

subsection C:

C. The Metropolitan Traffic and Parking Commission, the Metropolitan Board of Parks and Recreation, the Metropolitan Nashville Police Department, the Nashville Fire Department, the Metropolitan Transit Authority, and all other departments, agencies, boards or commissions of the Metropolitan Government and the proper agencies of the State of Tennessee and of the United States are expressly exempted from the provisions of this section in the performance of their respective functions directed toward the orderly movement of traffic and pedestrians of the streets, sidewalks and other thoroughfares within the jurisdiction of the Metropolitan Government and in making other lawful and proper use of such streets, sidewalks, airspace and other thoroughfares.

Section 3. That Section 6.04.030 of the Metropolitan Code of Laws is hereby amended by deleting it in its entirety and substituting in lieu thereof the following:

6.04.030 - Aerial advertising prohibited

A. Except as allowed under subsection B, no person shall use any type of aircraft or other self-propelled or buoyant airborne object to display in any manner or for any purpose whatsoever any sign or advertising device. For the purpose of this chapter, a "sign" or "advertising device" includes, but is not limited to, a poster, banner, writing, picture, painting, light, model, display, emblem, notice, illustration, insignia, symbol or any other form of advertising sign or device.

B. Exceptions.

1. This section shall not prohibit the display of an identifying mark, trade name, trade insignia, or trademark on the exterior of an aircraft or self-propelled or buoyant airborne object if the displayed item is under the ownership or registration of the aircraft's or airborne object's owner.

2. This section shall not prohibit the display of a sign or advertising device placed wholly within, and visible only within, the interior of an aircraft or self-propelled or buoyant airborne object.

3. This section shall not apply to the display of a sign or advertising device when placed on or attached to any ground, building, or structure. Such a sign or advertising device shall be permitted, prohibited, or otherwise regulated as provided under the applicable provision of law.

Section 4. That Section 6.04.035 of the Metropolitan Code of Laws is hereby amended by deleting subsection A in its entirety and substituting in lieu thereof the following:

A. Responsible person. The person responsible for any signs or advertisements in violation of Sections 6.04.010, and 6.04.020, or 6.04.030 is defined as follows:

1. In the case of a sign, or advertisement, or advertisement device advertising a service, product, dwelling, or event: the person, business, company, or other entity hosting or organizing the event advertised or selling the services, dwellings, products, or events advertised, or and the person, business, company or other entity responsible for attaching, placing, painting, writing, stamping or pasting any sign or advertisement, shall be deemed the responsible person. That is, unless such person, business, company, or other entity notifies the director of the department of codes administration and the director of the department of public works of another person, business, company, or other entity who is responsible. In such case, the person shall provide the name, address, and signed consent of such other responsible person, business, company, or other entity within seven calendar days after a citation is issued.

2. In the case of a campaign sign for political office, the individual whose candidacy the sign supports shall be deemed the responsible person for posting campaign signs, unless he or she notifies the director of the department of codes administration and the director of the department of public works of another person, business, company, or other entity who is responsible, in the manner described in subsection A.1 of this section. The director of the department of codes administration or the director of the department of public works, or their designee(s), may determine that the responsible person under this section is a committee or group supporting the individual candidate and affiliated with the individual candidate.

3. In the case of a campaign sign regarding a ballot measure, the president or chief officer of the committee or group supporting or opposing such ballot measure shall be deemed the person responsible for posting campaign signs, unless he or she first notifies the director of the department of codes administration and the director of the department of public works of another person, business, company, or other entity who is responsible, in the manner described in subsection

A.1 of this section.

4. In the case of any other sign or advertisement not described in subsections A.1 through A.3 of this section, the responsible person shall be deemed to be the person, business, company, or other entity who is named on the sign or advertisement, or whose phone number, web site address, physical address, or electronic mail ("e-mail") address appears on the sign or advertisement, unless such person, business, company, or other entity notifies the director of department of codes administration and the director of the department of public works of another person, business, company, or other entity who is responsible, in the manner described in subsection A.1.

Section 5. That Section 6.04.035 of the Metropolitan Code of Laws is hereby further amended by deleting subsection C in its entirety and substituting in lieu thereof the following:

C. Penalty. Violation of this chapter shall subject the responsible person who placed or caused to be placed the sign(s), advertisement(s), advertisement device, or other written material to a civil penalty of fifty dollars per sign, advertisement, advertisement device, or other written material placed in violation of this chapter. Both the department of codes administration and the department of public works shall have the authority to issue a citation for violations of this chapter. If a violator has removed the sign, handbill, advertisement or other matter within seven days of receipt of a citation, then the department that issued the citation shall have the authority to declare the citation null and void and shall notify the court to that effect, if applicable. Each and every violation shall constitute a separate and distinct offense.

Section 6. That Section 6.04.060 of the Metropolitan Code of Laws is hereby further amended by deleting the section in its entirety and substituting in lieu thereof the following:

6.04.060 - Conflict of provisions.

Nothing contained in Sections 6.04.010, 6.04.020, 6.04.040 and 6.04.050 shall be construed to authorize any person to paint or erect signs, post bills or distribute circulars or other advertising material in a manner or in places not permitted by existing laws or ordinances.

Section 7. This Ordinance shall take effect from and after its enactment, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance, as amended, amends Chapter 6.04 of the Metropolitan Code of Laws to prohibit aerial advertising. Under this proposed Section 6.04.030, aircraft or other self-propelled or buoyant airborne object could not display any sign or advertising device. "Sign" or "advertising device" would be defined to include "a poster, banner, writing, picture, painting, light, model, display, emblem, notice, illustration, insignia, symbol or any other form of advertising sign or device." This prohibition would not apply to the display of an identifying mark or trade name affixed to the exterior of the body of an aircraft, any advertisements solely visible within the interior of an aircraft, or an advertisement placed on or attached to any ground, building or structure (which would instead be governed by other applicable law).

Additionally, the ordinance relocates existing provisions of Chapter 6.04 regarding the exemptions of various Metropolitan Government departments and agencies from provisions of the Chapter. The "conflict of provisions" section in Section 6.04.060 will be updated to reflect the relocation of these provisions. The term "advertising device" will be added to existing language within Chapter 6.04 for consistency with the new Section 6.04.030.

A similar ordinance from Honolulu, Hawaii has been upheld by the Ninth Circuit Court of Appeals as not being preempted by federal law and not in violation of the First Amendment to the United States Constitution.