



PLANNING COMMISSION STAFF REPORT

DATE: June 1, 2020

TO: Members of the Planning Commission

SUBMITTED BY: Patrick Tang, City Attorney
Robert Reber, Interim 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:

Adopt Resolution #20-02 recommending that City Council adopt proposed amendments to the City's existing Sign Ordinance.

FISCAL IMPACT OF RECOMMENDATION:

There are no direct fiscal impacts associated with this item.

BACKGROUND:

As City staff 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), necessitated some updates to the City's existing sign regulations (a detailed case background and analysis was provided in the September 10, 2019 report to Council; see Attachment 1). In the *Reed* case, the court ruled that regulations categorizing signs based on the type of information they convey and then applying different standards to each category are content-based regulations of speech and are subject to strict scrutiny under the First Amendment to the United States Constitution. The *Reed* decision impacts most every local sign ordinance in the U.S., as almost all sign codes contain content-based exemptions from permit requirements for house name plates, real estate signs, political and/or election signs, garage sale signs, etc., and then regulate them differently. The *Reed* ruling's impact is far reaching for cities across the country, because the court articulated an unforgiving standard for assessing the content neutrality of restrictions that impact speech rights under a city's sign ordinance.

After the September 10, 2019 presentation and discussion, Council directed staff to return to Council with draft amendments to the City's existing Sign Ordinance for Council's consideration. Staff was directed to make the minimum changes necessary to comply with the legal requirements of the *Reed* decision. At the May 12, 2020, Council meeting, the Council reviewed staff's recommended changes and directed staff to bring the proposed changes to the Planning Commission for review and consideration.

DISCUSSION:

In light of the uncertainties and inconsistent rulings in the wake of the *Reed* decision discussed in the September 10 report (see Attachment 1), 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 any separate rules for categories of signs that are 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.

A draft Ordinance is attached for the Commission’s review and consideration, with Attachment 2 being the redlined version, and Attachment 3 being the clean version. The draft makes: 1) the minimal changes necessary to conform with the *Reed* decision’s requirements, and 2) other non-substantive clarifications to eliminate inconsistencies within the existing code. 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).

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:

Defending reasonable sign regulations from First Amendment challenges 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 are not sufficiently content neutral.

ATTACHMENTS:

1. September 10, 2019, Report to City Council: Sign Ordinance Update
2. Resolution #20-02
 - Exhibit A: Draft Ordinance with proposed changes to Sign Ordinance (Municipal Code Chapter 13-34 — redlined with changes shown

- Exhibit B: Draft Ordinance with proposed changes to Sign Ordinance (Municipal Code Chapter 13-34) — clean with changes incorporated