



## TOWN OF LOS GATOS COUNCIL AGENDA REPORT

MEETING DATE: 04/02/2024

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DATE: March 27, 2024

TO: Mayor and Town Councilmembers

FROM: Gabrielle Whelan, Town Attorney

SUBJECT: Introduce an Ordinance Titled, "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' Article I, 'In General,' Division 3 'Signs,' of the Town Code Regarding Sign Regulations" as Recommended by the Planning Commission. The proposed amendments to the Town Code are not a project subject to CEQA [CEQA Guidelines Section 15061(b)(3)]. Town Code Amendment Application A-24-002. **Project Location: Town Wide.** Applicant: Town of Los Gatos.

### RECOMMENDATION:

Introduce an Ordinance titled, "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' Article I, 'In General,' Division 3 'Signs,' of the Town Code Regarding Sign Regulations" as recommended by the Planning Commission.

### BACKGROUND:

The Town Council considered this topic at a study session last year. As the Town Council will recall, the Town's Sign Ordinance is codified at Sections 29.10.100 through 29.10.140 of the Town Code and was most recently amended in 1994. Since then, a number of court decisions affecting sign regulations have been issued. These court decisions discuss the First Amendment and "freedom of speech." The most significant of these decisions is *Reed v. Gilbert*, 576 U.S. 155 (2015). In *Reed v. Gilbert*, the court overturned a local ordinance that imposed content-based regulations. Government regulation of speech is considered to be "content-based" if the law applies to particular speech based on the topic discussed or the idea or message expressed.

If a regulation affecting signs in the public right of way is "content-based," a court will only uphold the regulation if it: 1) serves a compelling government interest; and 2) is narrowly tailored to serve that interest. This is a very high standard and, aside from decisions upholding directional signage, content-based regulations are routinely struck down. A regulation affecting signs on private property will be upheld if it is: 1) reasonable; and 2) content-neutral.

Attachment 1
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Reviewed by: Planning Manager, Community Development Director, Assistant Town Manager, and Town Manager

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BACKGROUND (continued):

The Town's Sign Ordinance currently includes content-based regulations for several types of temporary signs. Examples of this are regulations that are specific to "political signs," "real estate open house signs," "grand opening" banners, and special event signs. The best practice is to have a category for "temporary signs" and apply the same regulations to all forms of temporary signs.

Case law does authorize the Town to impose "time, place, and manner" regulations on signage. Examples of "time, place, and manner" regulations are those related to size, location, and time limits for display.

At its study session, the Town Council's feedback was that the sign ordinance works well and should be amended as minimally as possible. The Town Attorney has worked with outside counsel to draft revisions for temporary signs that remove the "content-based" restrictions. For example, "political signs" have been reclassified as "temporary signs."

In addition, a revision is included to prohibit temporary signs in the following areas of public right of way: 1) the median; and 2) the area between the paved road and the sidewalk.

The Planning Commission reviewed proposed amendments to the Town's sign ordinance on February 28, 2024. In addition to the proposed revisions, the Planning Commission recommended that the ordinance be revised to:

- 1) Add a definition for "yard signs;"
- 2) Revise the "temporary sign" definition to give examples of temporary signs and to revise the 90-day time limit to add "or as otherwise set forth in this Article" (since some temporary signs have different time limits);
- 3) Change the term "jointly and severally liable" to "jointly and severally responsible;"
- 4) Provide that yard signs are limited in size to no more than six square feet and that there is no limit on the number of yard signs;
- 5) Remove the general prohibition on flags, banners, and balloons and address them as temporary signs that require a permit; and
- 6) Make the permitted size of signs on construction sites proportional to the size of the parcel.

DISCUSSION:

A redline of the sign ordinance with the proposed revisions, including the Planning Commission recommendations, is attached as Attachment 1. The proposed changes are:

DISCUSSION (continued):

**Sec. 29.10.100. Definitions.**

The content-based portions of the definitions of “bulletin board” and “sign” have been removed.

The definition for “political sign” has been removed since it is content-based.

Within the definition of “temporary sign,” a display limit of “90 days or as otherwise provided” has been added.

**Sec. 29.10.100 Definitions.**

The definition of “bulletin board” has been revised to remove the “content-based” description.

The term “zoning plot” has been replaced with the term “parcel.”

The term “political sign” has been removed because it is content-based.

Content-based language has been removed from the definition of “sign.”

Examples of temporary signs have been added to the definition of “temporary sign.”

**Sec. 29.10.105 Generally.**

A subsection (f) has been added to give noncommercial speech the same protections as commercial speech. This change is required by recent case law.

**Sec. 29.10.110. Exceptions.**

Subsection (5) has been renamed “Temporary Signs” and content-based regulations have been replaced with locational regulations. A category for yard signs has been added, providing that there is no limit on yard signs but that no yard sign shall exceed six square feet in size. The removal requirement for temporary signs has been moved to this Section.

Subsection (6) formerly contained a prohibition on individual or company advertising on open house signs. This prohibition has been removed because it is content-based. It has been revised and moved to be under the newly titled “Temporary Sign” subsection.

In subsection (8), content-based regulations have been removed.

DISCUSSION (continued):

The previous subsection (15) is content-based and has been deleted. In the new subsection (15), the phrase “jointly and severally liable” has been replaced with the phrase “jointly and severally responsible.”

**Sec. 29.10.115. Prohibited Signs.**

The Planning Commission recommended that subsection (1) prohibiting “banners, flags, pennants, balloons, and similar objected designed to move with the wind” be removed from this Section and that sign permits be required for these types of signs in accordance with Section 29.10.105(c) and 29.10.120.

A subsection (16) has been added to prohibit temporary signs in the public right of way median or area between the paved road and the sidewalk.

**Sec. 29.10.120. Temporary Signs.**

The heading of this Section has been revised to “Temporary Signs Requiring Permits” to differentiate it from the Section addressing temporary signs for which permits are not required. Content-based regulations have been replaced with content-neutral time, place, and manner regulations.

As recommended by the Planning Commission, the proposed ordinance provides that signs on construction sites with under 100 lineal feet of street frontage are limited to 32 square feet. Signs on construction sites with 100 lineal feet or more of street frontage are limited to 64 square feet.

PUBLIC COMMENTS:

Prior to the February 28<sup>th</sup> Planning Commission meeting, staff conducted outreach through the following media and social media resources, as well as direct communication with stakeholders as summarized below:

- The Town’s website home page, What’s New;
- The Town’s Facebook page;
- The Town’s Twitter account;
- The Town’s Instagram account;
- The Town’s NextDoor page;
- Newspaper ad; and
- Telephone call and letter to Silicon Valley Association of Realtors.

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PUBLIC COMMENTS (continued):

Because there was limited public comment at the Planning Commission meeting, staff subsequently provided a copy of the proposed sign ordinance to the Chamber of Commerce along with a cover letter summarizing the proposed revisions.

CEQA:

The proposed amendments to the Town's Sign Code are Exempt Pursuant to CEQA, Section 15061(b)(3), because it can be seen with certainty that they will not significantly affect the physical environment in that they make minor changes to the regulations applicable to temporary signs.

RECOMMENDATION:

Staff recommends that the Town Council introduce an Ordinance titled, "An Ordinance of the Town Council of the Town of Los Gatos Amending Chapter 29, 'Zoning Regulations,' Article I, 'In General,' Division 3 'Signs,' of the Town Code Regarding Sign Regulations" (Attachment 2).

ALTERNATIVE:

Alternatively, the Town Council could retain the original regulations for construction site signage, which did not provide for increased size based on street frontage.

ATTACHMENTS:

1. Redline of Town Code
2. Draft Sign Ordinance - Clean