

Regular Workshop – March 23, 2016
Agenda Item 11

Agenda Item: Sign Code Update

Presenter: Town Manager and Staff

Summary: In June 2015, the United States Supreme Court issued a written opinion regarding *Clyde Reed, et al v. Town of Gilbert, Arizona*. The Supreme Court held that government regulation of signs is content based if a regulation applies based on the particular content, topic discussed, or idea or message expressed.

At their September 28, 2015, Town Commission Special Meeting, the Town Attorney provided the Commission information as to how the Supreme Court's decision impacted sign codes across the country, including Longboat Key. After discussion, the Commission instructed Staff to cease enforcement of any existing sign regulation that is currently based on the content expressed on proposed signs.

Based on this direction, Staff is no longer reviewing for, enforcing, content-related provisions of the existing sign regulations contained within the Town Code Chapter 156.

The Town is working with a leading Sign Law Expert, Dan Mandelker, to conduct a review and rewrite of the Town's existing Sign Code. It is anticipated that a draft will be provided to the Planning and Zoning Board for review within the next several months.

Attachments: 3-10-16 Memo, PZB Director to Manager;
PowerPoint Presentation.

Recommended
Action: None, informational only.

M E M O R A N D U M

DATE: March 10, 2016

TO: David Bullock, Town Manager

FROM: Alaina Ray, AICP
Director – Planning, Zoning and Building Department

SUBJECT: Sign Code Update

In June 2015, the United States Supreme Court issued a written opinion regarding *Clyde Reed, et al v. Town of Gilbert, Arizona*. This constitutional First Amendment challenge dealt with the provisions and enforcement of the Town of Gilbert's sign ordinance. The Supreme Court held that government regulation of signs is content based if a regulation applies based on the particular content, topic discussed, or idea or message expressed.

At the Town Commission's September 28, 2015 Special Meeting, the Town Attorney provided information to the Town Commission as to how the Supreme Court's decision impacts sign codes across the country, including the existing sign regulations for Longboat Key.

After due deliberations, the Town Commission instructed Staff to cease enforcement of any existing sign regulation that is currently based upon the content expressed on proposed signs. This direction did not include, nor does it preclude, the enforcement of existing sign regulations based on time, place, manner, and other provisions not deemed content related.

Based on the direction provided, Staff is no longer reviewing for, nor enforcing, content-related provisions of the existing sign regulations contained within Town Code Chapter 156: Sign Code. In other words, any provision that requires reading the wording and/or intent of the sign should not be considered in the review or enforcement of the Town's sign regulations.

The Town's current Sign Code contains some potential content based regulations, similar to the Town of Gilbert's regulations. Staff has engaged a leading Sign Law expert, Dan Mandelker, to conduct a review and rewrite of the Town's existing Sign Code. Mr. Mandelker is currently identifying all content-based provisions and developing solutions to the issues, with the result being a new Sign Code. The new Sign Code will look significantly different from the current Sign Code, due to the elimination of all content-based provisions.

We anticipate providing a draft Sign Code to the Planning and Zoning Board within the next few months. We will also conduct public presentations once we have a draft ordinance.

xc: Maggie Mooney-Portale, Town Attorney



SIGN CODE UPDATE

**Town Commission Regular Workshop
March 23, 2016**



BACKGROUND AND HISTORY

- June 18, 2015: Supreme Court issued written opinion on *Clyde Reed, et al v. Town of Gilbert, AZ*
 - Constitutional First Amendment challenge to Town of Gilbert's sign regulations for varying requirements regarding temporary signs
 - Content based laws are presumptively unconstitutional and can only be justified by a local government if they are narrowly tailored to serve a compelling governmental interest.
 - Supreme Court held that government regulation of speech is content based if a law applies to a particular speech because of the topic discussed or idea or message expressed



BACKGROUND AND HISTORY

- Additional criteria is content neutral:
 - rules regulating sign size;
 - rules regulating the locations of signs (i.e., location in which signs may be placed in setbacks, zoning restrictions, etc.);
 - rules distinguishing between lighted and unlighted signs;
 - rules relating to signs with fixed messages and electronic signs with changing messages;
 - rules on the placement of signs on “public and private property” and “commercial and residential property”;
 - rules regarding on premise and off premise signs;
 - rules restricting the total number of signs per roadway mile; and
 - rules imposing time restrictions on signs advertising a one time event.



BACKGROUND AND HISTORY

- At their September 28, 2015 Special Meeting, the Town Commission considered information related to the Supreme Court written opinion regarding Clyde Reed, et al v. Town of Gilbert, Arizona.
 - Town Commission instructed Staff to cease enforcement of any existing sign regulation that is currently based upon the content expressed on proposed signs.
 - Direction did not include, nor does it preclude, the enforcement of existing sign regulations based on time, place, manner, and other provisions not deemed content related.



LONGBOAT KEY'S SIGN CODE

- The current code contains some potential content based regulations similar to the Town of Gilbert's regulations
 - Examples of content based signs:
 - Temporary Signs
 - Political Signs
- Town's Code needs to be revised and re-examined to bring these sections of the Code in line with the Reed decision.



ENFORCEMENT OF CODE

- Per Town Commission's direction, Staff is no longer reviewing for, nor enforcing, content-related provisions of the existing sign regulations contained within Town Code Chapter 156: Sign Code.
- Suspension of regulation and enforcement of the following:
 - Open House Signs
 - Special Event Banners
 - Political Signs
 - Temporary Directional Signs
 - Any other sign where it is necessary to read the content of the sign to determine the appropriate regulations



NEXT STEPS

- Staff has engaged a leading Sign Law expert, Dan Mandelker, to conduct a review and rewrite of the Town's existing Sign Code.
 - Dan Mandelker, Stamper Professor of Law, Washington University
 - Authored over twenty books, such as: Street Graphics and the Law (with J. Baker and R. Crawford) (4th ed. 2015)
 - Served as a major consultant with over fifty jurisdictions: Denver, CO; Melbourne, FL; New Orleans, LA
 - Has testified before subcommittees of the House and Senate Judiciary Committees on legislation establishing ripeness rules for land use litigation
 - Has litigation experience as expert witness and consultant for various jurisdictions



NEXT STEPS

- Consultant is currently identifying all content-based provisions and developing solutions
- Anticipate providing a draft sign code to the Planning and Zoning Board within the next few months
 - Consultant and Staff will give public presentations once we have draft ordinance
- New Sign Code will look significantly different than current Sign Code due to the elimination of all content-based provisions



End of Agenda Item