

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CHARLES PFLEGHAAR,	:	Case No.
	:	
<i>and</i>	:	Judge
	:	
KATINA HOLLAND	:	Magistrate
	:	
Plaintiffs,	:	VERIFIED COMPLAINT
	:	
-vs-	:	Exhibit A: Photograph of Disputed Signs
	:	
CITY OF PERRYSBURG, OHIO,	:	Exhibit B: Relevant City Ordinances
	:	
<i>and</i>	:	Exhibit C: Defendants' July 2017
	:	Correspondence Threatening Plaintiffs
BRODEN WALTERS, in his official capacity as	:	
Administrator of the City of Perrysburg, Ohio, and	:	Exhibit D: Email Correspondence Between
in his personal capacity	:	Plaintiffs and Defendants
	:	
Defendants.	:	Exhibit E: Defendant' November 2016
	:	Correspondence Threatening Plaintiffs

Now come Plaintiffs, CHARLES PFLEGHAAR and KATINA HOLLAND (collectively, the "Plaintiffs"), and for their Complaint against the CITY OF PERRYSBURG, OHIO and administrator BRODEN WALTERS ("defendants") allege as follows:

INTRODUCTION

1. This is an action for declaratory judgment, preliminary and permanent injunction, and nominal damages under 42 U.S.C. §1983 arising from Defendants' unconstitutional official conduct, policies, practices, regulations, restrictions, threats, intimidation, and/or harassment.

2. Specifically, Defendants maintain that they may prohibit Plaintiffs from posting otherwise-compliant political signs on their own private property except during a 67 day window of time that begins 60 days prior to the pertinent election and ends seven days thereafter.

3. Due to Defendants' official and individual conduct, Plaintiffs have suffered and will continue to suffer irreparable harm to their rights under the First Amendment to the United States Constitution and the Fourteenth Amendment to the United States Constitution.

4. This harm may only be remedied by a ruling from this Court, and Defendants must be immediately and permanently be enjoined from restricting Plaintiffs' protected speech in this manner.

PARTIES

5. Plaintiff Charles ("Chip") Pflgebraar is a resident of Perrysburg, Ohio and candidate for Perrysburg City Council.

6. Plaintiff Katina Holland is a resident of Perrysburg, Ohio, and as a concerned citizen, a supporter of Mr. Pflgebraar's election to city council.

7. The City of Perrysburg is a municipal corporation in Wood County organized under the Constitution and laws of the State of Ohio.

8. The City is a state actor and is a municipal corporation unprotected by sovereign immunity for the purposes of this action.

9. Defendant Broden Walters is, and has been at all times relevant to the facts at issue in this case, either the "administrator" and/or the "zoning administrator" for the City of Perrysburg.

10. The actions of Defendant Walters described herein were taken pursuant to official conduct on behalf of the City of Perrysburg, and were exercised under color of law.

11. At all times relevant to the allegations in this Complaint, each and all of the Defendants' acts alleged herein are attributed to Mr. Walters acting under the color, authority, and pretense of regulations, customs, usages, and policies of the City.

12. Mr. Walters has and continues to undertake specific action so as to deprive and/or violate the constitutional rights of the Plaintiffs and did so in his individual capacity, as part of his official duties

and responsibilities as an employee or agent of the City, and in his official capacity of adopting and implementing a policy, practice or custom of the City.

13. All actions by the Defendants described herein were undertaken under color of state law which caused the deprivation of Plaintiffs' rights protected by the United States Constitution.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of state law, of rights, privileges, and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to recover damages and secure equitable relief under an Act of Congress, specifically, 42 U.S.C. § 1983, which provides a cause of action for the protection of civil and constitutional rights; under 28 U.S.C. § 2201(a), to secure declaratory relief; under 28 U.S.C. § 2202, to secure preliminary and permanent injunctive relief and damages; and under 42 U.S.C. § 1988, to award attorneys fees.

15. Venue is proper within this judicial district and division pursuant to 28 U.S.C. § 1391(b) and Local Rule 3.8, as (i) the Defendants are situated within this judicial district and division; and (ii) all of the claims asserted by Plaintiff arose within this judicial district and division.

FACTUAL ALLEGATIONS

Plaintiffs' Political Speech

16. Pursuant to his independent candidacy for Perrysburg City Council, Mr. Pflieger ordered yard signs urging Perrysburg residents to vote for him.

17. Mr. Pflieger has posted several of these signs on his private property at 401 W. Front Street in Perrysburg, Ohio. **See Exhibit A.**

18. The signs innocuously indicate "Chip Pflieger for Council," and measure no greater than two feet wide by two feet tall. **See Exhibit A.**

19. If Mr. Pflgebraar is unsuccessful in his election, he intends to retain the signs and use them again outside of the City's window for temporary signs.

20. Mr. Pflgebraar has many supporters who display or wish to display signs seeking his election.

21. One such supporter, Plaintiff Katina Holland supports Mr. Pflgebraar, but has refrained from displaying signs advocating for his election due to the City's prohibitions.

Perrysburg's Prohibition on Political Signs

22. The City prohibits political signs 298 days of the year through (1) classifying them as "temporary;" and (2) prohibiting "temporary signs" on residential property at all times except "up to 60 days prior and 7 days after the event." See Section 1250.33(b) and 1250.33(c). **See Exhibit B.**

23. Further, "[n]o more than two signs may display an identical message." Section 1250.33(c).

24. The City's code is clear that "All signs not expressly permitted by this Code shall be prohibited." Section 1250.35.

Perrysburg's Enforcement of its Prohibition on Political Signs against Plaintiffs

25. As a matter of policy, the City characterizes political signs for and against candidates and issues as "temporary," and therefore prohibited other than during a 67 day window of time surrounding the election related to the sign.

26. On or about July 17, 2017, zoning inspector Brodin Walters indicated to Mr. Pflgebraar that it was "provid[ing] [him] with the following information to ensure that all political signs are placed legally." This correspondence indicates that, in a residential area, "signs are permitted to be displayed 60 days prior to and 7 days after an election/ voting day." **See Exhibit C.**

27. Mr. Pflgebraar sought to further clarify the City's policies through a follow-up email to Mr. Walters. In his response, Mr. Walters insisted as follows: "In order to be in compliance with the current code your signs should come down until 60 days prior to the election. This timeline will be different for

Mayoral candidates since they have a primary which allows their signs to go up ahead of council candidates. We wanted to send out the general letter to inform every candidate since you are not the only one that was not aware of the timing requirements for signs. We aren't specifically out targeting political signs but obviously we need to address them if we see them. There are basically 2 penalties, 1) if you put them in the right-of-way they will be taken and disposed of (so the penalty is losing the sign) and 2) if they are maintained on private property in violation of the size or time requirements there is the potential for a zoning fine of \$100 per day per violation." **See Exhibit D.**

28. In a later email exchange, Mr. Walters further clarified the construction of the sign is immaterial, since "the real intent of the code as I see it is to allow display of election signs during a time that is relevant..." **See Exhibit D.**

29. In response, Mr. Pflgebraar has removed one of his signs, abstained from displaying, and (subsequent to the threat) abstained from distributing signs to would-be supporters who would otherwise display them.

30. The speech of Mr. Pflgebraar's supporters, including Plaintiff Holland, has likewise been chilled.

31. Previously, on or about November 23, 2016, citing Perrysburg Codified Ordinance Section 1250.33(a), Defendants indicated to Mr. Pflgebraar that that "the presence of a political sign was noticed at the address above, for which you are the owner on record. I must inform you that political signs are not permitted to be up longer than a 70 day period. In particular 7 days after the event, this would have been Election Day....I am requesting that the sign be removed as soon as possible....our office will ensure that the sign is removed...."

32. Due to Defendants' threats, Mr. Pflgebraar removed his sign regarding the presidential election, just as he and Ms. Holland have now been forced to sacrifice their rights until they can be vindicated in this Court. **See Exhibit E.**

COUNT I
DECLARATORY JUDGMENT AND INJUNCTION
(28 U.S.C. § 2201, *et seq.*)

33. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

34. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning Plaintiffs' rights under the United States Constitution. A judicial declaration is necessary and appropriate at this time.

35. Plaintiffs desire a judicial determination of their rights against Defendants as they pertain to Plaintiffs' right to post political signs on private property outside of the City's arbitrary window for "temporary" signs without being subjected to threats, fines, litigation, prosecution or other harassment or intimidation by the City or its agents.

36. In order to prevent further violation of Plaintiffs' constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment be issued, pursuant to FED. R. CIV. P. 57, declaring unconstitutional the Defendants' policies and practices.

37. Furthermore, pursuant to 28 U.S.C. § 2202 and FED. R. CIV. P. 65, it is appropriate and hereby requested that this Court issue preliminary and permanent injunctions prohibiting the Defendants from enforcing their restrictions on Plaintiffs' expressive activities to the extent they are unconstitutional, in order to prevent the ongoing violation of Plaintiffs' constitutional rights.

38. Specifically, this Court should preliminarily and permanently enjoin Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in any further official conduct that threatens, attempts to threaten, and/or actually interferes with Plaintiffs' protected political speech, including but not limited to the use of political signs advocating for the election of certain candidates to City Council or other public offices.

COUNT II
VIOLATION OF RIGHT TO FREE SPEECH UNDER
THE FIRST AND FOURTEENTH AMENDMENTS
TO THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)

39. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

40. The City's threats have chilled and threaten to further silence Plaintiffs' protected political speech, including their use of otherwise-compliant yard signs advocating for the election of Mr. Pflgebraar to City Council.

Plaintiffs' political speech is protected.

41. The First Amendment to the United States Constitution and Section 11, Article I of the Ohio Constitution protect Plaintiffs' political speech, including their right to use the satirical SHTU logo.

42. Plaintiffs' political speech seeking to change and reform Perrysburg City Council is at the core of our electoral process and of the First Amendment freedoms – an area of public policy where protection of robust discussion is at its zenith.

43. Political “[s]peech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people.” *Citizens United v. FEC*, 130 S.Ct. 876, at 898 (2010), citing *Buckley v. Valeo*, 96 S.Ct. 612 (“In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential.”).

44. The First Amendment affords the broadest protection to such political expression in order “to assure (the) 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, at 484 (1957).

45. “[T]here is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. . . .” *Mills v. Alabama*, 384 U.S. 214, at 218 (1966).

Defendants' demand that Plaintiffs cease and desist engaging in protected political speech transgressed the First Amendment

46. A municipality is liable under § 1983 if it took “action pursuant to official municipal policy of some nature [that] caused a constitutional tort.” *Monell v. Dep't of Soc. Servs.*, 98 S. Ct. 2018 (1978).

47. “Municipal liability may be imposed for a single decision by municipal policy makers under appropriate circumstances.” *Id.*

48. Federal Court precedent supports the viability of protecting First Amendment freedoms through a facial challenge to an unwritten policy.

49. Threatened deprivation of constitutional rights that chills speech is a First Amendment harm. *United Food & Commercial Workers Local 1099 v. City of Sidney*, 364 F.3d 738 (6th Cir. 2004).

50. Restricting spontaneous political expression places a severe burden on political speech because, as the Supreme Court has observed, “timing is of the essence in politics ... and when an event occurs, it is often necessary to have one’s voice heard promptly, if it is to be considered at all.” *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, at 163 (1969) (Harlan, J., concurring).

51. A state actor cannot constitutionally condition the receipt of a benefit, such as a liquor license or an entertainment permit, on an agreement to refrain from exercising one’s constitutional rights, especially one’s right to free expression.

52. Defendants’ policy of characterizing election-related political signs as “temporary,” so as to trigger strict durational limits on when political speech through yard signs may take place, violates the First Amendment on its face.

53. The Defendants’ threats of \$100 per-day fines, and offer to abstain from such fines only if Plaintiffs’ sacrifice their clear First Amendment right to political speech, is an actionable cause for redress.

54. Time if of the essence, as Plaintiffs are pressed to convey their message ahead of the November 2017 election. Accordingly, each day’s chilling of speech is magnified.

55. The City's restrictions on the duration of political signage is particularly arbitrary in the modern era of expanded voting: for the November 7, 2017 general election, Military and Overseas Absentee Voting begins September 23, 2017 and Early In-Person Voting and Absentee Voting begin on October 11, 2017. See Ohio Secretary of State "Voting Schedule."¹

56. In the absence of this Court's relief, Plaintiffs are prohibited by Defendants from displaying political signs advocating for Mr. Pfleghaar's election, much less most or all other political signs related to candidates until on or about September 7, 2017, and prohibited from displaying any political signs related to candidates after November 14, 2017.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and that this Court:

- (1) Declare that Perrysburg Codified Ordinance Section 1250.33(a) is unconstitutional on its face, unconstitutional as applied by Defendants, and unconstitutional as applied to Plaintiffs, insofar as it prohibits political signs supporting the election of candidates other than during a 67 day window surrounding the election relevant to the candidate.
- (2) Declare that any other policy, pattern, practice, act, or conduct by Defendants separate and apart from or pursuant Section 1250.33(a) which prohibits political signs supporting the election of candidates other than during a 67 day window surrounding the election relevant to the candidate is unconstitutional on its face, unconstitutional as applied to Plaintiffs, and unconstitutional as applied by Defendants.
- (3) Issue a preliminary and permanent injunction prohibiting Defendants from enforcing Section 1250.33(a) so as to prohibit the posting of otherwise-legally-compliant political signs supporting candidates on private property.
- (4) Assess against Defendants and award to Plaintiffs nominal damages as compensation for the deprivation of their clearly-protected constitutional rights.

¹ A color-coded schedule is available online at <https://www.sos.state.oh.us/elections/voters/voting-schedule/#gref>.

- (5) Pursuant to 42 U.S.C. §1988 and other applicable law, award Plaintiffs their costs, damages, and expenses incurred in bringing this action, including their reasonable attorneys' fees; *and*
- (6) Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,

/s/ Maurice A. Thompson

Maurice A. Thompson (0078548)
1851 Center for Constitutional Law
122 E. Main Street
Columbus, Ohio 43215
Tel: (614) 340-9817
MThompson@OhioConstitution.org

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion and memorandum in support, as well as the verified complaint filed in this action has been served upon the following, via e-mail, on the date of filing:

Karlene Henderson, Esq.
Law Director
City of Perrysburg
201 W. Indiana Ave.
Perrysburg, OH 43551
KHenderson@CI.Perrysburg.oh.us

Respectfully submitted,

/s/ Maurice A. Thompson

Maurice A. Thompson (0078548)

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Charles Pflieghaar, declare the following:

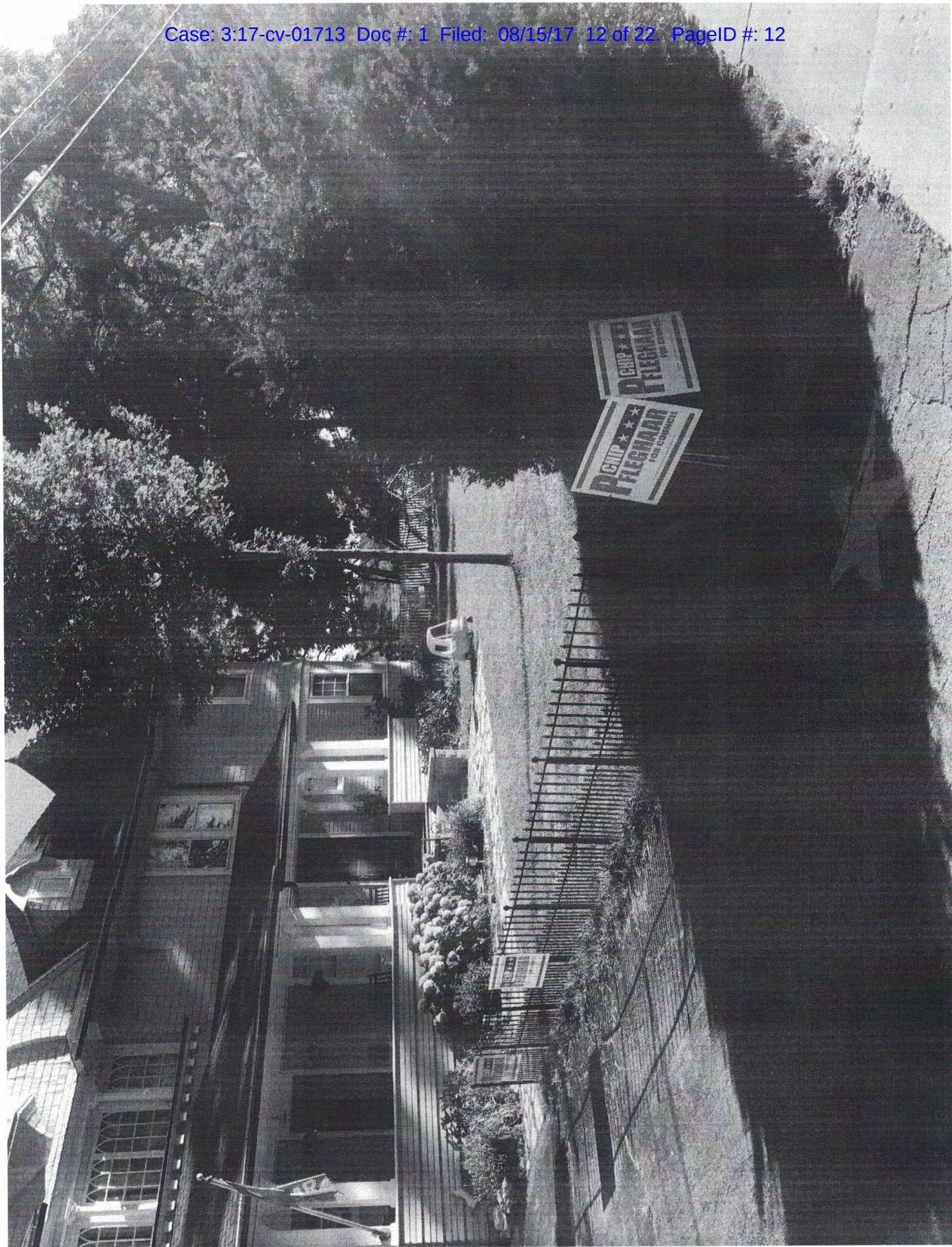
1. I have reviewed the Complaint in this case.
2. I have personal knowledge of the matters alleged in the Complaint.
3. The allegations contained herein are true and accurate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of August, 2017

/s/ Charles Pflieghaar

Charles Pflieghaar
Plaintiff



1250.29 SIGN REGULATIONS.

The purpose of this Chapter is to permit and regulate signs of all types in all zoning districts. The intent is to enhance the physical appearance of the City of Perrysburg, to preserve scenic beauty and architectural history, and to create an appearance that is attractive to business while preserving the general health, safety and welfare of the City. It is further intended to improve traffic safety by avoiding the distractions from disorganized or confusing presentation of signs. (Ord. 40-2013. Passed 4-9-13.)

1250.30 DEFINITIONS.

As used in this Chapter:

(a) Area of Sign: The entire area enclosing the extreme limits of the message(s), comprised of writing, representation, emblem or any figures of similar character, together with any frame or other material or color forming an integral part of the display, excluding the necessary supports or uprights on which such sign is placed, provided that:

- Where a sign has two (2) or more faces, the area of all faces shall be included in determining the area of the sign, except that where two (2) such faces are placed back to back and are at no point more than three (3) feet from one another, the area of the sign shall be taken as the area of one (1) face if the two (2) faces are of equal area, or as the area of the larger face if the two (2) faces are of unequal area.

- The necessary uprights or structures used to support a freestanding sign shall be excluded from the calculations of sign area, provided that the surface is not, by definition, a sign and provided further that the area of the support structure does not exceed fifty percent (50%) of the area of the sign being supported.

(b) Facade: The exterior of the wall or walls of a building facing in one (1) direction. For purposes of sign regulation, there shall not be more than four (4) facades per building.

(c) Freestanding Sign: Any and every sign erected on or affixed to the land and any and every exterior sign that is not attached to a building.

(d) Landmark Feature/Signage - A structure of interest that serves as an identifiable feature of sufficient quality to enhance the appeal of the City and to provide visitors and citizens a visual landmark. Landmark features/signs may include but are not limited to clock towers, fountains, sculptures, historical reproductions, public information displays, or other items of architectural, historical, recreational or visual interest. See Special Approval Uses "Landmark Feature/Signage".

(e) Marquee Sign: A sign attached to a marquee.

(f) Multi-Occupant Property Sign: A free standing sign which identifies three or more leasable tenant spaces or three or more businesses or organizations, with separate outside entrances.

(g) Nameplate: A sign which typically is used for the name of a single resident, business or institution, phone number, hours of operation, logo or other identifying symbol.

(h) Projecting Sign: A sign that is attached to a building and which projects out from the building wall so that the sign is generally at right angles to the building wall.

(i) Roof Sign: A sign erected upon, against or directly above a roof on the top of or above the parapet of a building.

(j) Sign: Any words, numerals, figures, devices, designs, pictures or trademarks, painted upon or otherwise affixed to a building, wall, board, plate or any other structure for the purpose of making anything known. The definition of a sign shall not include the following:

- Signs not exceeding one (1) square foot in area and bearing only property numbers, post box numbers or names of occupants of premises;

- Flags and insignia of any government.

- Legal notices, identification information or directional signs erected by governmental bodies.

(k) Temporary Sign: A sign that is not constructed or intended for long-term use or is not permanently affixed to the ground or a structure, maintained in good condition, and generally displayed for periods less than one year.

(l) Temporary Window Sign: A sign installed inside a window or door window and intended to be viewed from the adjacent public streets and not constructed nor intended for long-term use.

(m) Wall Sign: A display that is painted on or attached directly to the building wall, window, awning, or door, parallel to the wall to which it is attached.

(n) Warning Sign: A sign placed on private property that provides admonitions as to no trespassing, no dumping, danger, or similar warnings.

(Ord. 40-2013. Passed 4-9-13.)

1250.31 CONDITIONS APPLICABLE TO SIGNS IN ALL DISTRICTS.

- (a) Signs, as defined by this Chapter, may be erected or located in any use district subject to the conditions of this Chapter.
- (b) No sign, except those established and maintained by governmental units and marquee or projecting signs where permitted, shall be located in, project into or overhang a public right-of-way or dedicated public easement.
- (c) All directional signs required for the purpose of orientation, when established by governmental units, shall be permitted in all use districts.
- (d) Warning signs shall be permitted in any use district provided that they do not exceed two (2) square feet in area and are spaced not closer than fifty (50) feet from each other.
- (e) Signs shall not be placed within the "Clear Vision Zone" as provided in Section 1250.54.
- (f) Illuminated signs shall not be the flashing, twinkling, blinking, or traveling type. Lighting shall be of constant intensity. Static images may not change more frequently than one (1) sign image every seven (7) seconds.
- (g) Roof signs shall not be permitted in any district.
- (h) The regulations of this Chapter shall not apply to signs clearly intended for providing directions or instructions for vehicular or pedestrian traffic within a zoning lot. Two signs shall be permitted at each driveway entrance or exit not within the public right of way and each sign may have a maximum height of 42 inches and a sign area of no more than three (3) square feet and contain no advertising. All other signs for directions or instructions shall comply with the following:
- (1) Each sign shall not exceed eight (8) square feet in area and six (6) feet in height;
 - (2) The number of instructional or directional signs are the minimum needed to serve the intended purpose;
 - (3) Lettering on the sign does not exceed four inches in height; and
 - (4) The signs are not in a location and do not possess design characteristics that constitute or serve to attract attention beyond the perimeter of the zoning lot.
- (i) Signage shall be designed as a coordinated and complementary architectural element of the buildings to which it is principally related according to the Chart "Sign Criteria Do's and Don'ts".

<i>Sign Criteria Do's and Don'ts</i>	
<p>For All Signs:</p> <ol style="list-style-type: none"> Do use only fabricated materials that are of permanent quality and good durability for the intended period of display. <p>Property owners are to allocate permitted sign area among occupants and coordinate multiple signs on a zoning lot in compliance with this code.</p>	<p>For Freestanding Signs:</p> <ul style="list-style-type: none"> use architectural design elements or materials of the building. use design embellishment. Upright structures, caps, bases and other embellishments designed as separate elements from the graphic message are encouraged and if not an integral part of the graphic message shall not be counted as sign area. coordinate multiple occupant signs that display a directory or individual panels with one or more distinct common design element such as background color, similar size or font of lettering to show an overall design composition. multiple occupant signs shall use either a common background or common frame to contain the individual message of occupants. Better use of sign area is emphasis on a place name for more than 4 occupants. use landscaping to soften the appearance of the sign base and designed to not obscure the message area of the sign. street numbers are encouraged to be displayed on the sign and do not count as sign area if less than two square feet. don't use a single pole for a sign taller than 42 inches without enclosing the pole within a solid base or enclosure that extends vertically to enclose the message area of the sign. don't use flashing or intermittent illumination, however, electronic images may be displayed with static images changing no less than each 7 seconds.
<p>For Wall Signs:</p> <ol style="list-style-type: none"> Place sign within an architectural fascia that provides a sign band or panel which does not cover architectural features. If the building design does not clearly provide a sign band or fascia for placement of a sign panel, individual letters should be used. <p>Buildings that have the appearance of a single building because of architecture and design are to have occupant signs that share common elements of placement or design.</p>	

1250.33 TEMPORARY SIGNS.

Temporary signs shall be permitted within the various use districts subject to the following conditions:

(a) The type, number, setback, height and area of temporary signs shall be controlled as set forth in Table 1250.33(a) "Temporary Signs":

Table <u>1250.33(a)</u> Temporary Signs Allowed			See Sections <u>1250.33(b)</u> - (h) for explanation and restrictions.		
Within Non-Residential Districts	Number of Signs	Max. Size	Other Restrictions	Location & Height	Permit Y/N
Window Sign	unlimited	No more than 25% window coverage on facade			N
Wall or Freestanding	1	18 SF		Freestanding- 5' setback; 8' height. Wall - No higher than eve or parapet	Y
Wall or Freestanding Event Sign	1	48 SF	Allowed up to 60 days prior & 7 days after an event, in no case more than 70 days within any 12 months period.		Y, except real estate signs.
Within Residential Districts					
Freestanding Signs or flags	Unlimited	A total of 12 SF allowed year round. An additional 32 SF allowed related to an event.	Up to 12 SF total area allowed year round. An additional 32 SF of sign area allowed up to 60 days prior & 7 days after an event, in no case more than 70 days within any 12 month period. Max at any time = 44 SF.	Freestanding - 5' setback; 8' height. Wall - no higher than eve or parapet.	N

(b) Within non-residential districts temporary signs may be displayed on the inside of windows and may be banner wall signs or freestanding. One temporary sign up to 18 square feet may be permitted without time restriction. One additional sign related to an event may be permitted up to 60 days prior and 7 days after the event.

(c) Within residential districts temporary signs or flags totaling 12 square feet may be displayed without time restriction. Additionally, signs totaling 32 square feet may be displayed up to 60 days prior and 7 days after the event. At no time may temporary signs and flags be more than 44 square feet. No more than two signs may display an identical message.

(d) Corner Clearance: Temporary signs shall not be located within a clear vision zone. The clear vision zone is intended to provide for unobstructed visibility for vehicles and pedestrians. The clear vision zone is defined in accordance with the above illustrations and contains the area within the dashed lines. Figure 1 shows the dimensional calculations of the clear vision zone while Figure 2 shows the resulting shape of the clear vision zone.

(e) Removal: Temporary signs shall be removed promptly at the end of the allowed display period.

(f) Projection Into Right-of-Way: No temporary sign shall be located within or above any public right-of-way nor project beyond the property line unless approved by City Council.

(g) Damaged or Unsafe: Any temporary sign found by the Zoning Inspector to be in a torn or damaged condition must be removed by the owner within three (3) days after receipt of notice to do so from the Zoning Inspector. A sign found to be in an unsafe condition shall be removed by the owner within twenty-four (24) hours after verbal notification by the Zoning Inspector.

(h) Moving, Illuminated or Flashing Signs: Moving or illuminated temporary signs shall be prohibited.

(Ord. 40-2013. Passed 4-9-13.)

1250.35 PROHIBITED SIGNS.

All signs not expressly permitted by this Code shall be prohibited. Such signs include but are not limited to the following:

(a) No mobile signs shall be erected, constructed, displayed or maintained except those on commercial delivery and service vehicles. Such vehicles shall not be parked in any district closer to the street than the front line of the principal building, unless the principal building has no side or rear parking in which case such vehicles may not be parked closer to the street than half the distance from the front edge of the parking lot to the building front façade.

(b) Flashing, moving, inflatable, blinker, racer type, intermittent, rotating, moving or revolving signs, whirligig devices, tethered inflatable signs, pennants, non-governmental flags, ribbons, streamers, spinners, and other similar types of attention getting devices.

(c) Merchandise, equipment, products, vehicles or other items not themselves for sale and placed for attention getting, identification or advertising purposes.

(d) No sign shall be attached to a utility pole, tree, trash receptacle, bench or other structure not intended or approved by the City as a sign support.

(e) Permanent signs erected or attached to accessory structures.

(Ord. 40-2013. Passed 4-9-13.)

1250.36 SIGN PERMITS.

(a) Permits Required: No sign shall be erected or altered until approved by the Zoning Inspector, after paying a fee and issuance of a permit unless otherwise exempted in this Chapter. A new permit shall be required if such signs are relocated on the ground or are increased in surface area or dimension or change of copy.

(1) No sign for which a permit has been issued shall thereafter be moved to another location within the City nor shall it be structurally altered in any way without the approval of the official or board that granted the original permit. An additional fee shall be paid at the time of application for permission to move or alter each such sign.

(2) If a sign is proposed to be located within a Historic District, the Zoning Inspector shall require a Certificate of Appropriateness for submission to the Historic Landmarks Commission for review and approval.

(b) Assurance of Discontinuance: As an additional means of enforcing this Zoning Code, the Zoning Inspector may accept an assurance of discontinuance of any act or practice deemed to be in violation of this Zoning Code or of any rule or regulation adopted pursuant hereto from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance shall occur. Failure to perform such assurance shall constitute prima facie proof of a violation of this Zoning Code, or of any rule or regulation adopted pursuant hereto, or of any order issued pursuant thereto, which makes the alleged act or practice unlawful, for the purpose of securing any injunctive relief from a court of competent jurisdiction.

(c) Effective Period: Every sign permit issued by the Zoning Inspector shall become null and void if the sign is not erected within one hundred and eighty (180) days from the date of such permit. If construction authorized by such a permit is suspended or abandoned for one- hundred and twenty (120) days any time after the construction is commenced, another permit shall be obtained before work is recommenced. The fee for such additional permit shall be one-half (½) the amount required for a new permit for such construction, provided that no changes have been made in the original plans. Such permit shall not be unreasonably withheld, provided that proper application is made and the fee paid.

(d) Revocation: The Zoning Inspector may, in writing, suspend or revoke a permit issued under this Chapter whenever the permit is issued on the basis of a misstatement of fact or fraud. When the Zoning Inspector denies a sign permit, he or she shall give written notice of the denial to the applicant, together with a brief written statement of the reasons for the denial.

(e) Permit Fees: An application for a permit shall be filed with the Zoning Inspector, together with a fee for each sign. The fee schedule shall be as determined from time to time by City. (Ord. 40-2013. Passed 4-9-13.)

1250.37 OTHER ADMINISTRATIVE PROCEDURES.

(a) Abandoned Signs: Except as otherwise provided in this Zoning Code, any sign located on a zoning lot that becomes vacant or unoccupied for three (3) months or more or any sign which pertains to a time, event or purpose that no longer applies to the zoning lot, shall be deemed to have been abandoned. Permanent signs applicable to an occupancy temporarily suspended because of a change of ownership or management shall not be deemed abandoned unless the zoning lot remains vacant or unoccupied for a period of six (6) months or more. Any nonconforming sign that, for a period of three (3) consecutive months, advertises goods, products, services or facilities no longer available or that directs persons to a location where such goods, products, services or facilities are no longer available shall be deemed to have been abandoned.

(b) Removal of Signs by the Zoning Inspector:

(1) The Zoning Inspector shall cause to be removed any sign that endangers the public safety, such as but not limited to, an abandoned, dangerous or materially, electrically or structurally defective sign or a sign for which no permit has been issued. The Zoning Inspector shall prepare a notice describing the sign, specifying the violation involved, and stating that if the sign is not removed or the violation is not corrected within ten (10) days, the sign shall be removed in accordance with this Chapter.

(2) Notices mailed by the Zoning Inspector shall be sent by certified mail. Time periods provided in this Chapter shall commence on the date of the receipt of the certified mail.

(3) If known, or with reasonable care should be known, the notice shall be mailed to or delivered to the owner of the sign and the occupant of the property. For all other signs, the notice shall be mailed to the owner of the property on which the sign is located as shown on the last equalized assessment roll.

(4) Notwithstanding the above, in cases of emergency, the Zoning Inspector may cause the immediate removal of a dangerous or defective sign without notice.

(c) Disposal of Signs; Fees:

(1) Any sign removed by the Zoning Inspector pursuant to this Zoning Code shall become the property of the City and may be disposed of in any manner deemed appropriate by the City. The cost of removal of the sign by the City shall be considered a debt owed to the City by the owner of the sign and the owner of the property. Such debt may be recovered in an appropriate court action by the City or by assessment against the property as hereinafter provided. The cost of removal shall include any and all incidental expenses incurred by the City in connection with removal of the sign.

(2) If the Zoning Inspector determines that such sign would cause an imminent danger to the public safety, and if contact cannot be made with the sign owner or the property owner, the service of a written notice shall not be required. In such emergency the Zoning Inspector may correct the danger with costs assessed against the sign owner or property owner.

(d) Conflict of Laws: If any portion of this Chapter is found to be in conflict with any other provision of this Zoning Code or with the provisions of any building, fire, safety, or health code of the City, the provision establishing the higher standard shall prevail.

(Ord. 40-2013. Passed 4-9-13.)

1280.03 ENFORCEMENT.

The Zoning Inspector shall have the primary duty of enforcing the provisions of this Zoning Code under the direction of the Planning and Zoning Administrator or the Deputy Planning and Zoning Administrator. It shall be the duty of all officers and employees at the City, and especially of all members of the Police and Fire Divisions, to assist the Zoning Inspector by reporting to him or her, so that he/she may take the necessary initial action, all apparent violations of this Zoning Code.

(Ord. 119-2011. Passed 6-21-11.)

1280.04 EXISTING VIOLATIONS.

Any structure or use of a building or land erected, relocated, structurally altered, or used in violation of the provisions of Ordinance No. 246, adopted August 29, 1939, commonly known as the "Zoning Ordinance of the Village of Perrysburg," and Ordinance No. 542-60, adopted August 29, 1960, and known and referred to as the "1960 Zoning Ordinance of the Municipality of Perrysburg," and not specifically authorized by such ordinances, shall be considered a continuing violation and subject to the penalties and sanctions available under this Zoning Code.

(Ord. 32-2006. Passed 3-7-06.)

1280.05 EQUITABLE REMEDIES.

In addition to the other remedies and penalties provided in this Zoning Code, in the event any building or structure is erected, relocated or structurally altered, or any lot is used in violation of the provisions of this Zoning Code, the City may institute an appropriate action or proceeding to prevent, restrain or enjoin any threatened or continuing violation or to correct or abate any present violation thereof.

(Ord. 32-2006. Passed 3-7-06.)

1280.06 PENALTY.

The remedies and enforcement powers established in this Zoning Code are cumulative, and the City may exercise them in any order. Without limitation:

(a) The City, through its Planning and Zoning Division, may require that any person immediately stop any work being performed in violation of this Zoning Code or other state or local laws. Such requirement shall be in writing, shall be directed to the person performing the work; and shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed.

(b) In the case of violations of this Zoning Code, as determined by the Planning and Zoning Administrator, that do not constitute an emergency or require immediate attention, the Zoning Inspector shall provide notice of the violation to the property owner or to any other person who is party to the agreement or to any applicant for any relevant permit, after which the persons receiving notice will have up to thirty (30) days to correct the violation before further enforcement action will be taken.

(1) Notice must be given in person, by the U.S. mail, or by posting notice on the premises.

(2) Notice of violation must state the nature of the violation and the time period for compliance and may state the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.

(c) Should the notice provided pursuant to Section 1280.06(a) or (b) fail to remedy a violation, the City may take further legal action. Without limitation:

(1) Pursuant to Ohio R.C. 713.13, the City may seek an injunction or other equitable relief in court to stop any violation of this Zoning Code.

(2) The City may seek a court order to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.

(3) The City may pursue any other actions or remedies available to it under the law.

(d) In the case of violations of this Zoning Code, as determined by the Planning and Zoning Administrator, that would result in public safety concerns or which otherwise require immediate remedy, the City may use the enforcement powers available under this Zoning Code (including, but not limited to, legal action for injunction, an order to abate or remove a violation, or other legal or equitable remedy) without prior notice.

(1) Zoning officials must attempt to give notice to the property owner and to applicant for any relevant permit simultaneously with beginning enforcement action.

(2) Where the City makes a reasonable attempt to provide such notice, failure to provide actual notice shall not prevent the City from exercising all otherwise available enforcement powers.

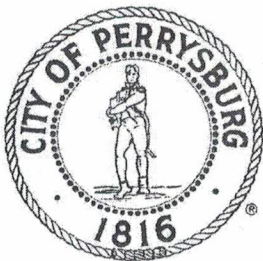
(e) In addition to any civil or other remedies available under the Code, whoever violates or fails to comply with any of the provisions of this Zoning Code, or erects or alters any building in disregard for or in violation of any detailed statement or plan submitted or approved in connection with the issuance of any permit, shall be guilty of a minor misdemeanor and shall be fined not more than one hundred dollars (\$100.00).

(1) A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

(2) The owner of the building or lot where anything in violation of this Zoning Code is placed or permitted to exist and any architect, builder, contractor, agent, lessee, or person employed in connection with such violation or who may have assisted in the commission of any such violation, shall be deemed guilty of a separate offense and shall be subject to the penalty herein provided.

(f) The City may seek any such other penalties and remedies as are available under the law.

(Ord. 119-2011. Passed 6-21-11.)



Brodin L. Walters
Administrator

Mark Easterling
Zoning Inspector

Cody Grodi
Zoning Intern

Heather Alfaro
Zoning Clerk

City of Perrysburg

Division of Planning and Zoning

201 West Indiana Avenue

Perrysburg, Ohio 43551-1582

(419) 872-8060 • Fax (419) 872-8019

www.ci.perrysburg.oh.us

July 17, 2017

Dear candidate,

As you prepare for election season the Planning and Zoning Division would like to provide you the following information to ensure that all political signs are placed legally. We greatly appreciate your understanding and cooperation.

The purpose of regulating signage in all zoning districts is to enhance the physical appearance of the City of Perrysburg, to preserve scenic beauty and architectural history, and to create an appearance that is attractive to business while preserving the general health, safety and welfare of the City. It is further intended to improve traffic safety by avoiding the distractions from disorganized or confusing presentation of signs.

If a temporary sign is being placed in a residential zoning district you must adhere to the following criteria:

1. Signs are permitted to be displayed 60 days prior to and 7 days after an election / voting day.
2. The maximum for all displayed signage on a property is 44 S.F. at any one time.
3. No more than 2 signs with an identical message may be displayed on a property.
4. Signs must be no taller than 8'.
5. Sign must be setback at least 5' from the right-of-way.
6. No sign permit is needed.

If a temporary sign is being placed in a non-residential zoning district you must adhere to the following criteria:

1. One sign per property is permitted to be displayed 60 days prior to and 7 days after an election / voting day.
2. The maximum size for signage on a property is 48 S.F.
3. Signs must be no taller than 8'.
4. Sign must be setback at least 5' from the right-of-way.
5. A sign permit is needed.

EXHIBIT D

EMAIL CORRESPONDENCE BETWEEN PLAINTIFFS AND DEFENDANTS

From: Brody Walters <bwalters@ci.perrysburg.oh.us>

Date: August 10, 2017 at 10:04:21 AM EDT

To: charles pfleghaar <pfleghaar@att.net>

Subject: RE: Political signs

Chip,

The code doesn't have an allowance for allowing signs up longer if they are better constructed (similar to what you mentioned). There is a minimum standard for all signs and I think the ones you have now would probably meet that requirement for the time that they would be displayed. The real intent of the code as I see it is to allow display of election signs during a time that is relevant and then to have them removed upon the conclusion of the election.

Brodin L. Walters

Administrator

Planning and Zoning

City of Perrysburg

201 West Indiana Avenue

Perrysburg, Ohio 43551

Ph: 419-872-8060

Fax: 419-872-8019

bwalters@ci.perrysburg.oh.us

www.ci.perrysburg.oh.us

From: charles pfleghaar [<mailto:pfleghaar@att.net>]

Sent: Wednesday, August 09, 2017 4:59 PM

To: Brody Walters <bwalters@ci.perrysburg.oh.us>

Subject: Re: Political signs

Brody-

Thanks for the clarification. I have one other question: does this have anything to do with how my signs are made? For example, if I use sturdier, more permanent signs and attach them to my fence, and have supporters do the same (or attach them to postholes in the ground), can we use those now and also more than 7 days after the election?

Please let me know soon, as I can get new signs ordered possibly today or first thing in the morning, if this would be a solution (I'm not sure if it is or not).

Thanks so much for your time.

Chip

Chip Pfleghaar

419.280.0709

On Aug 8, 2017, at 10:29 AM, Brody Walters <bwalters@ci.perrysburg.oh.us> wrote:

Hi Chip,

In order to be in compliance with the current code your signs should come down until 60 days prior to the

election. This timeline will be different for Mayoral candidates since they have a primary which allows their signs to go up ahead of council candidates. We wanted to send out the general letter to inform every candidate since you are not the only one that was not aware of the timing requirements for signs. We aren't specifically out targeting political signs but obviously we need to address them if we see them. There are basically 2 penalties, 1) if you put them in the right-of-way they will be taken and disposed of (so the penalty is losing the sign) and 2) if they are maintained on private property in violation of the size or time requirements there is the potential for a zoning fine of \$100 per day per violation. Obviously we don't want to penalize anyone for a sign, rather our goal is to have a reasonable display option for all such signs. Let me know if you still have questions.

Thanks,

Brodin L. Walters
Administrator
Planning and Zoning
City of Perrysburg
201 West Indiana Avenue
Perrysburg, Ohio 43551
Ph: 419-872-8060
Fax: 419-872-8019
bwalters@ci.perrysburg.oh.us
www.ci.perrysburg.oh.us

-----Original Message-----

From: charles pfleghaar [<mailto:pfleghaar@att.net>]

Sent: Tuesday, August 08, 2017 10:18 AM

To: Brody Walters <bwalters@ci.perrysburg.oh.us>; Mark Easterling <measterling@ci.perrysburg.oh.us>

Subject: Political signs

Brody and Mark-

I received your July 17th letter indicating that political signs supporting candidates are prohibited in Perrysburg other than 60 days before and seven days after the election.

As you already know, I'm running for City Council, and I've had my own signs up at my house for a while now. Also, I have some friends and family that were going to put my signs up, but are concerned that it might be illegal to do so.

Do I need to take my signs down? And do they need to wait until September 7th to put their signs up? One of my family members asked me what the penalty was for putting up a sign now or leaving it up, and honestly, I can't figure out from the City code the answer to that question. Can you tell me what the penalty is, please?

Thanks,

Chip

Chip Pfleghaar
419.280.0709

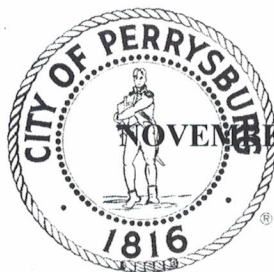


EXHIBIT E:

NOVEMBER 2016 THREAT LETTER

City of Perrysburg

Division of Planning and Zoning

201 West Indiana Avenue

Perrysburg, Ohio 43551-1582

(419) 872-8060 • Fax (419) 872-8019

www.ci.perrysburg.oh.us

Brodin L. Walters
Administrator

Mark Easterling
Zoning Inspector

Cody Grodi
Zoning Intern

Mary Jo Sutton
Zoning Clerk

November 23, 2016

Jennifer and Charles Pflgebraar
401 W Front St.
Perrysburg, OH 43551

Dear Mr. and Mrs. Pflgebraar,

Upon recent routine inspections, the presence of a political sign was noticed at the address above, for which you are the owner on record. I must inform you that political signs are not permitted to be up longer than a 70 day period. In particular 7 days after the event, this would have been Election Day. This time limit is clearly stated in Chapter 1250.33(a) of the Perrysburg Codified Ordinance. Additionally, I have included an aerial photograph of your property. The yellow line shows where your property boundaries are located. For further sign placement, it must be within the property boundaries.

I am requesting that the sign be removed as soon as possible, however no later than **December 2, 2016**. If upon the date the sign still remains, our office will ensure that the sign is removed. If you have any questions regarding this issue feel free to give our office a call. I thank you in advance for your cooperation.

Sincerely,

Cody Grodi
Planning and Zoning Division