





Pinellas County Office of Human Rights

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Memorandum from Office of Human Rights

To: Board of County Commissioners

From: Paul Valenti, Director of Human Rights 

Through: Robert LaSala, County Administrator 

CC: Jim L. Bennett, County Attorney
Carl Harness, Assistant County Administrator
Tim Burns, Director of Justice & Consumer Services
Michelle Wallace, Sr. Assistant County Attorney
Carl Brody, Sr. Assistant County Attorney

Date: July 23, 2012

Re: Proposed Ordinance Requiring ADA Signage for Self-Serve Gas Stations

Background:

On June 26, 2012, the Board voted to send this proposed ordinance to public hearing on July 24, 2012. The Board also requested solicitation of comments from industry stakeholders, and asked for clarification on certain provisions of the proposed ordinance.

Summary of Proposed Ordinance:

The proposed ordinance mandates self-service gas stations post signs which let disabled patrons know they can call a designated, working telephone number to obtain refueling assistance from an employee, and requires all calls be answered.

Consistent with federal law, the proposed ordinance specifically states no assistance is required when only one employee is on duty (in this circumstance, the proposed ordinance requires the sole employee on duty to advise the prospective patron that no assistance is available due to limited staffing).

The proposed ordinance also spells out the minimum size and location of the sign to be posted, mandates use of the international symbol of accessibility, and requires the sign have a blue background.

The proposed ordinance contains provisions for investigating alleged violations, seeks the voluntary compliance of gasoline stations/retailers without the required signage, and establishes a framework for citations, hearings and fines (up to \$500.00) for gasoline stations/retailers which refuse voluntary compliance.

Finally, the ordinance requires gasoline stations/retailers to comply with the signage requirement within ninety (90) days after adoption.

Comments from Industry Stakeholders:

Mr. Pat Moricca, President of the Gasoline Retailers Association of Florida (which represents independent gasoline retailers, convenience stores, tire shops, repair stations, etc. – i.e. “mom and pop” or “single unit” type operators), voiced enthusiastic support for the proposed ordinance, suggesting gasoline stations/retailers post hours when two (2) or more staff members are on duty to advise persons with disabilities of “ideal” times to purchase gas. President Moricca’s suggestion is not included in the proposed ordinance, though gasoline stations/retailers are free to voluntarily disclose this information.

Mr. Bill Mitchell, President and CEO of Rally Stores, and Chairman of the Florida Petroleum Marketers & Convenience Store Association, an industry association group for larger convenience store/gas station retailers (multi-unit retailers, franchisors, etc.), was generally supportive of the proposed ordinance and the public policy interests leading to its consideration.

He did, however, voice several comments on behalf of his membership for consideration¹. These comments, along with changes in the proposed ordinance in response thereto, are as follows:

Comment 1: Consideration be made for non-compliant gasoline stations/retailers which have otherwise taken steps to make gasoline accessible to persons with disabilities.

Response: Section 7(E) of the proposed ordinance will be revised to specifically require investigations of alleged violations note other accessibility measures (such as a call button on the keypad at the pump) taken by a gasoline station/retailer. Such measures may be considered in any hearing brought pursuant to the ordinance.

¹ Unfortunately, I was out of the country on emergency personal business when this ordinance first came before the Board of County Commissioners. My understanding, however, is that many of Mr. Mitchell’s comments mirror questions and concerns several Board members raised on June 28th.

Mandating other accessibility measures be considered was discussed, however, the Office of the County Attorney advised this could unduly restrict determinations made by the special magistrate who would hear such cases. In particular, the inclusion of such mandatory language could be read to prevent the imposition of fines for continued non-compliance with the ordinance's signage mandate, frustrating the public education rationale underlying the posting requirement.

Comment 2: No penalties be imposed prior to affording a non-compliant station the opportunity to enter into compliance on their own or through an Agreement of Voluntary Compliance (or "AVC").

Response: Section 8 of the proposed ordinance spells out progressive measures to be taken to insure compliance. This scheme of progressive measures clearly suggests that initial efforts be made towards bringing a gasoline station/retailer into voluntary compliance with the ordinance. Failing voluntary compliance, the progressive scheme in Section 8 suggests attempts to enter into an Agreement of Voluntary Compliance (or "AVC") prior to taking steps to impose monetary fines.

It is also noted that the Office of Human Rights, which would have responsibility for investigations under the proposed ordinance, routinely seeks voluntary resolution of all complaints filed with our office. We would adopt this practice in the discharge of our duties under the proposed ordinance as well. We understand the intent of the Board in considering this ordinance to be greater inclusion of persons with disabilities in our community through reduced barriers, and no intent to impose undue burdens on gasoline stations/retailers which are not readily achievable.

Comment 3: Allowances for structural impediments, pre-existing merchandising/signage, etc., be included in regards to the requirement that signs be posted at 60".

Response: The proposed ordinance can be amended to allow required signs to be posted anywhere between 48" to 60" from ground level to allow for the considerations articulated by Mr. Mitchell and the membership he represents.

Comment 4: Gasoline stations/retailers with call buttons at the pump be deemed compliant with the ordinance - though Mr. Mitchell indicated he

understood the concerns relating to persons with mobility impairments who may find it difficult to access said buttons.

Response: As indicated above, the proposed ordinance allows for consideration to be made for other accessibility measures. We believe, however, that obviating the signage requirement for stations with such call buttons would create an ordinance scheme which is not uniform, and which would also frustrate the public education rationale underlying the posting requirement.

Moreover, as also referenced above, persons with certain mobility limitations may find it difficult to access such call buttons. In the absence of the sign requirement, such mobility impaired persons would have to call attention to their need for service through alternative means – typically by honking their car horn or flashing their headlights. Many persons with mobility limitations could construe this to draw undue attention to their circumstances, leading to a sense of segregation, as opposed to the sense of inclusion we believe to be behind consideration of this ordinance.

I remain available to answer any questions you may have, and will, of course, be available at the public hearing on July 24th.