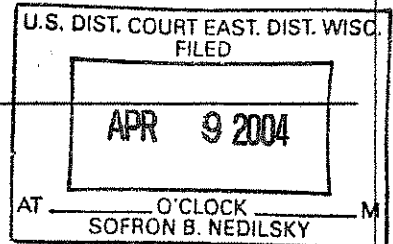


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN



WALTER FIEDOROWICZ,
Plaintiff,

v.

Case No. 02-C-0830

THE CITY OF PEWAUKEE,
Defendant.

DECISION AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT, DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT,
DECLARING UNCONSTITUTIONAL THE ORDINANCES AT ISSUE, AND AWARDING
PLAINTIFF ATTORNEY'S FEES

Plaintiff, Walter Fiedorowicz, brought this action under 28 U.S.C. §1983 asking the court to declare the City of Pewaukee, Wisconsin's Election Sign Ordinance §17.702(c) and Temporary Sign Permit Process, §§ 17.703(b), 17.0713, and 17.0719 unconstitutional. Fiedorowicz and the City of Pewaukee (the City) have filed cross motions for summary judgment. For the reasons set forth below, the court will grant Fiedorowicz's summary judgment motion, deny the City of Pewaukee's summary judgment motion, declare the ordinances unconstitutional, and award Fiedorowicz his attorney's fees as the prevailing party pursuant to 42 U.S.C. § 1988.

Summary Judgment Standard

Summary judgment is proper when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). That the parties have filed cross-motions for summary judgment does not affect this standard. See *I.A.E., Inc. v. Shaver*, 74 F.3d 768, 774 (7th Cir.1996). Also, all inferences are construed

in favor of the party against whom the motion is made in determining whether there is a genuine issue of material fact. *Id.* However, in this case the facts relevant to the pending motions are not in dispute.

Findings of Fact

Walter Fiedorowicz resides and votes in the City. (Aff. Fiedorowicz, ¶ 1) The City is a municipal entity organized and existing pursuant to Wisconsin Statutes. (Am. Complaint, ¶ 4; Answer and Affirmative Defenses to Am. Complaint, ¶ 4)

Chapter 17.0700 of the City's Municipal Code governs "SIGNS AND GRAPHICS." (Aff. Peterson, Ex. E) Section 17.0701 states:

INTENT AND PURPOSE

The intent of this section is to provide for and regulate the location and safe construction of signs in the Town in a manner that will ensure that signs are compatible with surrounding land uses, and to express the identity of individual proprietors and the community as a whole. It shall be unlawful for any person, firm or corporation to locate, erect, move, reconstruct, extend, enlarge, convert, or structurally alter any sign without first complying with the requirements of this section.

(Aff. Peterson, Ex. E)

Section 17.0702 provides:

SIGNS PERMITTED IN INDIVIDUAL ZONING DISTRICTS WITHOUT A PERMIT

Certain signs are permitted as accessory uses in individual zoning districts without a permit as set forth in the individual district regulations. In addition, the following signs may also be permitted without permit:

...

- c. Election Campaign Signs may be permitted in any district without a permit provided that permission shall be obtained

from the property owner, renter, or lessee, and provided that such sign shall not be erected more than 45 days prior to an election and shall be removed within seven (7) days following the election. Such signs in residential zoning districts shall not exceed four (4) square feet in sign area per sign nor more than a total of 20 square feet per individual property (ownership). Such signs in all other zoning districts shall not exceed four (4) square feet in sign area per sign nor more than a total of 32 square feet in sign area per individual property (ownership or lease).

(Aff. Peterson, Ex. E)

Section 17.0703 provides:

SIGNS PERMITTED IN INDIVIDUAL ZONING DISTRICTS WITH A PERMIT

Certain signs may be permitted in any specific zoning district after application and permit by the Building Inspector as follows:

...

- b. Temporary Signs or Banners when authorized by the Building Inspector. For purposes of this provision a temporary sign is one which will be used for no more than thirty (30) days in a six (6) month period. Such signs shall not exceed thirty-two (32) square feet in sign area.

(Aff. Peterson, Ex. E)

Section 17.0713 provides:

ADMINISTRATION

Applicants [sic] for permits shall be filed with the Town Building Inspector, who shall review the application for its completeness and accuracy and approve or deny the application within 45 days of receipt unless the time is extended by written agreement with the applicant. A sign permit shall become null and void if work authorized under the permit has not been completed within six (6) months from the date of issuance. Applicants [sic] shall be made on forms provided by the Building Inspector and shall contain or have attached thereto at least the following information:

- a. Name, Address, and Telephone Number of the applicant, and location of building, structure, lot or property to which or upon which the sign is to be attached or erected.
- b. Name of Person, Firm, Corporation, or Association erecting the sign.
- c. Written Consent of the owner or leasee of the building, structure, or land to which or upon which the sign is to be affixed or erected.
- d. A Scale Drawing of such sign indicating the dimensions, the materials to be used, the type of illumination, if any, and the method of construction and attachment.
- e. A Scale Site Drawing indicating the location and position of such sign in relation to nearby buildings, structures, property boundaries, or signs.
- f. Information (or type of information or message) to be displayed on the face(s) of the sign.
- g. Copies of any other permit required and issued for said sign, including the written approval by the Electrical Inspector in the case of illuminated signs. The Building Inspector shall examine the plans and specifications, inspecting all wiring and connections to determine if the same complies with the Town Codes and Ordinances.
- h. Additional Information such as photographs as may be required by the Building Inspector.
- i. Payment of a fee as set forth herein. The Building Inspector may, if necessity requires, direct that the applicant for a sign permit meet with the Plan Commission to review the request and provide guidance in the issuance of the permit.

(Aff. Peterson, Ex. E.)

Section 17.0717 provides:

PERMIT FEES

- a. Application and Sign Erection Permit Fee. Each application for a permit shall be accompanied by a minimum fee of \$25.00 plus thirty-five cents (\$0.35) for each square foot over ten (10) square feet on one (1) side to a maximum of \$200.00.

(Aff. Peterson, Ex. E)

Section 17.0210 provides:

PRINCIPLES AND STANDARDS FOR THE AESTHETIC EVALUATION OF SITE AND BUILDING PROJECTS

- a. Introduction and Intent
The process of private building and development in a community may be simple or complex depending upon the size of the project, the number of participants, the ease of communication among the various private and public parties involved, and the content and clarity of the public rule and regulations. While the community representatives can not usually directly affect either the project size or the number of project participants, they can have a direct affect on the content and clarity of rules and regulations as well as the communication, and indeed, interpretation of any such rules and regulations.

Like inhabitants of most developing communities, Pewaukee Town officials and citizens have legitimate concerns about both the future character of the community and the integrity of existing (and even historic) development. One such concern is in regard to land uses or the mix of land uses, both existing and planned. Another concern is the financial capability of development (developers) to provide the required and promised improvements and, the financial capability of the community to provide the necessary and requested services. A third major concern, importantly, is in regard to the visual impact or image of the community by people both living within or only traveling through the Town. The intent or purpose of this sub-section is to provide principles and standards for use by both the potential developer and Town officials in the preparation and review of site and building plans proposed within the Town with emphasis on and the primary objective of heightening the visual character of the sites and buildings proposed and, thereby,

the entire community. It is understood that such visual enhancement is also expected to be maintained over time and not be only an initial accomplishment to be forgotten.

...

b. Site Planning and Design Principles

Following is a list of principles which should be utilized by everyone concerned in any Site Planning and Design Projects in the Town of Pewaukee:

...

- (3) All elements and aspects of the site, both natural and man-made, are important to the aesthetic character of the site.

...

- (7) Site grading, landscaping, paving, fencing, lighting, signage, and other site enhancement are an integral part of any building and development project.

c. Building, Design, Layout and Construction Principles

Following is a list of principles which should be utilized by everyone concerned in any Building Design, Layout and Construction project in the Town of Pewaukee.

- (1) No side or facade of a building or structure is exempt from public view and, consequently, all sides or facades should be visually pleasing and architecturally and aesthetically compatible.
- (2) The shape, size, dimension, architectural style, facade material, texture and color, building landscaping, building signage, and, the setting of the building within its immediate environment are all elements of the building structure design addressed by the designer, both individually and in concert.

...

- (8) Building signage, that is signage which is or appears to be an integral part of the building façade design, needs to be carefully planned and the appropriate sign materials, sign lighting and color used so as not to detract from the architecture of the building or be disruptive.

d. Site Planning and Design Standards

...

- (7) STANDARD NO. SD-7
Signage of uses and buildings on the site shall be limited by the Plan Commission in number, size and type so as not to detract from the visual attractiveness of the site or architecture, or be a distraction to the traveling public or the neighborhood in general.

e. Building Design Standards

Standards must be related to the various Principles which, in turn, are related to the overall Objective which, in this case, is to "Heighten the visual character of sites and buildings in the Town of Pewaukee." It should be noted that the visual aspects of building design are difficult to relate to quantitative standards, and, therefore, many of the building design standards must be qualitative. Following are both quantitative and qualitative standards related to the visual aspects of building construction which will be used by the Plan Commission in the review of every site plan or development.

...

- (5) STANDARD NO. BD-5

...

- (b) Building landscaping, lighting and signage shall be presented as an integral part of the building design and shall not be so large or distinct

as to detract from the architecture of the building.

(Aff. Peterson, Ex. E)

As a resident and voter, Fiedorowicz supports a referendum addressing consolidation of the City of Pewaukee and the Village of Pewaukee. (Aff. Fiedorowicz, ¶ 2) In support of his position, Fiedorowicz and others prepared signs stating: "Let us vote; 1 Pewaukee Committee." (Aff. Fiedorowicz, ¶¶ 3, 4) Fiedorowicz obtained permission from property owners to place signs on their property within the City. (Aff. Fiedorowicz, ¶ 5) Moreover, he sought permission from the City of Pewaukee to place signs on private property within the City more than 45 days before the Fall 2002 election. (Aff. Fiedorowicz, ¶ 6)

The City's Common Council denied Fiedorowicz permission to erect signs by a vote of three to two, with one abstention, at a meeting on May 6, 2002. (Aff. Peterson, Ex. C; Aff. Fiedorowicz, ¶ 7) During that meeting, Common Council members and the City Attorney stated that the election campaign sign ordinance, § 17.0702(c), applied to Fiedorowicz's request. (Aff. Peterson, Ex. C) Consequently, Fiedorowicz was not given permission to place signs on private property more than 45 days before the Fall 2002 election. (Id.)

In a letter to the City's Mayor, Jeffrey Nowak, dated July 11, 2002, Fiedorowicz, by counsel, asked the City to reconsider its decision denying him permission to place signs on private property in the City. (Aff. Peterson, Ex. D) However, the City did not respond. (Aff. Fiedorowicz, ¶ 8) Regardless, the City maintains that Fiedorowicz could have posted signage pursuant to the temporary signs or banners ordinance, § 17.0703(b).

Conclusions of Law

The First Amendment, which is applicable to the States under the Fourteenth Amendment, prohibits States from enforcing laws "abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I. This Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, 484, 77 S. Ct. 1304, 1 L. Ed. 2d 1498 (1957). Courts have held that communication by signs and posters is virtually pure speech. *Arlington County Republican Comm. v. Arlington County, Va.*, 983 F.2d 587, 593 (citing *Baldwin v. Redwood*, 540 F.2d 1360, 1366 (9th Cir. 1976)).

Not all limitations on political speech are impermissible. For example, signs may be subject to municipal regulation because they pose distinctive problems that are subject to police powers. *City of Ladue v. Gilleo*, 512 U.S. 43, 48, 114 S. Ct. 2038, 129 L. Ed. 2d 36 (1994). "Unlike oral speech, signs take up space and may obstruct view, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation." *Id.* "It is common ground that governments may regulate the physical characteristics of signs – just as they can, within reasonable bounds and absent censorial purpose, regulate audible expression in its capacity as noise." *Id.* (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989) and *Kovacs v. Cooper*, 336 U.S. 77, 69 S. Ct. 448, 93 L. Ed. 513 (1949)). Fiedorowicz does not challenge the City of Pewaukee's ability to regulate the physical characteristics of signs. Rather, he launches a facial attack on the time limits or duration that a sign may be posted. (Plaintiff's Brief, p. 9, n. 2).

Traditionally, courts examining an ordinance under the First Amendment first determine whether the ordinance is content-based or content-neutral. A content-based regulation, which restricts speech because of the ideas or messages expressed, is presumptively invalid and subject to strict scrutiny. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992). Consequently, the government must demonstrate a compelling state interest and that the regulation is the least restrictive alternative. *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126, 109 S. Ct. 2829, 106 L. Ed. 2d 93 (1989). Most content-based regulations do not survive this exacting standard of review. See, e.g., *City of Ladue*, 512 U.S. at 43 (prohibiting yard signs in order to minimize visual clutter may be a substantial interest but it is not a compelling interest); *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 52 L. Ed. 2d 155, 97 S. Ct. 1614 (1977) (the city's interest in maintaining a stable, racially integrated neighborhood held insufficient to support a prohibition of residential "For Sale" signs); *New York Times v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964) (potential for libel of public official held insufficient to prevent publication in newspaper); *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969) (undifferentiated fear or apprehension of disturbance held insufficient to support regulation prohibiting anti-war armbands).

On the other hand, a lesser standard is applied if the regulation on speech is deemed content-neutral. In such cases, the government need only show that it has a significant interest at stake, that the regulation is narrowly tailored to promote that interest, and that there are ample alternative means available to communicate the desired speech. See *Lee v. International Society for Krishna Consciousness, Inc.*, 505 U.S. 830, 112 S. Ct.

2709, 120 L. Ed. 2d 669 (1992) (finding that flow of passengers into and out of the airport terminal was a substantial governmental interest); *Ward*, 491 U.S. at 781 (regulating noise levels at an outdoor concert was a substantial governmental interest); *Heffron v. International Society for Krishna Consciousness Inc.*, 452 U.S. 640, 101 S. Ct. 2559, 69 L. Ed. 2d 298 (1981)(finding that a rule requiring solicitation at a state fair be done from a booth was narrowly tailored because it focused on the incidental effects of providing exemptions).

Section 17.0701 of the City ordinance makes it unlawful to "locate, erect, move, reconstruct, extend, enlarge, convert, or structurally alter any sign" without first complying with the requirements of the section. The section includes restrictions based on the type of sign at issue. For example, bulletin boards for public, charitable or religious institutions require a permit but may be displayed indefinitely. § 17.0703(a). Real estate signs require a permit but may be displayed six months, unless extended by action of the Town Plan Commission. § 17.0704(c). Fiedorowicz's "Let us vote" signs fall within the election campaign sign ordinance, § 17.0702(c) or the temporary sign ordinance, § 17.0703(b). The election campaign sign ordinance allows signs conveying "election" or "campaign" messages to be posted without a permit 45 days before an election and seven days after. § 17.0702(c). The temporary signs or banners ordinance provides that residents must file an application with the Town Building Inspector on a form that includes the "Information (or type of information or message)" to be displayed on the face(s) of the sign. § 17.0713(f). In addition, the applicants must pay a minimum fee of \$25 plus thirty-five cents for each square foot over ten square feet on one side of the proposed sign to a maximum of \$200. § 17.0717(a). The Building Inspector may require the applicant to meet with the Plan Commission to review the request

and to provide guidance in the issuance of the permit. § 17.0713(i). If approved, the sign may be used no more than 30 days in a six month period. § 17.0703(b).

Most courts addressing the constitutionality of durational limitations similar to those in the City have proceeded under the traditional framework and found the limitations to be content-based. *Curry v. Prince George's County, Maryland*, 33 F. Supp. 2d 447, 452 (D. Md. 1999) (collecting cases). In *Curry*, the court held unconstitutional an ordinance prohibiting campaign signs more than 45 days before an election and 10 days after the election. In *Whitton v. City of Gladstone, Missouri*, 54 F. 3d 1400 (8th Cir. 1995), the court held unconstitutional an ordinance prohibiting campaign signs more than 30 days before an election and seven days after the election. The ordinance was content-based because the words on the sign defined whether the sign was subject to the durational limitations. *Id.*, at 1404. Similarly, in *Painesville Bldg. Dept. v. Dworken & Bernstein Co., L.P.A.*, 733 N.E.2d 1152 (Ohio 2000), the Ohio Supreme Court held unconstitutional an ordinance prohibiting campaign signs more than 17 days prior to an election and 48 hours after the election.

According to the City, these cases are inapposite because they do not address adequately the United States Supreme Court's approach in *City of Ladue*, 512 U.S. at 43. *Ladue* banned political signs displayed from a private residence, but carved out exceptions for what *Ladue* deemed to be indispensable signs. *Id.* at 45. *Ladue* justified its ban because signs create "ugliness, visual blight and clutter" which "tarnish the natural beauty of the landscape as well as the residential and commercial architecture, impair property values, substantially impinge upon the privacy and special ambience of the community, and may cause safety and traffic hazards to motorists, pedestrians, and children." *Id.*, at 47 n. 6. In striking down the ordinance, the Supreme Court found it unnecessary to categorize a

challenged political sign ordinance as content-based or content-neutral. This approach troubled Justice O'Connor, who accused the Supreme Court of stepping away from its normal analytical structure and failing to determine whether the ordinance was content-based or content-neutral. *Id.* at 60.

This court is not persuaded by the City of Pewaukee's assertion that *City of Ladue* "heralds a new approach in First Amendment jurisprudence." (Defendant's Brief in Opposition, p. 13). The Supreme Court acknowledged problems with the content discrimination rationale. For example, Ladue could remove theoretically the defects in its ordinance by repealing all exemptions to its ban. But in doing so, Ladue could still run afoul of the First Amendment by prohibiting too much speech. *Id.* at 51. Ultimately, the Ladue ordinance could not prevail under any level of scrutiny. Therefore, rather than engaging in the content discrimination question, the Supreme Court assumed, for the sake of deciding the case, the validity of Ladue's submission that the various exemptions were free of impermissible content or viewpoint discrimination. *Id.*

City of Ladue is instructive because of the similarities to the case at bar. Ladue argued, just as the City of Pewaukee argued in this case, that the ordinance was a mere regulation of the time, place, or manner of speech because residents remained free to convey their desired messages by other means, such as hand-held signs, letters, handbills, flyers, telephone calls, newspaper advertisements, bumper stickers, speeches and neighborhood or community meetings. *Id.*, at 56. Yet, the Supreme Court was not persuaded that there were adequate substitutes for the important medium of speech that Ladue closed off:

Displaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means.

Precisely because of their location, such signs provide information about the identity of the "speaker." As an early and eminent student of rhetoric observed, the identity of the speaker is an important component of many attempts to persuade. A sign advocating "Peace in the Gulf" in the front lawn of a retired general or decorated war veteran may provoke a different reaction than the same sign in a 10-year old child's bedroom window or the same message on a bumper sticker of a passing automobile. An espousal of the socialism may carry different implications when displayed on the ground of a stately mansion than when pasted on a factory wall or an ambulatory sandwich board.

Id., at 56. The Supreme Court noted that "Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute." *Id.* at 57.

Though careful to note that they were not confronted with "mere regulations short of a ban," the Supreme Court mentioned that "individual residents themselves have strong incentives to keep their own property values up and to prevent 'visual clutter' in their own yards and neighborhoods - incentives markedly different from those of persons who erect signs on others' land, in others' neighborhoods, or on public property." *Id.* at 58. "Residents' self-interest diminishes the danger of the 'unlimited' proliferation of residential signs that concerns the City of Ladue." *Id.*

Admittedly, Ladue implemented a near total ban on signs. However, the same rationale applies even if the City of Pewaukee grants a short grace period in which political signs may be displayed. The vast majority of the year, the City of Pewaukee has completely foreclosed "a venerable means of communication that is both unique and important." *Id.* at 54. Moreover, under the *City of Ladue* analysis, the City of Pewaukee is not providing ample alternative channels for communication. The City of Pewaukee submits that "[b]esides

posting temporary signs, door-to-door distributions, mass mailing or telephone campaigns, peaceful face-to-face communication, leafleting and picketing, and print, radio, and television are all effective alternative avenues of communication for Plaintiff." *Defendant's brief at p. 16.* However, the Supreme Court rejected this argument because the means of communication cited by *Ladue* were not adequate substitutes for a sign displayed at one's own residence. *Id.* at 56.

Even if this court does not proceed under the *City of Ladue* analysis, the City of Pewaukee's durational limitations on signs are content-based. To comply with the requirements, the content of the sign must be considered to determine what section applies. The various sections of the ordinance value certain speech over others. A commercial real estate sign, church bulletin board, and political speech receive different treatment. If the sign advocates a cause or issue and falls outside of the 45 days prior to the election, the resident must file an application, pay a fee, and hope for the approval of the Building Inspector. The Inspector considers, in part, the type of speech being conveyed on the sign. If approved, the resident can voice his or her opinion, but only for 30 days in a six-month period. Quintessentially, this is a content-based restriction on speech.

Another case from this district, *Deida v. City of Milwaukee and Scott McCallum*, 176 F. Supp. 2d 859 (E.D. Wis. 2001), proceeds under this traditional framework while acknowledging the impact of *City of Ladue*. In *Deida*, the court struck down a city ordinance that prohibited the placement of pamphlets on vehicles except for those pamphlets containing "educational material . . . approved by the council on physical disabilities . . . relating to the parking privileges of physically disabled persons." *Id.* at 866. In concluding that the ordinance was content-based, the court reasoned as follows:

Under the ordinance, an officer who observes someone placing a leaflet on a vehicle must examine the content of the leaflet in order to determine if the leafleter violated the ordinance. If the content of the leaflet relates to parking privileges of the disabled and has been approved by the Council, then the leafleter acted lawfully. If the content of the leaflet relates to any subject other than the parking rights of the disabled or if it has not been approved by the Council, the leafleter has violated the ordinance. Like the ordinance in *Mosley*, the regulation's operative distinction between lawful and unlawful is the message in the leaflet. The ordinance, therefore, restricts speech based on its content and is presumptively subject to strict scrutiny.

Id. Under strict scrutiny, the court found that Milwaukee's proffered interests in protecting private property, reducing litter and visual clutter and improving driver and pedestrian safety were not compelling. Aesthetic interests and traffic safety have been found substantial, *see, e.g., City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 805-87, 80 L. Ed. 2d 772, 104 S. Ct. 2118 (1984), but not compelling, *see, e.g., Curry*, 33 F. Supp. 2d at 452 (traffic safety and aesthetic interests not compelling); *Whitton*, 54 F.3d at 1409 (same); *City of Ladue*, 512 U.S. at 54 (reducing visual clutter not compelling).

In so holding, the *Deida* court rejected the "secondary effects" rationale that the City asserts in this case. The court noted that "outside the adult entertainment context neither the Supreme Court nor the Seventh Circuit has found a secondary-effects justification warrants applying lesser scrutiny to a facially content-based regulation." *Id.* at 867 (citing *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. 2000)). The rationale for relaxed scrutiny is warranted where the "sexually explicit material is the source of social problems that the government wishes to address." *Id.* However, in *Deida* and the case at bar, the speech proscribed by the ordinance is not an alleged source of any social problem, and, "in fact, includes speech of the highest value." *Id.*

The City has failed to justify the limitations on speech it has imposed as a compelling state interest, and has not crafted a remedy that is the least restrictive alternative. The justifications for the ordinances at issue – aesthetics, property values, safety, and space management – have not been determined to be compelling interests. *Deida*, 176 F. Supp. 2d at 869; *Whitton*, 54 F.3d at 1408. Moreover, the City has not persuaded this court that the limitations are tailored to serve these objectives. Restrictions on the size and maintenance of signs adequately promote these interests, and there is nothing in this record which supports the durational limitations the City has placed on political signs versus other signs tolerated under the ordinance. The fee and permit requirements for the temporary signs and banners ordinance act only to increase the cost and the inconvenience of a favored means of communication.

The temporary signs and banners ordinance faces an additional hurdle. It operates as an unconstitutional prior restraint of speech. A prior restraint is one in which a party must apply to a government body for a permit or license before it can engage in the protected activity. *S.E. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 552-53, 95 S. Ct. 1239, 43 L. Ed. 2d 448 (1975). Prior restraints are presumptively unconstitutional, *Freedman v. Maryland*, 380 U.S. 51, 56, 85 S. Ct. 734, 13 L. Ed. 2d 649 (1965), because of the likelihood that they will be used as a method of censoring unfavorable speech, *Forsyth County, Ga. v. The Nationalist Movement*, 505 U.S. 123, 131-32, 112 S. Ct. 2395, 120 L. Ed. 2d 101 (1992).

To be permissible, a prior restraint has to contain specific, detailed criteria upon which the licensing body must base its decision to grant or deny a permit. *Id.* at 132 (citations omitted). It is insufficient for the government body to claim that it uses set criteria; rather, those standards must be incorporated into the regulation or publicized by binding

administrative or judicial construction. *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 770, 108 S. Ct. 2138, 100 L. Ed.2d 771 (1988).

Section 17.0713 requires that applicants provide the "Information (or type of information or message) to be displayed on the face(s) of the sign." Knowing that content, the Building Inspector has 45 days to decide whether to approve the application. Section 17.0210, "Principles and Standards for the Aesthetic Evaluation of Site and Building Projects," enumerates "general standards" relating to the intent of the ordinance. Standard No. SD-7, addresses "signage of uses and buildings" and cites broad, aesthetic goals of not detracting from the visual attractiveness of the site or architecture, or distracting the traveling public or the neighborhood in general. These guidelines are not objective, narrow, and definite standards required by case law. *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-51, 89 S. Ct. 935, 22 L. Ed. 2d 162 (1969). A building inspector who disagrees with the content of a proposed sign may deny the application, and there is no requirement that he or she provide reasons or otherwise reduce those reasons to writing absent a request. If a written decision is requested within ten days, there is no time frame for delivering that decision to the individual who requested it.

For the above reasons, the court will grant Fiedorowicz's motion for summary judgment. As the City did not respond to plaintiff's request for an award of attorney's fees pursuant to 42 U.S.C. § 1988, the court will grant that request and require Fiedorowicz to file documents supporting a reasonable fee award.

Now, therefore,

IT IS ORDERED that plaintiff's motion for summary judgment is granted.

This 9th day of April, 2004, pursuant to Rule 77(d) Federal Rules of Civil Procedure, copies of this document were mailed by M. Jones to the following parties:

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