



TOWN OF LOS GATOS
PLANNING COMMISSION REPORT

MEETING DATE: 02/28/2024

ITEM NO: 4

DATE: February 23, 2024
TO: Planning Commission
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Forward a Recommendation to the Town Council on Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding Sign Regulations. 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:

Forward a recommendation to the Town Council on amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding sign regulations.

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.

FINDINGS:

- The proposed amendments are Exempt Pursuant to CEQA, Section 15061(b)(3); and
- The amendments to Chapter 29 of the Town Code are consistent with the General Plan.

BACKGROUND:

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.

Reviewed by: Planning Manager and Community Development Director

BACKGROUND (continued):

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.

DISCUSSION:

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.

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.” Also, the existing Town Code prohibits open house signs from including advertising for individuals or companies, which is a content-based regulation. For commercial speech, the law requires that any content-based regulations be:

- 1) Related to a substantial government interest; and
- 2) Narrowly tailored to serve that substantial government interest.

If the Planning Commission recommends retaining this limitation, the Town would need to identify the substantial government interest and narrowly tailor the regulation to serve that interest.

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.

A redline of the sign ordinance with the proposed revisions is attached as Exhibit 1. The proposed changes are:

Sec. 29.10.100. Definitions.

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

DISCUSSION (continued):

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 has been added.

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. A severability clause has been added as subsection (g). In the event that any element of the Sign Ordinance is overturned, this section is intended to insulate the remainder of the Sign Ordinance.

Sec. 29.10.110. Exceptions.

Subsection (5) has been renamed “Temporary Signs,” a definition was added, and content-based regulations have been replaced with locational regulations.

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.

Subsection (15) is content-based and has been deleted.

Sec. 29.10.115. Prohibited Signs.

In subsection (1), a content-based restriction on flags has been removed and replaced with a prohibition on flags, banners, pennants, balloons, and similar objects designed to move with the wind. This prohibition exempts flags up to 15 square feet.

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.

Content-based regulations have been replaced with content-neutral time, place, and manner regulations.

PUBLIC COMMENTS:

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.

CONCLUSION:

A. Recommendation

Staff recommends that the Planning Commission review the information included in the staff report and forward a recommendation to the Town Council for introduction of the amendments to the Town's Sign Ordinance (Exhibit 2).

B. Alternatives

Alternatively, the Commission can:

1. Forward a recommendation to the Town Council for approval of the Draft Ordinance with modifications; or
2. Forward a recommendation to the Town Council for no changes to the Town Code; or
3. Continue the matter to a date certain with specific direction.

EXHIBITS:

1. Redline of Draft Sign Ordinance
2. Draft Sign Ordinance