



Staff Report

TO: City Council

FROM: Christina Taylor, Community Development Director and Nicole Wheelwright, Deputy City Clerk

DATE July 20, 2021

SUBJECT: Direction to City Staff on Proposed Changes to Beaumont Municipal Code Section 17.07 - Signs

Background and Analysis:

A review of Beaumont Municipal Code Section 17.07 – Signs was conducted per the request of City Council and to prepare an agenda item to discuss regulations as they apply to political signs. It was then advised by legal counsel to also review for compliance with recent case law that prohibits regulation of signs based on message and content. The background and information on the case of Reed v. Town of Gilbert is provided below.

The U.S. Supreme Court's Holding in Reed v. Town of Gilbert and its Impact on Sign Ordinances

In June 2015, the United States Supreme Court decided Reed v. Town of Gilbert, holding that a municipal code subjecting signs to different regulations depending on the message of the sign was a content-based restriction that could not survive strict scrutiny. The Town of Gilbert, Arizona, adopted a municipal code that prohibited the display of outdoor signs anywhere in the town without a permit, but exempted 23 categories of signs from the permit requirement. The three specific exemptions that came before the Court in Reed were: (1) Ideological Signs (i.e. signs communicating a message or ideas for noncommercial purposes); (2) Political Signs (i.e. temporary signs designed to influence the outcome of an election called by a public body); and (3) "Temporary Directional Signs Relating to a Qualifying Event," (i.e. signs "intended to direct pedestrians, motorists, and other passersby to a 'qualifying event'"). A "qualifying event" was defined as an "assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization."

Under the municipal ordinance adopted by the Town of Gilbert, each category of sign was subject to different regulations. For example, political signs were permitted to be up to 20 square feet in area and be placed in all zoning districts, while “temporary directional signs relating to a qualifying event” were to be no larger than six square feet, could be placed on private property or a public right of way, and could be displayed no more than one hour afterward after the qualifying event.

Prior to the Reed decision, many lower courts began their analysis of whether a sign ordinance was content based by first examining whether the government adopted the sign ordinance because it disagreed with the message the sign was conveying. In its decision however, the Supreme Court rejected this approach. The Court held that the analysis must first begin with whether the regulation, on its face, draws distinctions between speech depending on the message of the sign. If the regulation distinguishes between speech based on the message, the regulation is content based. Subsequently, the Court held that the Town of Gilbert’s sign ordinance was content based because it was regulating signs depending on the type of speech it was conveying; ideological, political or directional. Based on this determination, the Court applied strict scrutiny to the ordinance and concluded Gilbert’s approach was unconstitutional under the First Amendment.

The main takeaway from the Court’s decision in Reed is that cities and municipalities must closely examine their sign ordinances to make sure they do not impose different regulations on signs based on the content of the sign’s message. If an ordinance distinguishes between signs based on its message, the regulation must be narrowly tailored to meet a compelling government interest. When a city or municipality imposes a content-based restriction on speech, it bears the heavy burden of proving that it has a compelling reason for prohibiting or regulating that speech. In addition, the city or municipality also must show that it prohibited the least amount of speech possible to protect its interest. Based on previous court precedent, only a small number of the city’s or municipality’s interests would be considered compelling, and it is extremely difficult to meet this standard.

The Supreme Court’s Guidance on Permissible Sign Ordinance and Regulation Criteria

Although the Court in Reed changed the analysis for determining whether a city or municipal sign ordinance is content based and thus triggering the strict scrutiny standard, Justice Alito in his concurring opinion added “a few words of further explanation” to provide cities and municipalities with additional guidance. In his concurrence, Justice Alito stressed that cities and municipalities are not completely powerless to enact sign ordinances or regulations and offered a non-inclusive list of

content neutral criteria upon which ordinances and regulations could be based upon. This list included examples such as:

- *Codes and ordinances regulating the locations in which signs may be placed,*
- *Codes and ordinances distinguishing between lighted and unlighted signs,*
- *Codes and ordinances distinguishing between signs with fixed messages and electronic signs with messages that change,*
- *Codes and ordinances that distinguish between the placement of signs on private and public property,*
- *Codes and ordinances distinguishing between the placement of signs on commercial and residential property,*
- *Codes and ordinances distinguishing between on-premises and off-premises signs,*
- *Codes and ordinances restricting the total number of signs allowed per mile of roadway, and*
- *Codes and ordinances imposing time restrictions on signs advertising a one-time event.*

City staff, in coordination with the City Attorney, drafted changes to Municipal Code Section 17.07 – Signs (Attachment A) to amend the regulations to comply with case law established in Reed v. Town of Gilbert. The proposed changes provide content-neutral regulations and establish directive for signs based on their location and type (permanent or temporary).

Fiscal Impact:

City staff estimates the cost for preparation of the staff report to be \$3,750.

Recommended Action:

Direction to City staff on proposed changes to Municipal Code Section 17.07 - Signs

Attachments:

- A. Current Code with Red Lines
- B. Presentation