
CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | www.mercerisland.gov



PLANNING COMMISSION

To: Planning Commission
From: Alison Van Gorp, CPD Deputy Director
Date: May 13, 2021
RE: ZTR19-003 Sign Code Update

SUMMARY

The proposed code amendment amends MICC 19.06.020, 19.11.140 and 19.12.080 updating the code sections related to temporary signs, signs in Town Center and signs outside Town Center, respectively.

BACKGROUND

Daniel Kenny, an attorney with Ogden Murphy Wallace, has been contracted by the City to assist with drafting this code amendment. Mr. Kenny has prepared a memo summarizing the 2015 Supreme Court ruling in *Reed v. Town of Gilbert* and the implications for Mercer Island (see Attachment 1). Based on Mr. Kenny's review of the Mercer Island City Code, we are anticipating that the code amendments needed related to this change in case law are modest.

At the May 19 meeting, Mr. Kenny will make a presentation to the Planning Commission covering the *Reed v. Gilbert* case and an overview of the areas of the code where he is recommending amendments. The Commission will have the opportunity to ask questions and provide initial feedback to staff.

NEXT STEPS

Staff will take the Commission's input at the May 19 meeting and incorporate it into a draft code amendment. The Commission will hold a public hearing and review the draft amendment at its June 16 meeting. Final deliberation on this amendment and a recommendation are planned for the July 21 meeting. It is anticipated that the Planning Commission's recommendation will be transmitted to City Council for review in the September-October timeframe.

ATTACHMENTS

1. Memo from Daniel Kenny

MEMORANDUM

DATE: May 12, 2021
TO: Mercer Island Planning Commission
FROM: Daniel P. Kenny
RE: Sign Code Revisions

In 2015, the United States Supreme Court issued a ruling (*Reed v. Town of Gilbert*) which changed the way sign codes are analyzed for First Amendment issues. As a result of the Supreme Court's ruling, municipalities across the United States are adjusting and/or rewriting their sign codes.

Summary of *Reed v. Town of Gilbert*

Reed v. Town of Gilbert is a United States Supreme Court case that addresses First Amendment issues in local sign codes.

This case centers on the City of Gilbert, Arizona's sign code, which prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including three relevant here.

- "Ideological Signs," defined as signs "communicating a message or ideas for noncommercial purposes" that do not fit into other Sign Code categories, may be up to 20 square feet and have no placement or time restrictions.
- "Political Signs," defined as signs "designed to influence the outcome of an election," may be up to 32 square feet and may only be displayed during an election season.
- "Temporary Directional Signs," defined as signs directing the public to a church or other "qualifying event," have even greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the "qualifying event" and 1 hour after.

Petitioners, Good News Community Church (Church), held Sunday church services at various temporary locations in and near the Gilbert. In order to identify the location for the current week's service, the Church posted temporary signs early each Saturday bearing the Church name and the time and location for the next day's service. The Church left the signs up from Saturday until around midday Sunday, the day of the service. The Church left the signs up for longer than 1 hour after the event and was cited for exceeding the time limits prescribed for "temporary directional signs." The Church filed suit claiming that the Code abridged their freedom of speech. The case was appealed up to the United States Supreme Court.

The Court held that the Gilbert sign provisions were content based on their face. This required the Court to consider whether a regulation of speech "on its face" draws distinctions based on the message the speaker provides. If the regulation of speech is content based on its face, then it is subject to strict scrutiny. Strict scrutiny is a level of judicial review that is rarely met and is therefore nearly always fatal.

Each of Gilbert's sign code categories were defined based upon the message that the sign conveys. Consequently, those restrictions were subject to strict scrutiny.

The heightened scrutiny for content-based regulations extends not only to restrictions on particular viewpoints but also to prohibition of public discussion of an entire topic. Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter.

Gilbert's sign regulations failed to meet strict scrutiny and were held to be impermissible content-based regulations.

Basic Rule

The basic principle that should guide your review of your existing sign code is this: If a code enforcement officer must read the content of the sign to determine in which category the sign falls, and therefore which regulations apply, then the sign code regulation is content based on its face and is subject to strict scrutiny.

Mercer Island Sign Code

Similar to many jurisdictions across this country, the Mercer Island sign code has some provisions that should be altered to conform to *Reed v. Town of Gilbert*. Fortunately, the existing Mercer Island sign code relies less on content-based regulations as compared to Gilbert and other local Washington jurisdictions. Therefore, the goal would be to bring you revisions which are targeted as opposed to wholesale redrafting of the code.

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PLANNING COMMISSION

To: Planning Commission

From: Alison Van Gorp, CPD Deputy Director

Date: June 9, 2021

RE: ZTR19-003 Sign Code Update

SUMMARY

The proposed code amendment amends MICC 19.06.020, 19.11.140 and 19.12.080 updating the code sections related to temporary signs, signs in Town Center and signs outside Town Center, respectively.

BACKGROUND

At the May 19 meeting, Daniel Kenny provided an overview of the *Reed v. Gilbert* case and the areas of the code where he is recommending amendments. The Commission provided initial feedback to staff on the proposed code amendment. Staff have integrated this initial guidance into the attached draft code amendment. The draft includes proposed amendments intended to do the following:

- Comprehensive changes
 - Exempt signs required by local state or federal law or regulations from code requirements – this could include temporary signs like land use notifications and required safety signs such as “caution” signs on utility poles or equipment.
 - Replace the term “code official” with “Director”.
- Temporary signs
 - Shift to define temporary signs based on type and materials rather than duration of placement.
 - Add clarity to the term “non-commercial messages”.
 - Remove exception to prohibition on banners and pennants for “community-wide civic activities” as it is content-based.
 - Reorganize and clarify provisions for real estate signs.
 - Remove provisions related to political signs as they are content-based (political signs will be covered by the general temporary sign provisions).
 - Remove requirement for signs to be “professionally produced by a person skilled in the art of graphic design”.
- Town Center Signs
 - Add allowance for signs along alleyways and through-block connections
 - Add provisions for lighted signs to respond to the tenants of the Dark Skies Initiative

- Signs Outside Town Center
 - Clarify how sign size should be measured for all sign types.
 - Add an allowance for externally lighted signs in all zones (code is currently silent on whether lighting is allowed). Add provisions that respond to the Dark Skies Initiative.
 - Add an allowance for signs at neighborhood entrances and driveway entrances for identification and navigation purposes.
 - Add an allowance for the replacement of existing non-conforming signs.

In addition, please review the Comment bubbles included along the right margin of the draft code amendment, as they include a few additional policy questions for the commission, mostly related to areas of the code that could benefit from additional clarity of the intent or application of a code provision.

At the June 16 meeting, the Planning Commission will hold a public hearing on the draft code amendment and begin deliberations on the amendment. The Commission may choose to keep the public hearing open to receive additional public input at the July meeting. After the public hearing, staff will provide an overview of the draft code amendment and review policy questions for further discussion and input from the Commission. Staff will also address any questions from the Commission. The Commission should begin discussion of the draft code amendment and provide feedback to staff, including any revisions the Commission would like to make.

NEXT STEPS

The Commission will hold a public hearing and review the draft code amendment at the June 16 meeting. The Commission may choose to continue the public hearing to the July 21 meeting if additional time for public input is desired. Staff will incorporate the Commission's feedback at the June 16 meeting into an updated draft code amendment. Final deliberation on this amendment and a recommendation are planned for the July 21 meeting. It is anticipated that the Planning Commission's recommendation will be transmitted to City Council for review in the September-October timeframe.

ATTACHMENTS

1. ZTR19-003 Draft Sign Code Amendment

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PLANNING COMMISSION

To: Planning Commission

From: Alison Van Gorp, CPD Deputy Director

Date: July 28, 2021

RE: ZTR19-003 Sign Code Update

SUMMARY

The proposed code amendment amends MICC 19.06.020, 19.11.140 and 19.12.080 updating the code sections related to temporary signs, signs in Town Center and signs outside Town Center, respectively.

BACKGROUND

At the June 16 meeting, the Planning Commission held a public hearing and began discussion of the draft code amendment. The Commission continued the public hearing to receive additional public input at the July meeting. The Commission requested several additional revisions to the draft. Staff have prepared a revised draft code amendment for the commission's review and consideration at the July 28 meeting. The additional revisions include the following:

- General Provisions
 - Exemption for government signs for the purpose of promoting health, safety and welfare
 - Added a definition of "Public Art" and revised the definition of "Sign" to clarify that public art, including murals, is not regulated as signs.
- Temporary Signs
 - Defines temporary signs to include: A-frame signs, banners, pennants and signs staked into the ground, including wire frame or H-frame signs. Any of these sign types are allowed on private property in all zones. Subsection (A)(13) includes the provisions for placing signs in the Right Of Way.
 - Prohibits signs in parks, except as permitted in the parks code (MICC 9.30.040)
 - Additional provisions added related to placement of signs – clarifying signs cannot obstruct sidewalks, sight lines, bicycle facilities, bus stops, etc. Setback distances from driveways, roads, sidewalks, etc are specified. It also prohibits signs in medians, roundabouts and traffic circles.
 - Specifies that the City may remove signs that are in violation of these requirements
 - Allows temporary non-commercial banners and pennants in the ROW in Town Center subject to a permit. Note: the banners currently hanging on light poles in the Town Center are an art installation and are not regulated as a sign/banner.

- Added the Commercial Office (C-O) zone the list of zones that allow temporary commercial signs (including TC, B and PBZ). The provisions and allowed uses in the C-O zone are very similar to the B zone. I don't know why these signs were allowed in one and not the other.
- Town Center Signs
 - Removed “proportionate” requirement as it is too subjective. The Objectives section already includes the intent that signs should be proportionate.
 - Added allowance for a secondary wall sign on the primary frontage of a business to identify a secondary or affiliated use. This is intended to provide for signs for things like ATMs and coffee stands inside grocery stores.
 - Clarify that the 25% limit on window signs applies to each tenant/business window area that faces the street or through-block connection. Allowance for lighting of window signs during business hours.
 - Further revisions of the lighted sign provisions. Staff chose not to include a quantitative limit on brightness and instead focused on objective standards around the design of the sign and lighting to limit glare and reflection of light.
- Signs Outside Town Center
 - Similar update to sign lighting standards as in the Town Center.
 - Clarification on Portable signs and Vehicles provisions. Note: since government signs are exempt from these regulations, things like readerboard signs that are used for emergencies or road construction would not be prohibited.

The draft code amendment includes staff comment bubbles related to a few of the revisions. The following policy questions/considerations are included in comment bubbles and highlighted in yellow in the document:

- Confirm the addition of Commercial-Office to the zones where temporary commercial signs are allowed.
- Confirm removal of “proportionate” requirement for town center freestanding and wall signs
- Confirm addition of secondary sign allowance for wall signs. Is 5 square feet an appropriate size limit?
- Consider removing the Design Commission Discretion provision, or add specific criteria for Design Commission approval
- Does the revised Lighted Sign standard provide an appropriate balance of objective standards without being overly complicated or technical?

The July 28 meeting will begin with a continuation of the public hearing. After the public hearing, staff will provide an overview of the revisions to the draft code amendment and address any questions from the Commission. The Commission should then begin deliberations, including proposing any additional revisions to the code amendment.

NEXT STEPS

At the July 28 meeting, the Commission will continue the public hearing. The hearing will be followed by deliberations and a recommendation. It is anticipated that the Planning Commission's recommendation will be transmitted to City Council for review in September and October.

ATTACHMENTS

1. ZTR19-003 Draft Sign Code Amendment