



CITY OF HOLLY HILL

The City with a Heart

1065 Ridgewood Avenue ♥ Holly Hill, Florida 32117

www.hollyhilfl.org

**Building,
Zoning,
Licensing &
Inspections**

386-248-9442
Fax 386-248-9498

Monday, April 15, 2013

**City
Clerk**

386-248-9441
Fax 386-248-9448

OFFICE OF THE MAYOR

Hon. Roy Johnson
City of Holly Hill, Florida

**City
Manager**

386-248-9425
Fax 386-248-9448

Memorandum of Explanation – Flag and Temporary Sign Ordinance

**Community
Services**

386-248-9435
Fax 386-248-9448

Recently, I have received numerous notes and calls from concerned citizens regarding media reports that our community has prohibited the display of United States Military flags in the Ridgewood Avenue commercial corridor.

**Economic
Development**

386-248-9424
Fax 386-248-9444

This information is incorrect.

The City of Holly Hill, Florida, strongly supports our active duty and honorably discharged military veterans. Our long-standing commitment to honoring our nation's heroes was best exemplified by a recent tribute to D-Day veteran and Holly Hill resident Mr. Morton Parks, as we commemorated his extraordinary service to the cause of freedom and celebrated his recent induction into the French Legion of Honor.

Finance

386-248-9427
Fax 386-248-9497

As a proud Air Force veteran, the very insinuation that our community would dishonor veterans – or the hallowed insignia of our nation's armed forces – causes me great concern.

**Human
Resources**

386-248-9440
Fax 386-248-9448

For many years our ordinance – like most surrounding cities – limited the number of flags on any single parcel of property to three. In an effort to permit the broadest possible opportunities for area businesses during the recent economic downturn, we focused on a complaint driven system for dealing with advertising banners and flags. As a result, we experienced a proliferation of various flags and temporary advertising signage in the commercial corridor.

**Information
Technology**

386-248-9459
Fax 386-248-9448

**Public
Works**

386-248-9463
Fax 386-248-9499

Recently, the City began a more rigorous code enforcement effort in the commercial corridor while also providing a legal opportunity for businesses to increase the number of flags and temporary advertising signs.

**Utility
Billing**

386-248-9432
Fax 386-248-9458

To facilitate this, an ordinance was recently passed which allows a business owner to apply for more temporary signage, including flags.

Last week Mr. Eddie Colosimo, President of Bikers for First Amendment Rights, decided to publically challenge the City's ordinance after he was asked to remove a non-compliant Bike Week advertising banner from the front of his building. Until last week, Mr. Colosimo had limited his display of the military flags to weekends only. Now, after having been provided a courtesy notice and explanatory information regarding the ordinance, Mr. Colosimo erected six military flags and contacted the media with reports that the City of Holly Hill was prohibiting him from honoring our armed forces.

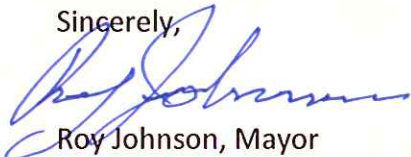
Rightfully, this prompted a very emotional response from veterans across the nation.

The City of Holly Hill has never regulated the content of any flag – nor will we. Our community vigorously supports the constitutional rights of all citizens, including the right to display the flags of our military. However, we are also a community of laws and we respect the legislative process which allows us, as elected representatives, to review ordinances and regulations and make changes when warranted. We do this through the peaceful debate of competing ideas, safe in the knowledge that everyone involved has the best interests of our community at heart.

As Mayor of the City of Holly Hill, I would like to assure everyone that the City Commission will review this important issue at our next regularly scheduled meeting. At that time we will consider all options, including increasing the number of flags permitted on individual parcels.

Until then, I would like to reinforce our community's commitment to honoring our nation's armed forces and the democratic traditions and freedoms that we have fought so hard, and sacrificed so much, to defend.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roy Johnson".

Roy Johnson, Mayor

SCOTT E. SIMPSON, P.A.
of
KOREY, SWEET, McKINNON & SIMPSON
Attorneys and Counselors at Law

*Suite A, Granada Oaks Professional Building
595 West Granada Boulevard
Ormond Beach, Florida 32174
(386) 677-3431-Telephone
(386) 673-0748-Telefax
Website: ormondlegal.com
Email: scott.scottsimpsonlaw@gmail.com*

TO: Mayor and City Commissioners
FROM: Scott E. Simpson, City Attorney
DATE: April 15, 2013
RE: Flag Issue

* * M E M O R A N D U M * *

A recent controversy has occurred over the City's sign regulations, specifically the number of flags allowed to be flown. Although some may view the flying of a flag differently than regulating signage, both fall under the First Amendment protection. Regulating signage is one of the most legally challenging issues from the perspective of compliance with the First Amendment. This memo will first review the status of the City's current regulations, then evaluate flag regulations of surrounding local governments and lastly, review the legal requirements the City's regulation of signs.

CURRENT STATUS

It is my understanding that some believe that the City recently changed its regulations regarding flags and this has resulted in the current issue. This is not true. The City currently allows a commercial property owner to fly three (3) flags or insignias of governmental, religious, charitable, fraternal or other organizations on a parcel of property. This regulation was adopted in 1993 and has remained unchanged since adoption. Therefore, any property owner who has displayed more than three (3) flags on a parcel has been in violation of this regulation.

City staff realized that there were several commercial properties along U.S. 1 that were displaying more signage than allowed. The City was faced with two options, either enforce the existing regulations, which would have resulted in a significant amount of code enforcement activity, or amend the City's regulations to allow more signage. The City recently adopted Ordinance No. 2932, which increased the number of permitted temporary signs on industrial and commercial properties based on the street frontage of the property. The more street frontage the parcel has the more temporary signs that are allowed.

As it relates to BFFAR, apparently there have been more than three (3) flags flown on this property at different times in the past, which as previously mentioned, violated the City's regulation. When Ordinance No. 2932 was adopted BFFAR was provided notice that only three (3) flags were allowed but additional flags could be flown as a temporary sign. However,

BFFAR has not asked for a permit for any additional flags as a temporary sign but has continued to fly more than three (3) flags. Apparently, since this has become an issue, BFFAR has actually flown more flags than it has in the past and is flying the flags continuously which, in the past, the additional flags were only flown on the weekend. As a result of BFFAR's conduct, the City has issued a notice of violation to both BFFAR, as the tenant of the property, as well as the property owner. At no time has BFFAR been cited because of the type of flag that was being flown nor, has the City instructed BFFAR what flag should be flown. The City has only regulated the number of flags and which three (3) flags BFFAR decides to fly is entirely up to the BFFAR.

SURROUNDING JURISDICTIONS' FLAG REGULATIONS

Below is a summary of some of the surrounding jurisdictions' flag regulations:

Daytona Beach

Flags, emblems, or insignia of any nation or political subdivision, one welcome flag, and one corporate flag. All flags shall be displayed from a permanent structure or flagpole. Flagpoles must meet wind load standards contained in the building code.

Ormond Beach

Flags and insignia of the United States or the state which are five feet (5') by eight feet (8') or smaller. (Note: Flagpole shall require building permit).

South Daytona

No more than three flags or insignia of governmental, charitable, religious, fraternal or other organizations may be displayed on any one parcel of land. The maximum width from top to bottom of any flag shall be 20 percent of the total height of the flag pole, or in the absence of a flag pole, 20 percent of the distance from the top of the flag or insignia to the ground.

Port Orange

No more than three flags or insignias of governmental, charitable, religious, fraternal, corporate or other organizations may be displayed on any site development. The maximum width from top to bottom of any flag shall be 20 percent of the total height of the flag pole, or in the absence of a flag pole, 20 percent of the distance from the top of the flag or insignia to the ground. The display of flags within any multi-tenant development shall be designed for the use by the entire development, rather than for use by any individual tenant for his/her tenant space.

Daytona Beach Shores

Flags and insignias of any government are exempt unless used in connection with commercial advertising or promotions, in which case Condition L in section 6-9 shall apply to flags located in the GC-RD and TC-MUPUD districts.

Condition L. One (1) American flag and one (1) State of Florida flag shall be allowed with or without a pole not higher than fifteen (15) feet and not placed in the front yard setback. Flags, banners and festoons are allowed for a thirty-day period during special events pursuant to chapter 16¾ of the city's Code of Ordinances or during promotional events pursuant to subsection 6-8(18) of the city's Land Development Code. Flags, banners and festoons shall be approved by the city council sixty (60) days prior to the event.

Deltona

No more than three flags or insignias of governmental, charitable, religious, fraternal, corporate, or other organizations may be displayed as part of any grand opening for a new site development.

Edgewater

(Exempt Flags) The flag of the United States shall be displayed in accordance with the protocol established by the Congress of the United States for Stars and Stripes. All other flags shall conform to the requirements of Section 21-61.

(Overlay Zoning) Flags. A maximum of one (1) state, one (1) federal and one (1) local/county flag per parcel; each a maximum of thirty-five (35) square feet. Flags shall be set back from road right-of-way a minimum distance of ten feet (10').

As is evident from the above Holly Hill's regulations regarding the display of flags is consistent with surrounding jurisdictions.

LEGAL ANALYSIS

As I previous stated, regulating signage is one of the most challenging areas of the law because the regulations must be in compliance with the First Amendment. Displaying signs, including the display of flags, is viewed as a form of protected speech. Without getting into a lengthy legal analysis, the most important criteria are that local government regulations should be content neutral and should focus on "time, place and manner" restrictions. Stated differently, local government can regulate when, where and how speech is stated, but not what is stated. When the regulations vary depending on type of speech, then the regulation is a content-based regulation and is subject to the strictest scrutiny by the courts. For example, the 11th Circuit Court of Appeals, which is the Circuit Holly Hill is located, held a regulation unconstitutional because it only allowed flags of the U.S. Government or political subdivisions. The Court stated the following:

In language strikingly similar to that held unconstitutional in *Dimmitt*, the Douglasville sign ordinance provides that, in the historic district, "[b]anners, pennants and streamers along or across road rights-of-way" are prohibited; however, an exception is made for "flags or banners of the United States or other political subdivisions thereof." Douglasville, Ga., Zoning Ord., § 3.73.04(e)(2). Under this provision, like the provision in *Dimmitt*, the display of the American flag or the flag of the State of Georgia would be allowed in the

City's historic district, while a flag displaying a Greenpeace logo or a union affiliation would be prohibited. See *Dimmitt*, 985 F.2d at 1569. On its face, this provision, like the provision in *Dimmitt*, draws a content-based distinction between different types of banners, flags, and pennants. Accordingly, it is unconstitutional. Lamar Adver. Co. v. City of Douglasville, Georgia, 254 F. Supp. 2d 1321, 1331 (N.D. Ga. 2003).

There has been discussion about having a regulation that would allow more than three (3) flags if the additional flags were governmental flags or flags of the branches of the military. Such a proposed regulation would appear to be a content-based regulation and could likewise be unconstitutional. The City would be in essence saying that if a property owner wants more than three (3) flags, these additional flags must be limited to the content the City approves. I am concerned that such a restriction would have constitutional implications even if we limited the additional flags to branches of the military.

The City does have the authority to amend the number of flags that can be flown on a parcel of property, as that is a content-neutral regulation. My recommendation is that the focus of the City Commission discussion be on "time, place and manner" restrictions and not on the type of flags that are being flown. The basis of the regulation should not be based on the message contained in the flag.