

City of Palm Coast, Florida

Agenda Item

Agenda Date: November 15, 2023

Department	COMMUNITY DEVELOPMENT	Amount
Division	PLANNING	Account #
Subject: ORDINANCE 2023-XX RELATING TO SIGNS AND ADVERTISING BY AMENDING SECTION 3.01.06 USES NOT PERMITTED IN THE CITY, AMENDING CHAPTER 12 SIGNS AND ADVERTISING AND AMENDING SECTION 14.02 GLOSSARY, OF THE UNIFIED LAND DEVELOPMENT CODE.		
Presenter: ESTELLE LENS, AICP, PLANNER		
Attachments: 1. City Attorney PowerPoint Presentation 2. Draft Ordinance 3. Temporary Sign Chart 4. Document from Flagler County Association of Realtors (FCAR) 5. Public Correspondence		
Background: Chapter 12 of the Land Development Code – SIGNS AND ADVERTISING - was adopted along with the balance of the Unified Land Development Code (LDC) in August 2008. It has been amended twice, once in 2009 and again in 2012. These amendments were made working with stakeholders to provide more flexibility for applicants in the development community. The sign code is being amended now to comply with changes in the law, address challenges and make the code less restrictive, more business friendly and more community friendly. The Assistant City Attorney has provided the following as a background for the required and proposed changes to the City's sign code: The U.S. Supreme Court changed the face of sign regulation by local governments in the case of <i>Reed v. Gilbert</i>, a unanimous decision. In the opinion of most experts, the decision requires amendments to almost all local government codes, including the City of Palm Coast's code. The Supreme Court held that Gilbert's sign restrictions were content based unconstitutional regulations of speech that did not survive the highest level of scrutiny that the Court applies. The Town of Gilbert, Arizona sign code required permits for signs which allowed a number of exemptions such as: • Political signs were permitted up to 32 square feet. • Temporary directional signs were only permitted up to 6 square feet. • Ideological signs were allowed up to only 20 square feet. A local church was cited for violation of the rules for temporary directional signs and then challenged the sign code for violating their First Amendment rights. The Town argued (and the lower courts agreed) that the challenged regulations were content neutral, and that the sign distinctions were based on objective factors and not the expressive content of the sign.		

The distinctions did not favor nor censor a particular viewpoint or philosophy. And the justification for the regulation was unrelated to the content of the sign.

Justice Thomas, writing for the Supreme Court, disagreed. He found the distinctions plainly content based and therefore subject to strict scrutiny. The various type of sign distinctions “depended entirely on the communicative content of the sign”. The Court articulated the “need to read” standard, meaning if a code enforcement officer has to read the sign to determine if a sign regulation applies to it, then the provision will be stricken as unconstitutional. This was true despite the fact that it was evident to the Court that the Town had benign motives in creating these sign categories. Put another way, the Court struck the Gilbert code because a particular sign was treated differently based on the purpose of the sign, instead of on its size, shape, location, or other content neutral time, place and manner regulation.

The Town attempted to address the strict scrutiny standard by offering two governmental interests to support its distinctions: aesthetic appeal and traffic safety. The Court held that even if these distinctions were compelling governmental interests, the regulations were not narrowly tailored. Justice Kagan noted in her own opinion (concurring in the judgment only) that the Town’s distinctions did “not pass strict scrutiny, or intermediate scrutiny, or even the laugh test.” The Court required the Town of Gilbert to pay Reed’s attorneys’ fees to the tune of \$800,000.

Because the Court found the sign code to have content based regulations, the regulations were required to pass the “strict scrutiny” standard, and they failed. Most codes do, because “strict scrutiny” is described as being just like a civil war stomach wound. The Court even stated that directional signs could only potentially be considered a lawful sign category if sufficiently valid reasons for allowing them could be articulated by the city. Sign codes are being constitutionally contested throughout the court based on the “characterization” of signs (i.e. church signs; gas station signs; political signs).

The Court attempted to reassure local governments that sign codes could withstand scrutiny if cities and counties limit regulation to regulation of size, building materials, lighting, moving parts, and portability, if done in an even handed manner. The Court recently found that regulation based on location was a valid way to regulate signs, so that banning off-site signs is not a content based regulation.

Based on the *Reed* analysis, time restrictions on temporary signs must be carefully evaluated. For example, temporary signs cannot be severely limited in number or duration, because that regulation would unlawfully impact political and real estate signs.

Reed shows the degree to which courts will now scrutinize a city’s efforts to regulate signs and how those regulations impact free speech. Any code provisions in the City code that might show content bias must be amended to remove those distinctions. Cities are left, in the wake of *Reed*, with being forced to err on the side of allowing for less restrictive, rather than more restrictive, sign regulations, until the courts provide more guidance on these matters.

However, *Reed* did not explicitly overrule prior Supreme Court precedent allowing off site and on site signs to be treated differently or permitting commercial signs to be regulated more strictly than non-commercial signs, as demonstrated in the case involving the City of Austin recently decided by the U.S. Supreme Court, which upheld Austin’s distinction between “on-site” and “off-site” signs. Another bright note is that it appears that so far cities still have the ability to choose the content of “government” signs on their own property and in the rights of way. Plus, lower courts have limited *Reed*’s application to temporary signs only.

In conclusion, it behooves the City to amend its sign code or the City will be vulnerable to a challenge. If contested on constitutional grounds and the City loses, the sign code becomes void.

Another case impacting sign codes is *Sweet Sage Café, LLC v. Town of North Redington Beach* a case from the Middle District of Florida, Tampa Division. In this case, the United States District Court ruled that the town's ordinance infringed on the right of free speech protected by the U.S. Constitution. Specifically, the Court ruled that the ordinance was facially unconstitutional because it regulated based on content of the speech and could not survive the strict scrutiny test. As a result, the town's sign code was voided by the Court utilizing the precedent in the *Reed v. Town of Gilbert* case. The attorney for Sweet Sage Café subsequently filed suit in federal court asking for legal fees.

Considering these factors, Staff and the Assistant City Attorney met with the Flagler County Association of Responsible Developers (FCARD) nine times to hammer out these sign code amendments several years ago. Subsequently, in August and September of this year, City Staff met two times with other stakeholders to help modify these amendments. The stakeholders at the meetings this year included members from the Flagler County Association of Realtors (FCAR) and the Palm Coast-Flagler Regional Chamber of Commerce, local attorneys, and FCARD.

The substantive changes to the sign code are primarily as follows:

- Revising Purpose & Intent to reflect new findings on signage.
- Revising Exempt and Prohibited Signs, exempting temporary signs from permitting
- Correcting glitches.
- Deleting content-based definitions and replacing with new location-based qualifiers.
- Government signs are no longer regulated by the City sign code, in keeping with case law.
- Revising Temporary Signs, to genericize the categories. Signs are regulated based upon the zoning district in which the sign is placed. Simplified categories of temporary signs by providing a table. Generally, signs that are currently permitted will remain permitted, and signs that are currently prohibited will remain prohibited.
- Revising Glossary for commercial and temporary signage.
- The text of the regulations are outlined in the attached draft Ordinance in cross-out and underline format.

The amendments do not modify the amount or type of site or wall signage for commercial uses. Also, the regulation regarding Commercial banners is not modified.

..Suggested changes to the Ordinance since the PLDRB Workshop on October 18, 2023:

The following change was recommended at the workshop:

- Temporary Sign Chart - Proposed LDC 12.06 Temporary Signs.
B. Residentially Zoned Properties - Temporary Sign Standards
"Signs for parcels with active site/building permits" (construction signs) – Change maximum sign area for to 6 SF vs 4 SF, to match following category ("Signs on property being actively marketed for sale...)

Following are further recommended revisions to the Ordinance:

- Title of Ordinance – Correct line 3 from Chapter 3 of the "Code of Ordinances" to Chapter 3 of

the "Land Development Code".

Temporary Sign Chart – LDC 12.06

A. Non-Residentially Zoned Properties' Temporary Sign Standards

- "Commercial Signs" - change "number of signs" column to "per property" for (not per business).
- "Commercial Signs" - add area maximums consistent with other categories.
- "Signs for parcels with active Site /building permits" - additional Standards column – suggest striking number 3. "Maximum 1 sign facing each public right of way".
- "Commercial Signs" Additional Standards – suggest striking no. 2 "No Permit required" (Permit is not required for any temporary signs.)

B. Residentially Zoned Properties' Temporary Sign Standards

- "Signs on properties with a sale on the property (Not defined above)" – suggest adding "Maximum 2 times per year" to be consistent with Code of Ordinances Chapter 16 article V - Garage sales.
- "Signs on properties with a sale on the property (Not defined above)" – suggest adding setbacks to be consistent with the other categories.

Recommended Action:

Staff recommends that the Planning and Land Development Regulation Board recommend approval of the amendment to Chapter 3, Chapter 12 and Chapter 14 of the Unified Land Development Code as shown on the attached