PLANNING COMMISSION

Planning & Development Services Department • 201 N. Stone Ave. • Tucson, AZ 85701

DATE: December 7, 2016

TO: Planning Commission

FROM: Nicole Ewing Gavin, Executive Secretary

SUBJECT: Sign Code Revision Project

Issue: This is a study session to provide the Planning Commission an update on the Joint Subcommittee to review the Sign Code Revision Project as directed by Mayor and Council (see Background below for details). On August 9, 2016, the Mayor and Council initiated a Sign Code revision process and gave direction to do the following:

> Comply with the 2015 U.S. Supreme Court decision on *Reed v. Town of Gilbert*; Simplify the Sign Code by integrating it into the Unified Development Code, and Make practical changes that modernize the Code, improve the quality of design and flexibility of the overall code, and ground it in technical standards; Have the Citizens Sign Code Committee and the Planning Commission hold joint study sessions and public hearings on the proposed changes to the Sign Code; Have staff return to the Mayor and Council with a recommendation no later than January 2017.

Note several councilmembers stated that Mayor and Council may consider a longer period of time at a study session if needed

Recommendation: The City Manager directed staff to prepare a draft sign regulations compliant with *Reed* that also moves the regulations to the Unified Development Code and additionally to make recommendations on process improvements.

Background: The June 2015 U.S. Supreme Court decision in the case *Reed vs. The Town of Gilbert* has required all jurisdictions in the country to review and amend their sign codes to be content-neutral. This case has a major impact on the City of Tucson's Sign Code.

There is a certain urgency to revise the Sign Code, since Tucson like other jurisdictions are restricted in enforcing their codes because of potential conflicts with the *Reed* case. Further, any enforcement action could be challenged and likely ruled against the City. In such situations because of the nature of First Amendment judicial reviews, the City must prove the constitutionality of its code and if the plaintiff prevails, the City must pay the legal fees of the plaintiff.

About the time that Reed was announced, the local Chamber of Commerce and other members of the business community have raided concerns that the City's Sign Code is out of date, overly restrictive, and difficult to use in comparison to other local and Arizona jurisdictions. After the Mayor and Council's August Study Session, several stakeholders not related to the business community have raised concerns that this revision project may cause the current Sign Code to be weakened.

Reed vs. Town of Gilbert – As noted in June 2015, United States Supreme Court made a ruling affecting a municipality's sign code's relationship to content-based restrictions. The case also stated the level of constitutional scrutiny that should be applied to content-based restrictions on speech. The case originated in 2005, regarding a sign ordinance in Gilbert, Arizona that regulated the manner in which signs could be displayed in public areas.

The Gilbert ordinance placed stricter limitations on directional signs advertising services than signs that displayed "political" or "ideological" messages. When the Town's code enforcement cited a local church for violating the ordinance, the church filed a lawsuit that contended the Town's sign regulations violated its First Amendment right to freedom of speech.

The Supreme Court voted 9-0 in favor of the plaintiff, Reed stating that Gilbert's sign code violated the First Amendment. Further, the level of judicial review that a sign code is subject to under Reed is "strict scrutiny" judicial review (the highest and most demanding level of review) to any standards based on a sign's content i.e., what is written or portrayed on the sign. In a strict scrutiny review the typical community character rationales of sign clutter management or traffic safety are not adequate. Instead strict scrutiny involves issues like advertising illegal activity, pornography, hate speech, or a similar First Amendment issue.

The outcome is that all jurisdictions in the country must review their codes for sign types and categories that are regulated by the content of the sign's message and revise them to be regulated in a manner that is content-neutral.

Citizen Sign Code Committee – Planning Commission Joint Subcommittee Update -
Since October, a joint subcommittee to review the Sign Code revisions has met five times on Monday afternoons from 3PM to 5PM. The meetings are generally organized as follows:

- Call to Order / Roll Call
- Approval of Previous Meeting's Minutes / Legal Action Reports
- 1st Call to the Audience
- Presentation of Supporting Information Regarding Process and Requested Clarifications
- Review of Previous Meeting Discussion and Suggested Modifications to Language

- Review and Discussion by Subcommittee of the Sections of Preliminary Sign Code Revisions
- 2nd Call to the Audience

In addition, between each meeting, Staff has a number of tasks they conduct. On the Wednesday prior to the next scheduled subcommittee meeting, Staff will post the upcoming agenda and email it out to the subcommittee and a public group of interested individuals. On the Friday prior to the next scheduled subcommittee meeting, Staff will post on the website (https://www.tucsonaz.gov/pdsd/projects/sign-code-revision-project) and distribute a matrix of suggested edits based on comments by the subcommittee and the Meeting Minutes / Legal Action Report from the previous meeting. Please find a copy of the latest matrix of suggested edits in attachment D.

Currently the subcommittee has reviewed the following sections of the Revised Sign Code:

- Section 7A.1 – Purpose and Applicability
- Section 7A.2 – Interpretation and Substitution Clause
- Section 7A.3 – Definitions
- Section 7A.4 – Permits, Inspections, Fees
- Section 7A.5 – Violations, Location, and General Requirements
- Section 7A.6 – Measurement, Location, and General Requirements (partial review – postponed to a later date)
- Section 7A.13 – Citizen Sign Code Committee
- Section 7A.7 – Sign Design Option (partial review)

Sections subcommittee has yet to review:

- Section 7A.6 – Measurement, Location, and General Requirements (partial review completed)
- Section 7A.7 – Sign Design Option (partial review completed)
- Section 7A.8 – Prohibited and Exempt Signs
- Section 7A.9 – Non-conforming Signs
- Section 7A.10 – Sign Types and General Standards
- Section 7A.11 – Special Districts
- Section 7A.12 – Appeals and Variances

Planning Considerations

Reed and Sign Code Problems – One of the lessons of *Reed* is not to name signs by the message they convey. Instead, it is preferable to be content-neutral by naming the sign by time, place or manner. Here are several examples:

Content Problem	***Content Neutral Option***
Real Estate Sign	**Temporary Sign - time**

Directional Sign	**Access Point Sign - place**
Freestanding Identification Sign	**Freestanding Sign - manner**

Exempt Signs –National legal analysts recommend closely reviewing the Sign Code's Exempt Section as a potential problem area where the code often gives more flexibility to some signs that are message-oriented. The current Sign Code has only six exempt signs and only one appears to be a problem that a minor renaming will resolve.

Message-oriented Signs - The other problem area is message-oriented sign categories. In reviewing the Sign Code, the following signs are problems: real estate, directional, political, time and temperature, home occupation, grand opening, building memorial marker. At the same time, these Sign Code signs are probably acceptable: A-frame, awning, banner, canopy, freestanding, freeway, wall, portable, projecting, and window.

There are not a lot of *Reed* compliant sign codes. Staff reviewed the model code from the book, *Street Graphics and the Law* as well as sign ordinances from the City of Flagstaff, Sparks, Nevada and a Kansas City metro area.

One idea that may be appropriate in Tucson is using an overall sign area allotment per property for a newly defined sign type called a portable sign. It is basically a long-term temporary sign made of light materials like wood, plastic, light metal, and various thick paper products that may practically be erected for several months or several years. A total sign area allotment along with dimensions such as total number, height, setback and maximum sign area per sign allow for a content-neutral strategy to control typical clutter typically related to temporary signs.

Simplification Problems - In 2012 the Mayor and Council adopted the Unified Development Code (UDC) that helped to simplify the City's zoning standards. Placing the Sign Code into the UDC could be the final step in simplifying zoning standards. By placing the Sign Code in the UDC, it removes redundant terms, processes, and appeals, allows for a more efficient use of staff resources, and creates clearer rules for the public to use. It further allows for adjustments to measurement standards, reviewing provisions where interpretations have been needed, introducing a more comprehensive design review process, updating of all the graphics and maps.

Business Community Concerns – Sign Code section staff reviewed the Sign Code for what they found to be particularly problematic in reviewing sign permit applications. After meeting with the business community representatives it became apparent that their list of issues was similar to staff's but the staff list was more extensive.

The business community mentioned the need to debate with staff the meaning of unclear provisions and not being allowed to use design techniques that are common in other jurisdictions. Below are examples of some issues that have been raised.

Alteration of non-conforming signs - In addressing alteration of non-conforming signs, staff has interpreted a reasonable alteration to include replacing out of date electronic

components with newer components. This type of alteration should be clarified in any sign code update.

Roof/Wall Sign using tall parapets - There has been a longstanding allowance to use a tall parapet (up to ten feet higher than the adjoining parapet) on a building as a grand entrance to the building. There have been some inconsistent interpretations as to whether the taller parapet is a prohibited roof sign or a wall sign. Staff has interpreted that a parapet that is up to ten feet may have a sign as a type of wall sign. This point should be clarified in a sign code revision as either a conditional roof sign or a wall sign allowance.

Premise definition - The term, premise has been problematic for applicants. It is interpreted to include single-owned property. This interpretation is a problem for a unified development complex using common parking, landscaping and other standards. Only signs standards are treated by separate parcel when the signage should be reviewed and permitted as another development component of the entire unified development center.

Grade definition – Concerns have been raised over the strictness of the grade calculation when the existing or finished grade of the sign structure is higher than the adjoining street's elevation. For such signs the sign height which is normally ten feet is reduced by the amount that the existing grade is higher than the street grade. For example, if the sign structure's existing grade is three feet above the road, the sign structure cannot exceed seven feet in height, if four feet above the road then six feet in height and so on.

The Planned Area Development zone (PAD) - PAD is often used in the rezoning of large developments like shopping malls, power centers, and other types of business and retail complexes. The applicants often request the use of a master sign program that creates a unified design of signs for wayfinding and identification. The current Sign Code does not allow this option. Such an option could allow for more flexibility with standards in exchange for greater attention to integrated identification and wayfinding, architectural design, legibility, and vehicle reaction time.

Besides PAD rezonings, there are businesses in Tucson that have traditionally used portable signs as part of their advertising, wayfinding and identification programs. A master sign program could be considered for this type of use also where clutter management, legibility, and unified design could be considered for a greater signage allowance.

Churches in Residential Zones – It is common for churches to have sign problems. They often must request sign variances for sign area. The current residential zone maximum sign area permitted for non-residential uses is 20 square feet for all signs on the property. There is also in the same section of the code a provision that appears to give some flexibility but staff has not used it because at the same time there is another provision that states 20 square feet is the maximum area. This duplication is confusing and a single clear standard is needed.

Integrated Architecture Option - The current Sign Code has an integrated architecture option. This provision is a step in the right direction except it lacks clear standards and findings to do a more thorough review prior to allowing an application to use the option. An individual sign design option with greater design review criteria would be an improvement that most Sign Code users would welcome. It could include the use of best design practices that consider vehicle reaction time, integrated architectural design, legibility, and clutter management as part of the review.

An Approach to Consider for Reed and Process Improvement - In creating a Sign Code revision strategy to revise the current Sign Code, the following points would improve the City's defense against any *Reed* challenges, be a step forward in process improvement, and encourage the use of best design practices.

Technical Studies - Include in the adopting ordinance for a sign code revision references to the technical studies that were reviewed in the preparation of the standards. Besides *Street Graphics and the Law* several technical studies have been consulted. While these studies can become very complex, they are useful tools in combining technical viewpoint with the City's own position on creating a pleasing visual environment.

Purpose Statement - Have a Purpose Statement that with a clear connection to traffic safety and the visual environment. The Purpose Statement can also make it clear the prominence of being in compliance with First Amendment rights as well as using technical standards in the development of the sign standards.

Substitution and Severability Clause - Have a substitution clause that states all commercial sign permitted are also available to non-commercial signs and a severability clause that basically states if a portion of the Sign Code is found unconstitutional that the remaining ordinance is still constitutional. The current Sign Code has both of these provisions

Sign Type Changes - Amend or delete all message-oriented sign types currently in the Sign Code. This strategy will also require an approach to temporary signs that are re-named portable signs where clutter management becomes a more prominent issue for government to address and sign messages become the concern of the property owner and not the government.

Design Options - Introduce a more robust sign design process tied to technical and visual environment standards that protect views, and improve signs so as not to be disorienting and distracting. Good design should consider vehicle reaction time, legibility, architectural integration, and clutter management.

Simplification - Simplify the terms, processes and appeals as well as using staffing resources more efficiently by placing the Sign Code in the UDC.

Future General Plan Update - Consider in a future update to the General Plan to include a sign policy that addresses the key provisions stated in the Purpose Statement. This type of

policy is very useful in showing a community-wide endorsement of a more comprehensive sign policy in the case that the Sign Code is legally challenged.

The current *Plan Tucson* mainly addresses the treatment and removal of non-conforming signs. The current proposed revision project is not in conflict with these non-conforming sign policies.

Policy on non-conforming signs should be refined at some point in that many non-conforming signs may qualify to be future historic landmark signs for which Tucson has a positive national reputation. The *Plan Tucson* policy HP4 refers to identifying and preserving significant character defining features along streetscapes which could include historic landmark signs.

Further, this proposed Sign Code revision project has as one of its focal points to improve design in the public realm and is consistent with *Plan Tucson* policy LT4 that encourages design which is sensitive to the surrounding scale and intensity of existing development.

Public Review Process - As noted there is an urgency to resolve the City's compliance with the *Reed* case and a timeframe to review and approve the sign revisions is recommended so that at the latest the revision will be in front of Mayor and Council at the beginning of 2017.

Both the Citizens' Sign Code Committee (Committee) and the Planning Commission (Commission) should be part of a joint public review this project. It is recommended that the review of a preliminary draft ordinance begin as soon as is practical over the next several months and that community stakeholders be allowed to speak during any joint committee or study session deliberations so that concerns can be identified and addressed appropriately.

Conclusion:
The 2015 *Reed vs. Town of Gilbert* decision requires the City of Tucson to revise its Sign Code to become content-neutral. A Sign Code Revision Project will address the *Reed* constitutional issues but should also consider for revision simplification and process improvement items that have been identified.

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Attachments:
A - Preliminary Sign Standards Sections
B - Preliminary Sign Standards Draft
C - Sign Table of Changes
D - Matrix of Suggested Edits