

FALKIRK COUNCIL

Subject: REGULATION OF DISPLAY OF ELECTION POSTERS
Meeting: FALKIRK COUNCIL
Date: 3 MARCH 2010
Author: DIRECTOR OF DEVELOPMENT SERVICES

1. INTRODUCTION

- 1.1 Local authorities, in addition to their specific duties in terms of election law, are also involved in election preparation in their respective capacities as Roads and Planning authorities particularly in relation to display of election material by or on behalf of candidates and/or the political parties they represent. In this connection, they (Local Authorities) also require to consider their position as property owners. There are existing guidelines which have been used for past elections but it was considered appropriate to revisit them for the purpose of clarity and to ensure that they remain in accordance with legislation.

2. LEGISLATIVE BACKGROUND

2.1 THE TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS) (SCOTLAND) REGULATIONS 1984

2.1.1 These Regulations provide *inter alia* that planning consent is deemed to be granted for the display of any advertisements relating to Parliamentary, European Assembly, Scottish Parliamentary and Local Government Elections.

2.1.2 The conditions applying to such deemed consent are:

- (a) the advertisement will be removed within 14 days after the close of the poll to the satisfaction of the planning authority.
- (b) all advertisements, including hoardings or similar structures and any land used shall be maintained in a clean, tidy and safe condition:
- (c) the consent of the property owner is obtained before the advertisement is displayed; and
- (d) advertisements must not obscure or hinder any road traffic sign or signal, or the like or render the use of any land, road or the like hazardous.

2.2 ROADS (SCOTLAND) ACT 1984

2.2.1 Section 100 of the Act states *inter alia* that anyone who, without lawful authority, affixes anything to a traffic sign, structure, etc, commits an offence.

- 2.3 While the Act and Regulations referred to above set out the statutory position with regard to planning and roads, the Council's position as property owner still requires to be considered. In that respect, it is appropriate that the Council takes a view on whether it wishes, in its capacity as the owner of property, to consent (the Advertisements Regulations) and /or to grant authority (Roads Act) to the display of such posters on any or all of its various properties.

3. OPTIONS

- 3.1 There is general acceptance amongst local authorities that tenants of domestic premises are entitled to display election posters at their respective homes. There is no specific provision in respect of this in Falkirk Council's tenancy agreement for council housing. Thereafter there are a variety of approaches available to display on other council properties. The occupation of any non domestic properties owned by the Council but tenanted by third parties, is generally regulated by the terms of a lease. However, if Members were minded to permit display of posters in other public places, it is considered preferable that guidelines be issued to regulate such display.
- 3.2 It is available for councils to take the view that a proliferation of election posters in public places is not to be encouraged. This can be the result of competitive posting and can leave public areas, including schools and community centres, in a mess similar to that produced by fly posting, with limited capacity for proper clear up after the election.

4. PROPOSED GUIDELINES

- 4.1 The proposed guidelines in the appendix are intended to describe the circumstances in which the Council, as roads authority, is prepared to automatically give the "lawful authority", referred to in the Roads (Scotland) Act 1984, to the display of election material. They would also provide a reminder of the provisions of the 1984 Advertisement Regulations but not convey any 'consent', as described in these regulations save for that in relation to lamp posts.
- 4.2 If approved, these guidelines would be offered to the Returning Officer at every election for inclusion in the information pack issued to prospective candidates.

5. RECOMMENDATION

5.1 It is recommended that Council:

- (a) **considers the types of property, if any, in respect of which it wishes to grant appropriate consent or authority in terms of the legislation referred to in this report; and thereafter**

- (b) considers the terms of the draft guidelines contained in Appendix 1 to this report.

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Director of Development Services
22nd February 2010

Contact Officer: Rhona Geisler x 4949

LIST OF BACKGROUND PAPERS

None

APPENDIX 1

DRAFT GUIDELINES FOR DISPLAY OF ELECTION POSTERS ON STREET FURNITURE

In accordance with the Roads (Scotland) Act 1984, Section 100(b) authority is deemed to be granted for the fixing of election posters to lighting columns on the public highway only, provided that all of the following conditions are met:

1. Material must not be displayed prior to publication of the Notice of Election. All election material including string, cable ties etc. **must be removed within 5 days of the date of the poll.**
2. Material must not be located so as to interfere with the visibility of drivers, particularly those emerging from side roads or private accesses, nor create obstructions to drivers' view.
3. Only one poster for each candidate (or 2 posters back to back) will be permitted on any lighting column. On the basis of the restrictions described in paragraph 6 below, not all candidates may be able to display material on all lighting columns of their choice. Where a candidate represents a political party, that party may choose, as appropriate, to display posters promoting only the party and not any particular candidate. If this is the case then either one can be displayed on each column but not both.
4. Under no circumstances must any passive diffusion tubes which are attached to lampposts for the purpose of monitoring traffic pollution be removed, or their operation interfered with. The tubes are made of plastic, two inches in length, attached to wooden blocks and tied to the lamppost.
5. Material must be so mounted that the material and its mount will not afford any resistance or damage to a vehicle coming into contact with it.
6. Material attached to lighting columns must be fixed first to a card no larger than A3 size and of adequate stiffness, which, in turn, must be attached with string or cable ties to the lighting column. The use of paste, glue or metal ties is not permitted. The bottom edge of the mounting card of the lowest poster must be no less than 2.3 metres above the height of the footway, whilst the top edge of the mounting card of the uppermost poster must be no more than 4 metres above the height of the footway and the card must be fixed so as not to obstruct vehicular traffic.
7. Statutory notices which are already placed on lighting columns should not be obstructed.
8. Persons affixing any material to lighting columns or other street furniture do so at their own risk. In offering this guidance, the Council does not warrant the condition of any lighting column or other item of street furniture. Candidates, agents and others will be expected to carry out risk assessments associated with the placing of materials in excess of 2.3 metres in height and with due consideration to pedestrian and traffic movements and indemnify the

Council against any damage to its own property and against any third party claims arising in any way from attachment of posters or other material. Relevant risk assessments and copies of indemnities shall be presented to the Director of Development Services prior to erection of any item, on request.

For the avoidance of doubt, authority is not given under any circumstances for:

1. Material to be located on pedestrian refuge islands, traffic signal posts or control boxes, nor affixed in such a manner or in such a locus as to interfere with the safety of road users.
2. Material erected on A-boards or temporary posts anywhere within the boundaries of the adopted road network (includes carriageways, footways, verges etc).

Non-compliance:

Failure to adhere to any conditions or exclusions set out above may result in Falkirk Council removing materials. Any costs incurred in so doing will be recharged to the promoter of the material or to the Election Agent(s) concerned.

Informatives

The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.

These Regulations provide that planning consent is deemed to be granted for the display of any advertisements relating to Parliamentary, European Assembly, Scottish Parliamentary and Local Government Elections. The conditions applying to such deemed consent are:

- (a) the advertisement will be removed within 14 days after the close of the poll to the satisfaction of the planning authority.
- (b) all advertisements, including hoardings or similar structures and any land used shall be maintained in a clean, tidy and safe condition:
- (c) the consent of the property owner is obtained before the advertisement is displayed; and
- (d) advertisements must not obscure or hinder any road traffic sign or signal, or the like or render the use of any land, road or the like hazardous.

Breach of any of these conditions may give rise to enforcement action being taken in terms of planning legislation.

For the avoidance of doubt, while the deemed planning consent referred to above authorises materials to be on display for up to 14 days, the Council, as owner of the lighting columns referred to in these guidelines, consents to their display for a period of **no more than 5 days following the date of the poll**. All election material must be therefore be removed within that timescale.

Trunk Roads

(Within the Falkirk Council Area trunk roads are the A80, M80, M876, M9, A876, associated slip roads and interchanges)

The Council has no locus in relation to trunk roads, which are the responsibility of the Scottish Government. Accordingly, these guidelines do not apply to the trunk road network. The Council has been advised that Transport Scotland currently has a policy which precludes the placing of election material within the trunk road boundary. This policy has been endorsed by the Scottish Ministers.

Further Information

The election Returning Officer cannot give advice or approval regarding the display of election material. Enquiries regarding the operation of this guidance must be made to the Director of Development Services, Abbotsford House, Bainsford, Falkirk, 01324 504950. Enquiries in relation to the trunk road network should be made to Bear Scotland on 0800 587 1107.

February 2010