



CITY OF TEMPE
REQUEST FOR COUNCIL ACTION

REVISED

Council Meeting Date: 12/08/2016
Agenda Item: 6C2

ACTION: Hold the second and final public hearing to adopt an ordinance for a Zoning and Development Code text amendment for SIGN CODE REFORM, consisting of changes within the modifying permitting processes and enforcement for sign related activities. The applicant is the City of Tempe. (Ordinance No. O2016.64)

FISCAL IMPACT: There is no fiscal impact on City funds.

RECOMMENDATION: Adopt Ordinance O2016.64
Development Review Commission – Approve, with modifications (5-1 vote) Commissioner Brown dissenting.

BACKGROUND INFORMATION: SIGN CODE REFORM (PL160329) will provide a clear and consistent non-content based form of Code (not utilizing a sign's content in its identification) when applications are submitted for new or modified signs as well as the enforcement of those signs. This amendment satisfies objectives within General Plan 2040's community design element plan for use of signage as well as other elements for interaction and way finding purposes. This amendment also contains recommendations from the Commercial Signs Working Group and the Non-Commercial/Political Sign Working Group. At the Development Review Commission's October 11, 2016 hearing, the Commission recommended limiting sign type "N" to implement generally-applicable time, place, and manner regulations and abide by state law, which prohibits a city from removing, altering, defacing or covering any political sign in a city's right of way (so long as certain statutory requirements are met) during the period commencing 60 days prior to an election, in lieu of the proposed 100 days before an election (6-0 vote). The request includes the following:

1. Code Text Amendment for within the Zoning and Development Code for Sections 4-901, 4-902, 4-903, 4-904, 4-905, 4-906, Table 4-903A, 6-306 Subsection (B), and 7-120 pertaining to definitions for signs.

ATTACHMENTS: Ordinance

STAFF CONTACT(S): Ryan Levesque, Deputy Community Development Director, (480) 858-2393

Department Director: Jeff Tamulevich, Interim Community Development Director
Legal review by: Sonia Blain, Deputy City Attorney
Prepared by: Ryan Levesque, Deputy Community Development Director

COMMENTS:

- § On July 20, 2015 the Supreme Court of the United States issued an opinion in *Reed v. Gilbert* finding that “[a] law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech.” This means, among other things, that a municipality’s sign code cannot regulate signs based on their content.
- § To bring Tempe’s sign code into compliance, Part 4, Chapter 9 of the Tempe Zoning and Development Code had to be rewritten with content neutral parameters of sign enforcement.
- § Examples of content neutral parameters:
 - Size
 - Location
 - Lighting
 - Zoning
 - Total number of signs
 - Time restrictions
 - Permits/Plan Reviews
 - Property Use
 - Construction/Mounting
 - Building Materials
 - Public Safety

Prior to the issuance of the Reed opinion, the City Council’s Committee of the Whole (COW) provided staff with proposed revisions to the sign code from two working groups, “Commercial Sign Updates” and “Non-Commercial Speech.” Staff conducted a public hearing process as set forth in greater detail in the Public Input and History & Facts sections, below.

Many of the proposed revisions to the sign code are briefly summarized as follows:

- 1) Code Text Amendment for the Zoning and Development Code for Sections 4-901, 4-902, 4-903 and Table 4-903A, 4-904, 4-905, 4-906, 6-306, and 7-120 pertaining to definitions for signs.
- 2) The complete repeal of Zoning and Development Code Sections 4-903, 4-905 and 4-906.
- 3) Identify non-public, safety based signs by letter and incorporate into a table format.
- 4) Change all methods of identification to non-content based forms of regulation.
- 5) Simplify sign package modification, which formerly required a Development Review Commission process, to an approval by staff with owner authorization.
- 6) Increase size of multi-tenant signs in centers with five or more tenants, from 24 square feet to 40 square feet in area.
- 7) Allow political signs to be posted for a longer period of time, 100 days prior an election and no more than 15 days after an election. Portable signs within a single-family district not to exceed a total of 16 square feet, and non-arterial street individual sign shall not exceed 4 square feet in area.

NOTE, Arizona Revised Statutes states the following:

A.R.S. 16-1019. Political signs; printed materials; tampering; classification (subsection C. and D. only)

C. Notwithstanding any other statute, ordinance or regulation, a city, town or county of this state shall not remove, alter, deface or cover any political sign if the following conditions are met:

1. The sign is placed in a public right-of-way that is owned or controlled by that jurisdiction.

2. The sign supports or opposes a candidate for public office or it supports or opposes a ballot measure.

3. The sign is not placed in a location that is hazardous to public safety, obstructs clear vision in the area or interferes with the requirements of the Americans with disabilities act (42 United States Code sections 12101 through 12213 and 47 United States Code sections 225 and 611).

4. The sign has a maximum area of sixteen square feet, if the sign is located in an area zoned for residential use, or a maximum area of thirty-two square feet if the sign is located in any other area.

5. The sign contains the name and telephone number or website address of the candidate or campaign committee contact person.

H. Subsection C applies only during the period commencing sixty days before a primary election and ending fifteen days after the general election, except that for a sign for a candidate in a primary election who does not advance to the general election, the period ends fifteen days after the primary election.

DEVELOPMENT REVIEW COMMISSION

At the Development Review Commission's October 11, 2016 hearing, the Commission recommended limiting sign type "N" (formerly political signs), and to allow posting no earlier than 60 days before an election, in lieu of the proposed 100 days before an election (6-0 vote). The commission wanted to maintain consistency with the established political sign ordinances of surrounding municipalities and follow current state law. Another motion was considered to reduce the size of all 40 square feet sign type "D" (formerly freestanding signs) to 24 square feet in area. This motion failed. As a result the Commission recommended approval of the Tempe sign code reform, with the proposed time limit modification (5-1 vote).

PUBLIC INPUT

The draft concepts of the Code Text Amendment within the Zoning and Development Code for Sections 4-901, 4-902, 4-903, 4-904, 4-905, 4-906 and Table 4-903A were shared with the Development Review Commission at the September 27, 2016 study session, interested stakeholders on October 3, 2016, the Neighborhood Advisory Commission on October 5, 2016 and the Development Review Commission again on October 11, 2016.

Conclusion

Staff recommends approval of the requested Zoning and Development Code text amendment changes. This request satisfies General Plan 2040's community design element plan for use of signage and other elements for interaction and way finding purposes. Moreover, these changes will provide a constitutional form of sign enforcement.

CONDITIONS OF APPROVAL:

EACH NUMBERED ITEM IS A CONDITION OF APPROVAL. THE DECISION-MAKING BODY MAY MODIFY, DELETE OR ADD TO THESE CONDITIONS.

1. Table 4-903B, Sign Type "N" shall be modified to match State Law, allowing signs in the right-of-way from 100 to now "60" days prior to an election and fifteen (15) days after.

HISTORY & FACTS:

March, 2014 The City Council gave direction at a Committee of the Whole (COW), to institute a pilot program to allow Neighborhood Associations and Homeowner's Associations (NA/HOA) registered with the city for the use of yard signs as a mechanism to communicate with neighbors about upcoming events or issues.

February 5, 2015 The permanency of the NA/HOA yard sign pilot program was discussed at the COW, and

direction was given to look at changes to the sign code allowing for non-commercial portable signs in residential areas. During this meeting Councilmember Schapira joined the working group and included the examination of political signs.

- May 14, 2015 The NA/HOA non-commercial speech working group returned to the COW. Direction was given to move forward with most of the working group's recommendations, including amending the Zoning and Development Code's language governing both non-commercial and political signs (which included adding language allowing political signs in the right of way during the period commencing 100 days before an election and fifteen days after) and continuing the NA/HOAs yard sign program on a first-come, first-serve basis.
- July 20, 2015 The U.S. Supreme Court released its opinion in *Reed v. Town of Gilbert* and held that an ordinance providing for differing regulations on signs based on the sign's content, is unconstitutional as it would not survive strict scrutiny analysis under the First Amendment. The opinion required a rewrite of Tempe's sign code. Thus, recommendations from the May 14th COW were delayed until they could be examined under a new proposed code.
- August 6, 2015 At the Council Committee of the Whole, City Council directed staff to conduct a comprehensive review of the sign regulations and process, and return with a rewritten code that complied with federal law.
- September 14, 2015 The Commercial Sign Update working group met to discuss next steps and direction on the topic of Sign Reform and developed a list of action items for a second working group discussion.
- October 22, 2015 A final meeting was conducted by the Commercial Sign Update working group.
- March 2, 2016 A business stakeholders meeting took place at the Tempe Public Library; primary concerns included color restrictions; window coverage; simplified application/process; need for an FAQ page.
- May 5, 2016 Councilmember Robin Arredondo-Savage and Vice Mayor Corey Woods presented the Commercial Signs Update working group's recommendations.
- September 27, 2016 Development Review Commission study session overview on sign code reform.
- October 3, 2016 Stakeholder meetings held with the Tempe Chamber of Commerce, the Arizona Sign Association, and the Downtown Tempe Association.
- October 5, 2016 Meeting with the Neighborhood Advisory Commission.
- October 11, 2016 Development Review Commission recommended approval of the revised sign code subject to modified language. The commission recommended modifying the time period for posting political signs from 100 to 60 days prior to an election to be consistent with State law.
- November 3, 2016 City Council introduction and first public hearing for this request.
- December 8, 2016 City Council second and final public hearing for this request.
- January 7, 2017 Potential effective date of ordinance.

ZONING AND DEVELOPMENT CODE REFERENCE:

Section 6-304, Zoning Map Amendments (including Overlay Districts) and Code Text Amendments