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United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY HERSON, and individual, and EAST BAY
OUTDOOR, INC., a California corporation,

No. C 09-4187 MHP

Plaintiffs,

**TEMPORARY
RESTRAINING
ORDER**

v.

CITY OF SAN CARLOS,

Defendant.

_____ /
This matter having come on for hearing before this court on October 16, 2009, and the court having considered the memoranda and arguments of counsel, and all other matters submitted with respect to plaintiffs’ application for a temporary restraining order, and good cause appearing, the court makes the following findings and enters this order.

1. Plaintiffs have established that they have a strong likelihood of success on the merits of their claim that the regulatory scheme of the City of San Carlos (“the City”) pertaining to the display of political signs violates the First Amendment to the United States Constitution insofar as it singles out political speech for special treatment and appears to place greater burdens on it than on commercial speech and non-political non-commercial speech. *See Desert Outdoor Adver. v. City of Moreno Valley*, 103 F.3d 814 (9th Cir. 1996). Furthermore, it appears that the City grants government officials unfettered discretion to determine who may or may not speak by failing to impose sufficient objective standards on the application and review process and by allowing for an

1 unlimited time for the City’s review, in violation of the First Amendment. *See id.*; *see generally*
2 *Thomas v. Chicago Park District*, 534 U.S. 316 (2001).

3 2. The loss of First Amendment rights for even a short period of time unquestionably
4 constitutes irreparable injury. *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1148 (9th Cir.1998);
5 *Klein v. City of San Clemente*, ___ F.3d ___, ___, 2009 WL 3152381, at *8 (9th Cir. Oct. 2, 2009).
6 If temporary injunctive relief is not granted, plaintiffs will suffer irreparable injury in that their First
7 Amendment rights will continue to be violated.

8 3. The balance of hardships weighs in favor of granting injunctive relief because the City
9 has articulated no legitimate interest in enforcing the constitutionally infirm portions of its
10 ordinance.

11 4. Because injunctive relief protects the public interest and the balance of hardships tips
12 sharply in favor of plaintiffs, no bond is required.

13 Accordingly, good cause exists to enter this Temporary Restraining Order.

14 As agreed by the parties, this Temporary Restraining Order remains in effect until such time
15 as a hearing on plaintiffs’ application for a preliminary injunction may be heard. Pending such
16 hearing, the City and its employees, agents and attorneys are **HEREBY RESTRAINED AND**
17 **ENJOINED** from enforcing the restriction on the size of political signs and the temporal limitations
18 on the display of political signs provided in San Carlos Municipal Code section 18.150.065 or
19 enforcing any other review, process or procedure provided in said section as preconditions to
20 plaintiffs’ exercise of their free speech rights. This Temporary Restraining Order does not restrain
21 or enjoin the City from exercising lawful review of, and requiring a building permit for, any
22 proposed structure to be built insofar as the review and permit are for content-neutral purposes such
23 as ensuring structural stability and safety.

24 The denial of plaintiffs’ application for a building permit, filed September 4, 2009, is
25 **HEREBY VACATED** and the application and its attachments are **HEREBY DEEMED FILED**. The
26 City **SHALL** act upon the application with all deliberate speed, immediately requesting any further
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1 submissions required from plaintiffs so long as they do not violate this order and comport with the
2 court's bench order.

3 The parties SHALL agree upon a briefing schedule and hearing date for plaintiffs'
4 application for a preliminary injunction and schedule such hearing date with the court's deputy
5 courtroom clerk.

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7 IT IS SO ORDERED.

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10 Dated: October 19, 2009

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MARILYN HALL PATEL
United States District Court Judge
Northern District of California

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