



REPORT TO CITY COUNCIL

DATE: July 14, 2020

TO: Mayor Esquivias and Members of the City Council

SUBMITTED BY: Patrick Tang, City Attorney
Robert Reber, Community Development Director

SUBJECT: Draft Zone Text Amendment #20-01—Updates to Sign Regulations following the decision in *Reed v. Town of Gilbert*

RECOMMENDED ACTION:

Open the public hearing, receive staff report, take public testimony, close the public hearing and consider waiving the first reading and approving introduction of the draft zone text amendments to the City's sign regulations.

FISCAL IMPACT OF RECOMMENDATION:

There are no direct fiscal impacts associated with this item.

BACKGROUND:

As originally reported to the City Council on September 10, 2019, the United States Supreme Court's ruling in *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), requires the City to modify existing sign regulations (a detailed case background and analysis was provided in the report to Council; see Attachment 1). Council directed staff to return to Council with draft amendments to the City's existing Sign Ordinance for Council's consideration. The Council requested that staff make the minimum changes necessary to comply with the legal requirements of the *Reed* decision.

The Council reviewed a proposed draft of changes to the City's sign regulations at the May 12, 2020, regular council meeting (See Attachment 2). Upon review and after discussion of the item, the Council directed staff to present the proposed changes to the Planning Commission for review and consideration, pursuant to the process denoted in the City's Zoning Regulations.¹

The proposed changes were presented to the Planning Commission for review and comment at their regular meeting of June 1, 2020 (See Attachment 3). The Commission voted unanimously to

¹ The Sign Ordinance is part of the City's zoning regulations (Municipal Code Chapter 13-34). Any amendments to the zoning regulations require Planning Commission review and recommendation, before final review and adoption by the City Council (Hercules Municipal Code Section 13-52.200).

recommend that the City Council adopt the proposed sign regulations, with the following additional amendments and clarifications included:

- Revise proposed Sec. 13-34.100.5.B to read, “Create a right to substitute an off-site commercial message in place of an on-site commercial message or in place of a non-commercial message.”
- To Sec. 13-34.400, “Signs Subject to Review,” add canopy signs, with signage not to exceed 25% of the canopy face.
- Regarding portable signs, change Sec. 13-34.700.3, “Prohibited Signs,” from “...except where specifically authorized in the Municipal Code” to “...except where specifically authorized as allowable off-site directional signs (see Sec. 13-34.500.3, “Signs Not Requiring a Permit).”

DISCUSSION:

In light of uncertainty as to the scope of the *Reed* decision and some inconsistency in subsequent court rulings, arguably the best course for cities is to err on the side of allowing for less restrictive, rather than more restrictive, sign regulations until the courts provide more specific guidance. Cities can still legally regulate signs, provided their regulations avoid making distinctions based on content or subject matter. Revisions to sign codes should ensure the codes are “content neutral” by:

- 1) Eliminating separate rules for categories of signs defined by the content or subject matter of their message. This means avoiding rules that have different size, height, or duration requirements for “political” or “directional” or “real estate” signs, etc.
- 2) Reviewing “exceptions” to regulations to make sure they are not content based, and eliminating such exceptions even if they seem innocuous (e.g., exceptions for historical markers, for example).
- 3) Adopting content neutral, “time, place, and manner” (TPM) regulations. Such TPM regulations can legally distinguish between for example, lighted and unlighted signs, signs with fixed and changing electronic messages, signs on public and private property, on-premise and off-premise signs, and signs on commercial and residential property.

The Planning Commission’s Resolution recommending adoption of the proposed changes is provided as Attachment 4. A draft Ordinance that includes the recommended changes from staff and the Planning Commission is attached for the Council’s review and consideration, with Attachment 5 being the redlined version, and Attachment 6 being the clean version. The draft makes: 1) the minimal changes necessary to conform with the *Reed* decision’s requirements; 2) other non-substantive clarifications to eliminate inconsistencies within the existing code; and 3) incorporates the Planning Commission’s minor changes and clarifications, which staff believes are consistent with Council’s prior direction.

Staff is offering the proposed draft updates with the caveat that there is still lingering confusion over what the *Reed* decision requires that may not be clarified until the courts rule on specific challenges

to various post-*Reed* ordinances. This may necessitate additional amendments to the Sign Ordinance as the courts continue to address sign code challenges.

CONCLUSION:

Drafting legally defensible sign regulations has become increasingly difficult following *Reed v. Town of Gilbert* and its progeny. While the courts continue to grapple with challenges to sign regulations after *Reed*, staff recommends that in the meantime, the City adopt the proposed Sign Ordinance amendments to remove provisions that on their face are probably not sufficiently content neutral under the *Reed* standard.

ATTACHMENTS:

1. September 10, 2019, Report to City Council: Sign Ordinance Update
2. May 12, 2020 Report to Council including Draft Legislation
3. June 1, 2020 Staff Report to Planning Commission
4. Planning Commission Resolution
5. Draft Ordinance with proposed changes to Sign Ordinance (Municipal Code Chapter 13-34 — redlined with changes shown)
6. Draft Ordinance with proposed changes to Sign Ordinance (Municipal Code Chapter 13-34) — clean with changes incorporated