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# MAYOR & COUNCIL MEMORANDUM

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August 9, 2016

Subject: Sign Code Revision Project (City Wide)

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**Issue** - The June 2015 U.S. Supreme Court decision in the case of *Reed v. Town of Gilbert* effectively required all jurisdictions in the country to review and amend their sign codes to be content-neutral. This case impacts the City of Tucson's Sign Code.

There is an urgency to revise the Sign Code since Tucson, like other jurisdictions, is restricted in enforcing its current sign code because of potential conflicts with the *Reed* case. Further, any enforcement action could be challenged and the City faces likely adverse rulings. In such situations, 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the local Chamber of Commerce and other members of the business community argued that the City's Sign Code is out of date, overly restrictive, and difficult to use in comparison to other local and Arizona jurisdictions.

**City Manager's Office Recommendation** - Staff is seeking Mayor and Council direction to initiate a Sign Code revision process to 1) comply with the 2015 U.S. Supreme Court decision on *Reed v. Town of Gilbert*, 2) simplify the Sign Code by integrating it into the Unified Development Code, and 3) make practical changes that modernize the Code, improve the quality of design and flexibility of the overall code, and ground it in technical standards.

As part of the process it is recommended that the Citizens Sign Code Committee and the Planning Commission hold joint study sessions and public hearings on the proposed changes to the Sign Code, and that staff return to the Mayor and Council with a recommendation no later than January 2017.

**Background** - *Reed v. Town of Gilbert* – In June 2015, the 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 displaying "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" 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.

The practical 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.

Reed and Sign Code Problems – One of the lessons of *Reed* is not to classify signs by the message they convey. Instead, to remain content-neutral, signs should be classified by time, place or manner. Here are several examples:

<u>Content Problem</u>	<u>Content Neutral Option</u>
Real Estate Sign	Temporary Sign - time
Directional Sign	Access Point Sign - place
Freestanding Identification Sign	Freestanding Sign - manner

Legal analysis of the *Reed* case points to a sign code's Exemption Section as a potential problem area where a sign code gives more flexibility to some signs based on content. The Tucson Sign Code has six exempt signs and only one appears to be a problem that a minor renaming will resolve.

The other problem area is message-oriented sign categories. In the Tucson 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, the following Sign Code signs are probably acceptable: A-frame, awning, banner, canopy, freestanding, freeway, wall, portable, projecting, and window.

Around the country, there are few *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 temporary sign clutter.

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 would be the last step in this simplification of zoning standards. Further 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. Additionally, allows for adjustments to measurement standards and other provisions where interpretations have been needed. It allows for the updating of all the graphics and maps.

*Business Community Concerns* - Staff has met with representatives from the business and sign consultant community. They mention 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.

In addressing alteration of non-conforming signs, staff has interpreted that a reasonable alteration includes replacing out of date electronic components with newer components. This type of alteration should be clarified in any sign code update.

There has been a longstanding allowance to use a tall 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. Staff has interpreted that a parapet that is up to ten feet in height may have a sign. This point should be clarified in a sign code revision.

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

The Planned Area Development zone (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 for signs for wayfinding and identification. The current Sign Code does not allow this option. Such an option would allow for more flexibility with standards, in exchange for more 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 where clutter management, legibility, and unified design could also be considered for a greater signage allowance.

The current Sign Code has an integrated architectural feature option. This provision is a step in the right direction but, it lacks clear standards and findings to do a more thorough review prior to allowing an applicant 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 should include the use of best design practices that consider vehicle reaction time, integrated architectural design, legibility, and clutter management as part of the review.

*Recommended Approach to Consider* - In creating a revision strategy to update 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 a technical viewpoint with the City's own position on creating a pleasing visual environment.

- *Purpose Statement* - Use a Purpose Statement with a clear connection to traffic safety and the visual environment. The Purpose Statement must make 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* - Use 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 contains both of these provisions
- *Sign Type Changes* - Amend or delete all message-oriented sign types currently in the Sign Code. For example, this strategy proposes renaming "temporary" signs as "portable" signs, where clutter management becomes a more prominent issue for government to address, and the sign message becomes 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 useful in showing a community-wide endorsement of a more comprehensive sign policy if 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 as 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, a focal point of this proposed Sign Code revision project is to improve design in the public realm. This is consistent with *Plan Tucson* policy LT4 that encourages design that is sensitive to the surrounding scale and intensity of existing development.

*Public Review Process* - As noted, there is urgency to resolve the City's compliance with the *Reed* case. The recommended time frame below delivers the latest revisions to the Mayor and Council at the beginning of 2017.

First, the Sign Code should be removed from Chapter Three of the Tucson Code, and second, the new sign standards should be placed in the UDC. 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.

Staff is recommending a joint Committee and Commission review through joint study sessions and a joint public hearing over the next several months leading up to a potential review and

adoption by Mayor and Council in January of 2017. It may also be appropriate to have one or more community-wide workshops as needed.

**Conclusion** - The 2015 *Reed v. Town of Gilbert* decision requires the City of Tucson to revise its Sign Code to become content-neutral. A Sign Code Revision Project is recommended that will address the *Reed* constitutional issues but also address simplification and process improvement issues that have been requested by the business community.

The project's goal is a revision that is content-neutral, uses technical standards in the development of the revision, places the Sign Code in the UDC, makes common sense process improvements and clarifications and encourages best design practices based on technical standards, architectural integration, and clutter management.

**Legal Considerations** - The City Attorney's Office has reviewed and approved this Memorandum.

Respectfully submitted,



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Attachment A - Overview of Preliminary Sign Standards Draft  
Attachment B - PowerPoint on Sign Standard Revision Project