

**CITY OF GOODYEAR
CITY COUNCIL ACTION FORM**

SUBJECT: Update on Amendments to City Sign Ordinance	STAFF PRESENTERS: Christopher Baker, Development Services Director Steve Careccia, Planner III Sarah Chilton, Assistant City Attorney
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RECOMMENDATION:

Council and the Planning and Zoning Commission will receive an update on proposed amendments to the City of Goodyear Sign Ordinance, and provide staff with guidance on several policy considerations concerning sign regulation within the City.

PURPOSE:

Update the Sign Ordinance in accordance with prior City Council direction, and review for consistency with the recent Supreme Court of the United States decision in *Reed v Town of Gilbert*.

BACKGROUND AND COMMUNITY BENEFIT:

The City of Goodyear Zoning Ordinance was adopted on May 24, 1999 and has had several revisions, including revisions to Article 7 - Sign Regulations. Updating the Zoning Ordinance allows the City to meet the changing needs of businesses and residents and to be consistent with evolving case law and regulation.

PREVIOUS ACTIONS AND DISCUSSION:

A worksession with the City Council was held on March 2, 2015. At that worksession, staff discussed proposed amendments to the Zoning Ordinance, including several revisions to the sign code. The Council provided staff with direction to proceed with several Sign Ordinance amendments, including amendments to address electronic message displays and future development signs.

The Supreme Court of the United States issued its *Reed* decision on June 18, 2015. The Opinion of the Court is attached for review. Since then, municipalities across the Country have been reviewing the Court's decision and discussing the effects it could have on the regulation of signs. While much remains unknown given the recentness of the decision, a clear takeaway from the decision is that sign regulation must be content neutral. A content neutral regulation does not require the reading of a sign to determine if a regulation applies. However, if that sign needs to be read in order to determine compliance, then that regulation is content-based.

Sign Ordinance provisions that regulate sign content will likely be deemed unconstitutional unless they achieve a compelling governmental interest through the least restrictive means possible. This is due to the Courts applying their highest standard of review (strict scrutiny) to sign regulations considered content-based.

The *Reed* decision clarified that ‘time, place and manner’ regulations remain constitutionally permitted. As such, municipalities may still regulate the time of display, location, size and building material for signs so long as such regulations are content neutral and uniformly applied.

On August 7, 2015, staff attended a workshop on sign regulation post-*Reed* sponsored by the Arizona Planning Association. At that workshop were the City Attorneys from Gilbert, Peoria and Phoenix along with a representative from the sign industry. Staff will be attending additional Sign Ordinance workshops in November of this year. Planning and Legal staff have also been reviewing the literature being produced as a result of *Reed*. Some of the recommendations obtained from these various sources include:

1. Review your sign ordinance for content based regulations
2. Review exceptions to Sign Ordinance regulations and reduce wherever possible
3. Seek uniform application of Sign Ordinance
4. Reduce number of sign categories
5. Do not proceed with code enforcement action on content-based infractions

A City Council Report was previously provided to the Commission and Council. This report provided an additional overview of the *Reed* decision and included an action schedule for the proposed amendments. The report is attached for review.

POLICY CONSIDERATIONS

It is generally understood that the Supreme Court’s decision will affect how municipalities approach the regulation of signage. In reviewing the City’s Sign Ordinance, staff has identified several areas that will need to be amended and the resultant policy considerations associated with such amendments. Presented below are some of the policy considerations staff has identified to date, and which we are seeking Commission and Council guidance:

Temporary Signs

Policy questions to be discussed:

1. To what extent should temporary signs be permitted?
2. How much flexibility should be inherent in the regulation of temporary signs?

The Sign Ordinance currently permits a variety of temporary signs. The Sign Ordinance regulates these signs based on the purpose and content of the signs, with varying regulations depending on the sign type. For example, Garage Sale Signs and Open House Directional Signs are two categories of temporary sign that are regulated by their purpose and content. The Sign Ordinance also treats these signs differently, with Garage Sale Signs allowed to be displayed no more than 24

hours prior to the garage sale and Open House Directional Signs allowed to be displayed for no more than nine hours.

To address the *Reed* requirement for content neutrality and uniform treatment, staff would recommend replacing the various categories of temporary signage, which are currently based on the content of the sign to categories based on physical characteristics. This would remove the content based aspect of the regulation while also creating more uniform administration. However, this approach would limit the flexibility offered by the current Sign Ordinance. But given that the inconsistent regulation of temporary signs was the basis of the *Reed* decision, it appears that the safest, most defensible approach from a legal standpoint is to seek more uniform treatment in temporary sign regulations.

Off-site signs

Policy question to be discussed:

1. The Sign Ordinance currently prohibits off-site signs. Should this regulation remain?

A concurring opinion in the *Reed* case by Justice Alito, with Justice Kennedy and Justice Sotomayor joining, stated that the rules distinguishing between on-premise and off-premise signs were reasonable. As such, staff feels comfortable recommending that this provision remain in the Sign Ordinance.

Private Signs in Right-of-Way & public property

Policy questions to be discussed:

1. The Sign Ordinance currently prohibits private signs from being placed in City rights-of-way (ROW) or on other City properties with two exceptions. Under one exception, the City may allow the construction of permanent signs by private parties within the City's ROW or on other City properties under conditions similar to those conditions required for a variance, pursuant to a license. The other exception involves City-owned or sponsored signage, which includes traffic signs and directional signs such as the directional kiosks that are located within the City's ROW. Notwithstanding signage permitted by license, should the prohibition on private signs within the ROW and on other public property remain?
2. Is some limited form of private signage acceptable in public ROW?

Given the *Reed* decision, staff would recommend that these provisions remain, and that the Sign Ordinance be amended to remove any exceptions that would otherwise allow private signs on public property (without approval of a license). Such recommendation is supported by the Supreme Court opinion as Justice Thomas wrote: "And on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner."

If it is determined that some private signage would be acceptable in the public ROW, then the Court's opinion would indicate that the Sign Ordinance would need to be amended to allow all signage within the ROW. Otherwise, the Sign Ordinance would be found to favor some speech over others, which would then be deemed a violation of the First Amendment.

Governmental Signs

Policy question to be discussed:

1. Should Sign Ordinance provisions regarding the use of signs by the City be amended?

At this point, the *Reed* decision does not appear to affect a government's use of signs. As written by Justice Alito, "In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech... They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots." Given the Court's opinion, staff would recommend an amendment to just further clarify the City's existing right to place signs within its ROW and on other public properties.

Comprehensive Sign Packages

Policy question to be discussed:

1. The Sign Ordinance requires developments with three or more businesses and all Planned Area Developments to submit a Comprehensive Sign Package (CSP). With the *Reed*-decision recommendation to uniformly apply sign regulations, should the City continue requiring certain developments to submit a CSP?

A CSP in conformance with the Sign Ordinance can be approved administratively by staff. A CSP requesting deviations to the Sign Ordinance must be reviewed and approved by the Planning and Zoning Commission and City Council. The typical CSP does contain deviations to the Sign Ordinance. Such deviations usually seek larger signs and/or an additional number of signs based on the nature of the development. Although deviations can be justifiable because of the nature of a development, the more prudent route would be to have a set of standardized requirements that would apply to all developments.

Accordingly, Staff is recommending that the Sign Ordinance continue to require CSPs for developments with three or more buildings but eliminate the ability to deviate from the Sign Ordinance. Staff is further undertaking a review of the existing CSPs approved within the City to identify deviations from the current Sign Code that have routinely been approved. The identification of such routine deviations would be the basis for proposed amendments to the Sign Ordinance, which would better insure uniformity while still accommodating the signage needs for varied projects.

The *Reed* opinion did not affect the ability of the City to create Sign Ordinance regulations that vary by zoning district. Justice Alito, in his concurring opinion, stated that rules distinguishing between the placement of signs on commercial and residential property are reasonable. The ability of the City to regulate signage based on zoning district would be relative to the City's intent to create an entertainment overlay district for properties along McDowell Road. Such a district could allow for enhanced signage that would not otherwise be appropriate elsewhere within the City.

Council Direction from March 2015 Worksession

Policy question to be discussed:

1. Now with the *Reed* decision having been issued, how should staff proceed with the prior Council direction provided in March 2015, especially concerning temporary signage?

Some of the direction provided to staff involving temporary signs, such as for larger Future Development signs, and for content-based signage, such as Directional signs, will be affected by the *Reed* decision for the reasons mentioned above. As part of this process, staff will need to look at the comprehensive changes to the Sign Ordinance and how to best protect the City and serve its citizens within the confines of the First Amendment.

FISCAL ANALYSIS:

A fiscal analysis was not conducted for this item.

ATTACHMENTS:

United States Supreme Court Opinion – *Reed v Town of Gilbert*
City Council Report from Staff dated October 13, 2015