

Attachment "A"

MEMORANDUM TO CITY COUNCIL

CITY OF BLUE EARTH

To: Blue Earth City Council.

FROM: David F. Frundt, City Attorney

RE: Regulation of Signs in residential windows – Free Speech.

Date: March 15, 2010

Mayor and Councilmembers:

At the City Council meeting held on March 2, 2010, the Council directed me to research and report on its ability to prohibit the placement of messages in a window of a residential property within the City which are found to be a public nuisance pursuant to Subsection 500.01 of the City Code. This question arose due to the placement of one sign in a picture window by a residential property owner. The question is whether or not such signs are protected as free speech by the U.S. Constitution. Based upon my review of state court rulings, Subsection 500.01 of the City Code cannot prohibit the sign in the window, because the sign is protected by the 1<sup>st</sup> amendment of the U.S. Constitution.

Freedom of speech is a First Amendment Right but is not an absolute right. First Amendment rights are subject to reasonable restrictions in the interest of public welfare. First Amendment rights are also preferred rights and any provision of law restricting such rights will not bear the usual presumption of constitutionality normally accorded to legislative enactments.

A statute designed to generally protect public welfare, like the one in question, can come in conflict with the First Amendment. A statute is overbroad if within its reach it prohibits constitutionally protected activity as well as activity that may be prohibited without offending constitutional rights. A court may limit the scope of a statute to prohibit its application to constitutionally protected expression while allowing the statute's provisions to apply to conduct that is not protected by the First Amendment.

The right to free speech is subject to reasonable time, place and manner restrictions. The restrictions must be justified without a reference to content and must serve a significant governmental interest while leaving open ample alternative channels for expression and communication of information. Content based restrictions only survive first amendment scrutiny if they are necessary to serve a compelling state interest and are narrowly drawn to achieve that end.

The Minnesota Court of Appeals has reviewed City Ordinances concerning signs in residential areas. In the case, Goward v. The City of Minneapolis, 456 NW2d 460, the Court struck down an

ordinance which prohibited political lawn signs in a residential neighborhood . The Court held that the ordinance did not constitute a valid time, place or manner restriction on free speech. The Court held that an ordinance restricting time, place or manner of speech will survive constitutional scrutiny only if it is justified without reference to content of regulated speech; it is narrowly tailored to serve a significant governmental interest; and it leave open ample alternative channels for communication of information. In the case, the City's reasoning for the ordinance was for aesthetic purposes. The Court held that the City's interest in aesthetics was not a compelling state interest that could justify content-based restrictions contained in the lawn sign ordinance.

I find that Subsection 500.01 of the Blue Earth City Code will most likely not survive constitutional scrutiny to prohibit the sign in question in the future. Blue Earth will also have the same problem as the City of Minneapolis, in that it does not have a compelling reason for the ordinance to generally prohibit speech that annoys some residents in the City. Additionally, and more importantly, the ordinance does not provide any alternative method of communication. The subsection applies across the City. It is not specific to a place or a time. It also is not specific as to manner of communication. If the statement in the window was offensive and annoying to some as written, it would also be offensive and annoying if spoken in a park or if put on a bumper sticker and driven around only in industrial areas of town. As such the subsection would not pass constitutional scrutiny if enforced as written. ( I note that this subsection was simply an adoption of the model ordinance for regulation of nuisances published by the League of Minnesota Cities in 1998. The League just came out with a new model ordinance for the regulation of nuisances which was included in your packet this week.)

It is possible to have a sign ordinance that regulates noncommercial speech in a residential area which will not violate the first amendment. (See Brayton v. the City of New Brighton, 519 NW2d 243). The purpose of the ordinance must be content-neutral and be specific as to its purpose. Aesthetics alone would not be a necessary governmental need. Public safety can be a necessary governmental need.

Sincerely,

David F. Frundt,

City Attorney.