



October 16, 2016

City of Tucson Planning Commission-Citizen Sign Code Committee Joint Committee on Sign Code Revision Project
3rd Floor
201 North Stone Avenue
Tucson, Arizona 85701

Via Electronic Mail to Each Member

RE: Sign Code Revision Project, Draft Sign Code Revisions (September 20, 2016)

Honorable Members of the Mayor and Council:

Scenic Arizona again registers its opposition to the Sign Code Revision Project including any proposed changes that are unrelated to compliance with the June 2015 Supreme Court decision (*Reed v Town of Gilbert*). There are more than 20 such proposed changes and they would almost universally weaken the code. We urge that you question staff as to whether it intends to proceed with the September 20 draft in its current form that includes such changes, and if the answer is yes, vote to delete the changes as they come before you for review.

At this juncture, Scenic Arizona will address the sections that are proposed for review at your first meeting tomorrow in summary form, with a more detailed analysis to follow in memorandum form as soon as it becomes available.

In summary form, the key problems with the subject sections of the draft are as follows:

1. The deletion of the existing purpose and intent statements and replacement with a new statement is unnecessary for *Reed* compliance. The existing statement is sound in that regard and if there is any argument for additional language (such as protection of nighttime skies or compliance with the General Plan), such additions or other changes should be considered on their own merits and referenced to the existing statement.
2. The wholesale deletion and replacement of the purpose/intent statement serves as cover for surreptitiously inserting a single phrase in the first paragraph (“promote equity between businesses and other typical sign users”) that would handcuff the City’s ability to continue to regulate commercial signs as it always has (at least to the extent that any given regulation complies with the “intermediate scrutiny” standard). Virtually all legal scholars and at least 13 post-*Reed* courts (mostly federal district) agree that *Reed* does not affect existing First Amendment standards for regulating commercial speech (referred to as the “commercial speech

doctrine”). It is only the Goldwater Institute that makes an extreme assertion to the contrary and if the City continues to follow their lead, it will have voluntarily ceded commercial sign regulation to the “strict scrutiny” standard that would otherwise only apply to non-commercial signs. At all costs, this phrase needs to be struck.

3. The wholesale deletion and replacement of the “sign” definition is unnecessary. There is no indication the existing definition does not comply with Reed, as it does not refer to any specific type of sign content (an infirmity found in sign definitions in some other codes). Instead, the wholesale replacement definition conveniently includes a phrase (“that has a visual display from a right-of-way or street”) that would weaken the substance of the code by no longer applying its provisions to all outdoor signs. There is no indication in any of the legal texts or presentations nationally that this is an issue related to Reed. Furthermore, the proposed replacement definition is taken from a post-Reed edition of a model sign code that also included the identical phrase in prior editions long before Reed came down (i.e., its inclusion was not driven by Reed while changes in other portions of that definition were).

4. Numerous definitions are deleted, added, or modified that presuppose substantive changes to the code in following sections that are either not necessary to comply with Reed or comply with Reed in a way that weakens the Sign Code far more than necessary. These definitional changes should be set aside until such time as the applicable substantive sections are considered.

The foregoing list is far from exhaustive, but does focus on key proposed changes that you should look at very critically and, as appropriate, reject or limit to what is truly needed for Reed compliance.

Sincerely,



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