



## City Council Staff Report

Date: April 20, 2016

LEGISLATION

Subject: AN INTERIM URGENCY ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, IMPOSING INTERIM REGULATIONS FOR THE INSTALLATION AND MAINTENANCE OF TEMPORARY SIGNS IN THE CITY OF PALM SPRINGS, SUBJECT TO CERTAIN EXCEPTIONS, FOR A PERIOD OF NINE MONTHS. (4/5THS Vote Required)

From: Douglas Holland, City Attorney

---

### SUMMARY

This is a proposal to adopt an urgency ordinance that would establish interim regulate temporary signs in the City in a manner consistent with a recent Supreme Court decision involving an Arizona municipality. Staff recommends the City Council refer the City's sign ordinance to appropriate stakeholders for comment and the Planning Commission to review and make recommendations to the Council regarding permanent amendments as may be necessary or desirable to ensure continued compliance with the general guidelines provided in the Court's decision.

### RECOMMENDATION:

Waive reading of the full text and adopt Urgency Ordinance No. \_\_\_\_\_, "AN INTERIM URGENCY ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, IMPOSING INTERIM REGULATIONS FOR THE INSTALLATION AND MAINTENANCE OF TEMPORARY SIGNS IN THE CITY OF PALM SPRINGS, SUBJECT TO CERTAIN EXCEPTIONS, FOR A PERIOD OF NINE MONTHS. (4/5THS Vote Required)"

### STAFF ANALYSIS:

Last year, the United States Supreme Court issued a decision against the Town of Gilbert, Arizona and its local sign ordinance. In this case, a church congregation did not have a fixed location; it conducted its Sunday services at different locations in the community every week. The pastor of this congregation placed temporary signs directing the congregation and anyone else interested to the sites of the services. The pastor was cited for failing to include the event date on the signs and for failing to remove the signs within the short period of time allowed for removal of such signs under the local ordinance. The opinion of the Court, written by Justice Thomas, struck down

the Town's sign ordinance, finding that the Town's regulatory program was "content based" and as such was subject to "strict scrutiny." (We note all nine justices concurred with the result; there were three separate concurring opinions.)

A "content based" regulation is one that "applies to particular speech because of the topic discussed or the idea or message expressed." The restrictions that applied to any given sign depended solely on the communicative content of the sign. Signs pertaining to elections were subject to different timing conditions than signs providing directions to a temporary event. Signs pertaining to other topics or ideas were required to comply with their own unique conditions. In an attempt to illuminate the issue, Justice Thomas explained:

"If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government. More to the point, the Church's signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas."

As mentioned above, "content based" regulations are subject to "strict scrutiny," a judicial standard that means a reviewing court can only uphold the regulation if the government demonstrates that is the least restrictive means of achieving a compelling government interest. This is a tough standard. One commentator reviewing the Gilbert decision described this standard: "Strict scrutiny, like a Civil War wound, is generally fatal."

The Town offered two governmental interests in support of the various distinctions in its sign ordinance: preservation of the Town's aesthetic appeal and traffic safety. The Court summarily dismissed both arguments, holding that even if aesthetics and traffic were assumed to be compelling government interests, the distinctions established in the Town's sign ordinance were "hopelessly under inclusive." Temporary directional signs are "no greater an eyesore" than ideological or political ones, yet the ordinance allowed for the unlimited proliferation of larger ideological signs while strictly limiting the number, size, and duration of smaller directional ones. In terms of traffic safety as a governmental interest, the Town offered "no reason to believe that directional signs pose a greater threat to safety than do ideological or political signs. If anything, a sharply worded ideological sign seems more likely to distract a driver than a sign directing the public to a nearby church meeting.

The Court found the differential treatment among signs to be arbitrary and the Town's ordinance failed the strict scrutiny analysis. If the Town was truly concerned about aesthetics and traffic safety, the Court noted there are several ways to regulate signs that have nothing to do with the sign's message, including regulations regarding size, materials, lighting, number of signs allowed in a given area, distinctions between signs

on private versus public property, distinctions between fixed message signs and electronic signs with changing messages, moving parts, and portability.

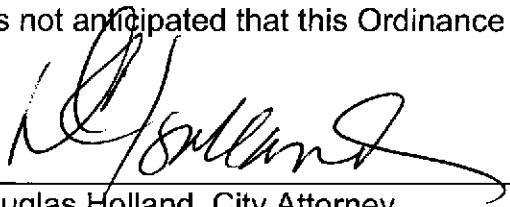
Despite the bleak picture painted by Justice Thomas in the official opinion of the Court, Justice Alito, joined by Justices Kennedy and Sotomayer, suggested that cities are not “powerless to enact reasonable sign regulations” and offered some rules these three justices opined “would not be content based:”

- “1. Rules regulating the size of signs. These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.
2. Rules regulating the locations in which signs may be placed. These rules may distinguish between free-standing signs and those attached to buildings.
3. Rules distinguishing between lighted and unlighted signs.
4. Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
5. Rules that distinguish between the placement of signs on private and public property.
6. Rules distinguishing between the placement of signs on commercial and residential property.
7. Rules distinguishing between on-premises and off-premises signs.
8. Rules restricting the total number of signs allowed per mile of roadway.
9. Rules imposing time restrictions on signs advertising a one-time event. Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed.[\*]
10. In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. . . . They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.
11. [T]oday's decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate esthetic objectives.”

We recommend the Council commence the process of reviewing its sign ordinance in the context of the guidelines provided by Justice Alito. We recommend the Council refer the general issues to affected stakeholders in the community as well as the Planning Commission to recommend appropriate amendments to the City's Sign Ordinance and various sign regulations. In the meantime, however, there are immediate issues regarding the City's temporary sign regulations and we recommend the Council address and adopt the proposed interim urgency ordinance to ensure a consistent approach to all temporary signs during the election cycles of 2016, including the primary in June and national election in November.

**FISCAL IMPACT:**

It is not anticipated that this Ordinance will have a fiscal impact on the City.

A handwritten signature in black ink, appearing to read "Douglas Holland", written over a horizontal line.

Douglas Holland, City Attorney

ORDINANCE NO \_\_\_\_.

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, IMPOSING INTERIM REGULATIONS FOR THE INSTALLATION AND MAINTENANCE OF TEMPORARY SIGNS IN THE CITY OF PALM SPRINGS, SUBJECT TO CERTAIN EXCEPTIONS, FOR A PERIOD OF NINE MONTHS. (4/5<sup>THS</sup> Vote Required)**

***City Attorney Summary***

*The City currently enforces a myriad of regulations relating to the installation and maintenance of various temporary signs both on private property and the public right-of-way. These regulations are based on significant policy concerns and past practices. A recent United States Supreme Court decision may call into question aspects of the City's temporary sign regulatory program. This interim urgency ordinance will provide an interim set of constitutional regulations that will adequately address problems associated with temporary signs during the 2016 primary and national election cycles while providing the Planning Commission and the City Council adequate time to review, consider, and adopt appropriate and necessary time, place, and manner restrictions for temporary signs in the City.*

**THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, FINDS:**

- A.** The City is responsible for providing appropriate and necessary time, place, and manner restrictions on temporary signs in the City.
- B.** The United States Supreme Court in the case of *Reed v. Town of Gilbert* (2015) 135 S.Ct. 2218 struck down several provisions of the Town of Gilbert's sign regulations that imposed different time, place, and manner restrictions on temporary signs that depended entirely on the communicative content of each sign. It is apparent amendments to the City of Palm Springs sign ordinance may be desirable to avoid any potential challenge in light of the *Reed* decision.
- C.** Several community interests are invested in significant aspects of the City's sign ordinance, including realtors, downtown merchants, and local businesses. In addition, any amendment to the City's sign ordinance also requires involvement of the City's Planning Commission. In order to ensure a timely and thorough review of the City's sign ordinance without enduring significant risk of legal challenge to the existing Code, the City Council has determined that the adoption of an interim urgency ordinance that imposes direct, immediate, and short-term temporary sign regulations are necessary and appropriate.

**D.** This interim urgency ordinance will provide an interim set of constitutional regulations that addresses problems associated with temporary signs during the 2016 primary and national election cycles while providing the Planning Commission and the City Council adequate time to review, consider, and adopt appropriate and necessary time, place, and manner restrictions for temporary signs in the City.

**THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA,  
ORDAINS:**

**Section 1.** The provisions of Palm Springs Sections 93.20.07 (Permitted Signs – Real Estate), 93.20.08 (Permitted Signs – Temporary), 93.20.09.B.5 (Portable Open Signs), and 93.20.10.C.4 (Signs on Vehicles) are hereby suspended during the period of time this Ordinance remains in effect.

**Section 2.** The following definitions shall apply to this Ordinance:

“Special Event” is any single event or series of events that occur on an infrequent basis and take place at a specific location in which the public is encouraged or invited to watch, listen, participate, or purchase goods and/or services, including, but not limited to, the following:

- a. Commercial sales, including pre and post holiday sales;
- b. Political picnics or gatherings;
- c. Elections;
- d. Arts and crafts shows, trade shows, antique shows, and other similar events;
- e. Carnivals, fairs, circuses, and similar activities;
- f. Outdoor shows, concerts, and exhibitions;
- g. Annual events

“Temporary sign” is any sign, handbill, or poster which is placed to advertise or announce a special event, or which pertains to a particular event or occurrence, or which is not permanently anchored or secured to a building and not having supports or braces permanently secured in the ground, including but not limited to “portable open signs”, “political signs,” “election signs,” and “real estate signs.” Banners, pennants, pin wheels, ribbons, streamers, strings of light bulbs, inflatables, or similar devices intended for a limited period of display shall also be considered a portable sign. The term “temporary signs” do not include any sign posted, erected, or installed by the City, the County of Riverside, the State of California, or any other government agency or public utility in the exercise of its responsibilities or in furtherance of governmental speech.

**Section 3.** Signs on Vehicles. No person shall drive, operate, move in or along,

or park on any street or on public or private property, any truck, trailer, carriage, wagon, sled, or other vehicle on which is attached or maintained any sign except as otherwise permitted pursuant to California Vehicle Code Section 21100(p)(2), as may be amended from time to time.

#### **Section 4. Temporary Signs.**

A. Up to two free-standing temporary signs of up to six (6) square feet or one free-standing temporary sign of up to twelve (12) square and/or one window sign of no more than four (4) square feet may be maintained on one single family property or on commercial, industrial, or multifamily property. A temporary sign associated with a special event shall not be installed more than thirty-one (31) days before the event and shall be removed no later than five (5) days after the event.

B. Temporary signs in commercial and industrial zones shall be governed by the same rules and regulations set forth in Section 93.20.05 that govern commercial and industrial signs. The total signage at any particular property, including temporary signs and other signs shall not exceed the restrictions set forth in Section 93.20.05.

C. Temporary signs in multi-family residential zones shall be governed by the same rules and regulations set forth in Section 93.20.06 that govern hotel, resort hotel, and apartment signs. The total amount of signage at any particular property, including temporary signs and other signs shall not exceed the restrictions set forth in Section 93.20.06.

D. Temporary signs shall not be installed or maintained on any public right of way or on any public property, including without limitation trees, public utility poles, and street signs.

E. Nothing herein shall be interpreted as prohibiting any person from carrying a temporary sign within a public right-of-way as allowed in Section 11.28.050 of this Code.

#### **Section 5. Message Substitution.**

A. Subject to the consent of the land owner and the sign owner, a constitutionally protected noncommercial message of any type may be substituted, in whole or in part, in place of any commercial message or any other noncommercial message on a sign if the sign structure or mounting device is legal without consideration of message content. Similarly, an onsite commercial message may be substituted for another commercial message on an on-site sign if the substitution does not also involve a change of the physical structure or mounting device for the sign. Such message substitutions may be made without any additional approval or permitting.

B. The purposes of this section are to prevent any inadvertent favoring of commercial speech over noncommercial speech or of any particular noncommercial message over any other noncommercial message and to allow a change of commercial messages on an on-site sign without a new permit.

C. This section does not create a right to increase the total amount of signage on a parcel, nor does it affect the requirement that a sign structure or mounting device be properly permitted. This section does not allow the substitution of an off-site commercial message in place of an on-site commercial message or the conversion of a sign to general advertising for hire.

D. In addition to message substitution, whenever a parcel has a right to display area that is unused, that area may be used for constitutionally protected non-commercial messages on temporary signs, without permits or approvals; it may also be used for display of noncommercial messages on permanent structures, if the structure is properly permitted.

E. This Section prevails over any more specific provision to the contrary within the City's sign ordinance.

**Section 6.** CEQA. The City Council finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance will have a significant effect on the environment. This Ordinance is therefore exempt from environmental review requirements of the California Environmental Quality Act pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

**Section 7.** Findings. The adoption of this Interim Urgency Ordinance is necessary for the immediate protection of the public peace, health, and safety by ensuring the timely and orderly consideration, adoption, and implementation of temporary sign regulations compliant with the constitutional guidelines of the Supreme Court and reasonably preserves an orderly and balanced temporary sign program during the election cycles of 2016 where the proliferation of temporary signs would adversely affect public property and rights of way and endanger the traveling public. In accordance with Section 312 of the Palm Springs City Charter, the City Council of the City of Palm Springs finds and determines that the adoption of this Interim Urgency Ordinance is necessary to ensure the immediate protection of the public peace, health, and safety.

**Section 8.** Effective Date. The City Council hereby declares, on the basis of the findings set forth in the Recitals and in Section 3 above, that an urgency ordinance is warranted and that this Ordinance is necessary to preserve the public peace, health and safety. Accordingly, this Ordinance is adopted as an urgency ordinance and shall take effect and be in force immediately upon its adoption. This Ordinance shall expire on January 20, 2017 unless otherwise extended by action of the City Council prior to such date.

PASSED, APPROVED AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL THIS 16th DAY OF SEPTEMBER, 2015.