—not for restricting, but for forbidding altogether—another category of speech which it has heretofore permitted and encouraged.

Planning Commission Action

The Planning Commission, as stated in the staff report for Council, did indeed vote 7-0 to initiate a Text Amendment and to forward it to Council for consideration. It would be disingenuous, however, to suggest that the seven Commissioners all agreed with the proposition that Alexandria's sign ordinance should be amended to eradicate political signs from the public rights-of-way.

Commissioner Brown disagreed with the staff's interpretation and application of the *Reed* decision, and urged instead that the city should consider whether its ordinance could be refined to comport with the requirements of that decision and thus to preserve the "compelling governmental interest" embodied in "our long-established practice of political signs in the right-of-way...." He concluded, however, that it would not be appropriate for him as an individual Commissioner to assert his legal opinion in lieu of the advice rendered to a City Commission by the City Attorney's office, nor for the Planning Commission as a whole in a sense to "preempt" the proper role of the City Council itself in weighing the important public policy question of balancing "the goals well served by the existing [political signs regulation]" against "the likelihood that anyone would mount a court challenge to the prohibition of non-political signs in the right-of-way, just to have the right to post signs for a limited period during election years." Four other Commissioners joined in expressing greater or lesser degrees of "reluctance" in concluding that there might be no obvious or risk-free way to preserve the political sign ordinance as is, and that the question should therefore be forwarded to the Council. One

Commissioner explained that he did not share his colleagues' "reluctance" about the demise of political signs, believing that it was an appropriate conclusion as a matter of planning policy for the use of public rights-of-way. One Commissioner did not speak specifically to any "reluctance" or lack thereof about the disposition of political signs.

Criticism of Campaign Signs

Staff paints a grim picture of the spectacle that would result if Council were to permit political signs to continue: an overwhelming profusion of unsightly signs of all types, defacing our roadways virtually year-round and imposing a daunting enforcement burden on the staff.^{2/}

Such dystopian predictions are quite unwarranted. Under the present or any future sign ordinance the City would retain unquestioned authority:

- (1) to limit the number of signs that may be placed, in a given area, per linear distance, or citywide.
- (2) to specify precise limits on the size and materials of such signs.
- (3) to confine the time period during which signs may be placed and after which they must be removed. The specter of virtually continuous signage is greatly exaggerated, at best. With the move of Alexandria's Council and School Board elections to November, there is now only one election that is regularly scheduled every year, in November. A common date (for both parties) is also fixed for a primary election in June, should either or both choose to employ that option to select their general election candidates—which they do not always do. With a short "window" for signs before the election—for illustration, 30 days—the period for placement of signs could be as little as 30 days in most years, or 60 days in years when either party conducted a primary: not close to the "almost year-round" spectacle portrayed in the staff materials.^{3/}
- (4) to prohibit signs in some locations (e.g., along Washington Street and the George Washington Memorial Parkway, including the "gateway" entrances to the city).
- (5) to regulate the placement of signs so as to assure that traffic safety is not compromised nor visibility impaired.
- (6) to confine sign placement to grassy areas, not including parks, school yards, playgrounds, tree wells, traffic channelization islands, etc.—and, by definition, not including placement on sidewalks or any other hard surfaces.
- (7) to authorize employees of any City department—or indeed "any person"—to "abate the nuisance" by removing improperly placed signs.

^{2/} The photograph that leads the staff presentation, illustrating an offensive clutter of unregulated real estate signs, comes from the Internet. It illustrates conditions in another jurisdiction, not in Alexandria.

^{3/} Every fourth year, there might be a Presidential Primary in March—again, only if either or both parties selected that method to choose their delegates.

- (8) to require the posting of a bond sufficient to assure that compliance will be largely a matter of self-enforcement.

This would be the case regardless of Alexandria's interpretation and application of the *Reed* decision. All of such regulations are "content-neutral" and thus would not be subject to "strict scrutiny". Indeed, three of the six Justices who joined in the opinion of the Court also issued a concurring opinion in which they explained that rules regulating the size of signs, the location in which they may be placed, the total number of signs allowed, and distinctions between free-standing or attached, lighted or unlighted, fixed message or electronic signs, distinctions between private and public property, commercial and residential property, and other factors, would all be permissible, and thus that

Properly understood, today's decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate esthetic objectives. (Emphasis added.)

No "Plethora of Signs"

The daunting picture of the calamity posited to result if political signs were permitted to continue rests on the presumption that a strictly "content-neutral" alternative must permit any and all persons or agencies to place every and all types of signs in the right-of-way, and thus would result in thousands of signs, commercial as well as political. But in fact there have been few if any complaints from commercial interests that they are not permitted to place signs in the right-of-way in the run-up to elections under the present "political signs only" ordinance; and it is exceedingly unlikely that many would judge it worthwhile to purchase and post hundreds or thousands of such signs under the much more stringent time, size, materials and placement limitations, bond requirements, and enforcement provisions likely under a revised ordinance—in most years, only for a few days in October, and occasionally in May.

Argument About Ugly "Bandit Signs" Is A Distraction: They Are Not the Issue

Unightly "bandit signs" ("We buy used cars", "Lose weight fast") would not be affected one way or the other by Council's leaving the political signs ordinance as it is, repealing it altogether, or modifying it to include the "content-neutral" alternative language that staff suggests. Affixing such stickers to utility poles, building walls and the like is illegal now, and would remain so in the future. The enforcement burden might in fact be reduced, not increased, by the more stringent limitations and self-enforcement applied to signs in general under the alternative language.

Process Employed in Advancing the Proposal to Abolish Political Signs

No proposition brought before Council—on this or any other subject of such great public importance—should be argued on the basis of incomplete, inaccurate, deceptive or misleading information; or by a process which, rather than being fair, open and transparent, obscures or misstates the true purpose and effect of the proposal, and discourages or avoids the opportunity for full and informed public participation in honest and open discussion and debate on its merits.

Alexandria's public policy has permitted or encouraged political signs in the rights-of-way for almost thirty years, as an integral part of the City's political process. A policy so critical to the central goal of encouraging maximum citizen participation in that process should not be repealed through a process which any citizens could consider as "stealthy". Repeal of the political signs ordinance should be

proposed (if at all) in full public view, and debated and discussed on its own merits—not as an adjunct or afterthought to a review of the mechanics of A-Frame commercial signs on King Street.

In June 2015, an “Ad Hoc Group on A-Frame & Digital Signage” was appointed by the Director of Planning to review experience and make recommendations regarding the experimental program begun several years earlier to permit small shops and restaurants to place temporary, free-standing “A-frame” signs at King Street intersections in Old Town. (Proprietors had urged such a program, complaining that pedestrians, motorists and trolley riders could see the establishments on King Street but were unaware of the wealth of smaller establishments on the intersecting or parallel streets nearby.) The panel was requested also to make recommendations regarding “digital” signage—i.e., electronic signs displaying changing messages.

The group appointed by the Director was composed with that purpose in mind; its membership was drawn specifically to include expertise and interest focused on commercial A-frame or prospective digital signage—not on Alexandria’s electoral process. The expectation was that the group would be able to complete its assignment through several meetings last summer; there was no expectation—and thus no notice—that review and recommendations on the City’s fundamental policy on political signage would be part of its portfolio.

To be sure, the group’s materials have been available on line at the City’s website, and subsequent to the *Reed* decision in June, there have been references to that case on the Group’s agenda since August, and to the topic of “Signs in Rights of Way” since November—though never explicitly to “political signs”. The composition of the Group was not enhanced to better equip it to address this major new public policy question, however, nor was there any new emphasis in public notice to potentially interested parties to alert them to the addition of this important new question. Until quite recently—until after the Group had adopted its recommendations and the Planning Commission had acted on them, in fact—the body was still referred to on-line, in public notices, and otherwise as the “Ad Hoc Group on A-Frame & Digital Signage”—hardly a caption likely to alert interested parties or the general public that the Group was developing recommendations which might substantially alter the City’s decades-old policy on political signs—or even delete it completely. The materials on line did not disclose staff’s proposal that political signs in the right-of-way be forbidden, moreover, until the Group’s December 7, 2015 meeting—slightly less than one month before the Planning Commission’s action thereon. Nor was there any significant discussion of that proposal by the Group—or perhaps any at all—until that December meeting.

As late as the Group’s December 7 meeting, staff indicated in response to a member’s question that it had not yet “undertaken any outreach to the local Democratic or Republican parties to see how they felt about the sign ordinance,” but that the “suggestion was a good one” and would be pursued. It was not in fact until just before Christmas that a curious citizen, digging down into the weeds of the Group’s on-line materials, discovered that the political signs policy was in play and sounded the alarm to others who might be interested, including the chairman of at least one of the local political parties.

The Planning Staff briefed civic representatives at a January 4 meeting of the Alexandria Federation of Civic Associations—the day before the Planning Commission acted on the proposal.^{4/}

^{4/} In fairness, it should be noted that this date was selected primarily for the convenience of the Federation, not of the staff. But the question by then had apparently been under consideration by staff or pending before the Ad Hoc Group for several months.

A more appropriate model could have been found in the process that was employed the last time a major review of and fundamental revisions to policy affecting Alexandria's political process was undertaken. Beginning in 2008, the City examined whether moving its municipal elections from May to November might substantially enhance voter turnout for those elections above the modest level typical of stand-alone elections in May; or whether, while increasing the quantity, it might damage the effectiveness of that citizen participation, "submerging" attention to Alexandria candidates and issues under the overwhelming media and public attention usually focused on the state and national elections in November. The Mayor appointed a "blue-ribbon commission" to study the question and make recommendations, including then-present and former state and local public officeholders and candidates of both parties, representatives of groups such as the League of Women Voters, and the like.^{5/} The Commission conducted several widely publicized public hearings and deliberated over a period of months before forwarding its recommendations to Council; its written report (including a synopsis of all of the public comment that it had received) was published well in advance of the Council's first consideration. Council itself developed its conclusions through an iterative process over several meetings, and even considered conducting a public referendum on the question before proceeding further. Council took final action on the question in June 2009. Some criticized it for acting at a meeting in the few weeks between a Council election (in which two new members had been elected) and the conclusion of the previous Council's term; but none could complain that the issue had taken anyone by surprise or that it had not been widely discussed and thoroughly debated over an ample period, or that public participation had not been welcomed and encouraged.

The contrast to the brief process through which the current proposal to ban political signs has been advanced could not be more stark. The current proposition falls well short of the standard for honest, open and transparent discussion set forth in Alexandria's Policy on Public Participation, adopted as the culmination of the "What's Next, Alexandria" project. That policy commits the City to seek to

Ensure that prior to the adoption of public policies which will significantly impact the quality of life of members of the community, **(1) the nature of the proposed policy or action has been fully disclosed, (2) the public has had reasonable opportunity to be informed, consulted, involved, or to collaborate on the proposed action, and (3) the decision-making body has had sufficient opportunity fairly to consider and reflect before acting.**^{6/} (Emphasis added.)

Hostility Toward Political Signage in Alexandria

Alexandria's sign ordinance has long permitted placement of political campaign signs in public rights-of-way, subject to detailed and precise regulation of the size, time and location of their placement, in the interest of traffic safety and appearance.

Some incumbent officeholders (unfortunately all from the same political party) have frequently betrayed a hostility to such signs, however. The current proposal to banish political signs from the right-of-way is at least the fourth such effort since the late 1990's:

^{5/} Popularly referred to as "the Hobson Commission", after its Chairman, former Virginia Delegate Richard Hobson.

^{6/} City Council Resolution No. 2597, January 25, 2014

- (1) In 1997-98, after the 1997 Virginia gubernatorial election, a Councilman who found the campaign slogan of the opposing party's candidate particularly obnoxious proposed that permitting of such signs in Alexandria be terminated.^{7/} With the assent of a majority of the Council, the proposal was referred to the Planning Commission with the request that it initiate the necessary amendment to the text of the Zoning Ordinance. When the Text Amendment returned to the Council, however, representatives of both of Alexandria's political parties, the League of Women Voters and the American Civil Liberties Union of Virginia defended political signage and exhorted Council not to proceed. Council did not act on the proposal.
- (2) In early 2004 (after the 2003 general election) another effort to severely limit or prohibit such political signs was initiated. The Planning Commission supported several amendments to tighten the technical regulation and enforcement of sign placement, but did not support any of the proposals to limit, regulate, or prohibit the content of such signage, and the effort was aborted.
- (3) In 2009, another incumbent Councilman solicited and encouraged his supporters and constituents to petition Council to restrict or eliminate such signs. The response was apparently disappointing, however, and no Planning Commission or Council action was initiated.
- (4) As noted, prohibition of political signs was neither contemplated nor included in the portfolio of the Ad Hoc Group on A-Frame & Digital Signage that was appointed in June 2015. The proposal was developed after the *Reed* decision, but with little notice or public discussion, either by the public or by the Group, until December. In November, one Councilman, while not explicitly urging his constituents to call for the banishment of signs, prominently reported the *Reed* case and a New York Times article in his monthly newsletter, under the headline, "The End of Campaign Median Signs?"

Given the prior history, a cynic could wonder whether opponents of political signage—whether staff or elected officials—had seized on the *Reed* decision as a rationale—or a pretext—for accomplishing the long-sought objective of repealing the authorization of political signs in the public rights-of-way. When the subject of "political signs" was added to the portfolio of the Ad Hoc Group, it was instructed—improperly—that the *Reed* decision established that any content-based sign regulation (such as Alexandria's permitting political signs) was "invalid" and must be repealed.

Alternative Language

The Council could follow one of four courses of action at its January 30 meeting. It could:

7/ Explaining the reason for his annoyance, the Councilman reported:

The other night my wife and I were driving somewhere and we saw a big banner...the same banner we've seen everywhere, a sign, just larger, 'NO CAR TAX VOTE GILMORE,' and I said that I thought this was one of the most discouraging moments that I think I've ever had in public office, to realize that someone was campaigning on that slogan....Let's give the devil his due. It's been a marvelous campaign issue in terms of being able to condense the campaign for the highest office in Virginia to a three-word road sign....

- (1) Leave the political signs ordinance essentially as it is, perhaps with the addition of an explicit statement of Council's finding of the central importance of promoting public awareness of and participation in the electoral process, as the reason for permitting political signs in the public rights-of-way in the period before elections (the "compelling governmental interest" to help insure conformity with the requirements of the *Reed* decision).
- (2) Adopt the ban recommended by staff, with no further public discussion. For the reasons stated, such an action would be unnecessary and unjustified, and contrary to Council's stated Policy on Public Participation.
- (3) Defer action on the political signs ordinance for the present, initiating instead the sort of transparent, open, and broadly participatory public process employed by the "Hobson Commission" and the Council in their consideration of the schedule for elections and other electoral process reforms.
- (4) If, nonetheless, Council felt compelled to act on the political signs ordinance on January 30, it could—and should—adopt alternative language for a Code amendment which would:
 - **Preserve** the core principle of Alexandria's long-standing public policy: the ability of candidates to place political signs in the right-of-way.
 - **Reform** the standards for sign placement to retain their positive value while reducing the negatives which critics complain of.
 - **Strengthen** enforcement so as to optimize the positive goal while minimizing noncompliance
 - **Assure** that Alexandria's ordinance covering political signs is entirely consistent with the Supreme Court's ruling in *Reed v. Town of Gilbert*.

A draft for an illustrative Code amendment is attached. It is based on the draft language suggested by staff, but with some recommended additions which could make it even more effective:

- (1) **Period Before An Election**. Staff does not suggest a specific time period in its draft Code amendment, but notes that some members of the Ad Hoc Group suggested 30 days (rather than the present 90 days), and notes also that Arlington County allows 30 days in its ordinance. (It is ironic that Arlington's 30-day provision is cited as a good model—but Arlington's basic decision to continue to allow political right-of-way signs in the first place, rather than abolishing them, is not.)

A 30-day window, however, would prohibit posting of signs until after the last day that new voters may register (30 days before the election); it would thus foreclose the benefit of such communication in alerting prospective new voters to the upcoming election and encouraging them to participate. The attached draft suggests, instead, a 45-day window.
- (2) **Placement Only in Grassy Areas**. The draft elaborates that signs may not be posted, e.g., in the tree or shrubbery wells typically found in sidewalks which extend to the curb.
- (3) **Limitation on Number of Signs Per Block**. In addition to the limitation on the total number of signs that can be placed in the city, a limitation on the number that can be placed in any one block

is suggested, as an additional means to discourage “clutter” in the most popular locations, and as perhaps a more easily enforceable standard.

- (4) Application Fee and Bond. Emphasizing that the \$100 application fee is non-refundable, and increasing the bond to be forfeited in case of violations from \$200 to \$300, could be considered as additional measures to discourage “frivolous” or trivial sign postings, and to encourage compliance by those who do post.
- (5) Total Number of Signs. Staff suggests an allowance of 1,500 signs, based on informal consultation with some who have used political signs previously. Since the allowance would apply to all kinds of signs, however, a somewhat smaller number might be sufficient to the needs of candidates for office while discouraging “clutter” overall.
- (6) Planning Director Authority. Granting the Planning Director authority to issue more detailed implementing regulations might provide an opportunity to further refine the regulatory framework, and to address unanticipated situations, without the need for further amendment of the Code, as experience develops.

Adoption of a “purely content-neutral” ordinance permitting all types of signs, with much more stringent standards and enforcement, would represent a significant departure from past practice. To evaluate experience with a new ordinance, Council could announce upon adoption its intent to review actual experience over a period of time and then to revisit the ordinance. A “pilot” period of 30 months, for example, would cover the 2016 Presidential election, the 2017 Gubernatorial election, and the 2018 Council and School Board election.

* * *

Candidates’ political signs in the public realm have been a centrally important part of Alexandria’s election campaign discourse for a generation.

It is reasonable and responsible to review and revise the specifics of that policy as necessary to comport with the requirements of *Reed v. Town of Gilbert*, and in the process, to consider whether refinements may be possible and appropriate to address any abuses that may have been observed in past practice, and to strengthen enforcement and compliance.

That review need not, however—and should not—conclude with a “throw the baby out with the bath water” solution. It should not eradicate election campaign signs from Alexandria’s public space but should, rather, reaffirm and reinforce this fundamental contribution to public awareness and participation in our democratic system of government.

Michael E. Hobbs
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Draft Code Amendment

(Language suggested by staff in plain text. Suggested additions in **ALL CAPS**, deletions ~~struck through~~)

Sec. 5-2-172. - Exceptions.

(a) This article shall not apply to the following signs:

- (1) Regulatory, traffic, or informational signs established or posted by or at the direction of an authorized City department.
- (2) Signs required to be posted pursuant to State, local, or Federal laws.
- (3) Temporary signs placed in the right-of-way **FORTY-FIVE (45)** days prior to and seven (7) days after a National, State or Local Election with the following standards:
 - a) Such signs may be mounted on the ground only in the grass portion of the public right-of-way, adjacent to a street, road, highway, alley or sidewalk.
 - b) No such sign may be posted in any public garden, **PARK, PLAZA, TREE OR SHRUBBERY WELL** or landscaped area.
 - c) No such sign may be placed within the public right-of-way of Washington Street, or the George Washington Memorial Parkway.
 - d) No such sign shall be placed within 15 feet of any point at which the curb or curb line of any two intersecting streets meet, within 15 feet of the end of any street median, or within any traffic channelization island.
 - e) **NO MORE THAN FIVE (5) SIGNS MAY BE PLACED IN THE RIGHT-OF-WAY BETWEEN ONE INTERSECTION AND THE NEXT INTERSECTION WITH A STREET, ROAD, OR HIGHWAY.**
 - f) Any sign erected or displayed within the public right-of-way shall be free standing, shall have no part of the sign or support thereof extending more than 42 inches above ground level, and shall be supported by no more than two supports, each support having dimensions of no more than one inch by two inches. The width of the sign shall be no more than 24 inches, and its thickness shall be no greater than 1 inch. Such sign is permitted to be 2-sided.
 - g) Prior to the display of any sign within the public right-of-way, a cash bond in the amount of ~~\$200.00~~ **\$300.00** shall be deposited with the City Manager. The bond will be refunded unless there has been a violation of the provisions of this article, in which case the City shall retain the entire amount of the bond to defray the cost of enforcing the provisions of this article.
 - h) Signs, including sign posts or stakes, shall be removed within 7 days after the National, State or Local election.

(b) An application and fee shall be submitted for the installation of signs in the right-of-way. There shall be ~~an~~ **A NON-REFUNDABLE** application fee of \$100 dollars. An applicant shall be permitted to post no more than one-thousand-five-hundred (~~1,500~~ **1,000**) signs with this application and fee payment.

(c) Nothing in this division shall apply to the installation of a plaque, plate, statue, or other commemorative monument or marker in accordance with permission from an authorized City Department with the approval of the City Council.

(d) THE DIRECTOR OF PLANNING AND ZONING SHALL PROMULGATE SUCH REGULATIONS AS HE MAY DEEM NECESSARY AND APPROPRIATE FOR THE APPLICATION AND IMPLEMENTATION OF THIS SECTION, CONSISTENT WITH THE PROVISIONS OF THIS SECTION, AND SUBJECT TO THE APPROVAL OF THE PLANNING COMMISSION.

Mayor Silberberg,

Thank you for your service on behalf of the citizens of Alexandria and for this opportunity to comment on this important proposal. I urge you to take more time to consider creative, wise, popular, and lawful alternatives to the Staff Report's recommendation (re: Text Amendment #2015-0005) to ban all political speech on our public rights of way. The *City of Gilbert* Supreme Court decision does not compel you to make that choice. You can seize this opportunity to beautify our city's thoroughfares while allowing our robust tradition of civic participation to flourish.

Please take the time to make the right decision. There is no rush and the options presented to you so far are unnecessarily limited. Your choice will significantly affect the core political rights of Alexandria's citizens—rights the citizens have the resources to defend in court or in the voting booth. At the heart of this controversy are signs posted only once or twice a year, at most, and only for a few weeks at a time. Take meaning from the fact that three of four speakers who appeared before the Planning Commission were opposed to the ban, with positions buttressed by the law and this city's proud history of citizen engagement, whereas only one speaker was in favor of the ban—based on a perception that these fleeting blooms of democratic participation are “clutter” and that banning them would “clean up” the city. Please give yourself time to develop a more comprehensive list of options and to make an informed decision.

The City of Gilbert Decision Does Not Compel a Draconian Ban on Political Expression. Gilbert, Arizona, regulated its citizens' speech differently based on the content of their speech. A strikingly unified Supreme Court wisely concluded that the First Amendment does not tolerate this. They did not say, as the Staff Report implies, that municipalities must choose between allowing *any* speech *anywhere* or ban *all* speech *everywhere*. Alexandria's elected leaders have the authority to prohibit all signs in *some* places, such as where signs may pose a hazard or damage city landscaping, and to regulate signs without regard to their content. The city may also regulate a temporary sign's size, the construction of the signs, and how long they may be displayed.

Embrace This Opportunity for Creative Consensus-Building Leadership. You can use this issue to make the city more beautiful while embracing the robust freedom of expression that its citizens enjoy. My fellow Alexandrians apparently include some who are disappointed in the state of city-maintained rights of way. It is not clear that occasional political signs are the problem, however. I note that the pictures in the presentation accompanying the Staff Report were not of signs in Alexandria, which says something. In my experience, our rights of way are largely clear of signs with the exception of election season, and those signs are so small they are limited to a candidate's name. That said, a prospering historical city with a growing population should have roadways to be proud of, particularly at the entrances to the city, as many similar cities do. Perhaps we can do better with our rights of way, featuring entrances to the city with low-maintenance landscaping and attractive signs welcoming visitors. Costs could be contained by allowing city businesses and civic organizations to adopt certain spaces to help maintain them in exchange for tasteful signs that credit their support. The Counsel may reasonably ask that signs not be placed in landscaping. But this could be done while still leaving extensive areas to accommodate any kind of sign (avoiding *City of Gilbert* issues), including the fleeting blooms of political signs that are driving this controversy.

Accordingly, I urge you to find a solution enabling beautification and political expression to coexist along the city's roads.

Respectfully,

Michael A. Columbo
2700 Farm Road
Alexandria, VA 22302

