



CITY COUNCIL STAFF REPORT

DATE: March 1, 2017 NEW BUSINESS

SUBJECT: COUNCIL SUBCOMMITTEE REPORT REGARDING TEMPORARY, PORTABLE SIGNS ON PUBLIC SIDEWALKS AND THE PUBLIC RIGHT OF WAY; REQUEST FOR COUNCIL DIRECTION

FROM: David H. Ready, City Manager

BY: Douglas Holland, City Attorney

SUMMARY

The City Council's subcommittee reviewing proposed changes to the City sign regulations will report to the City Council its progress to date regarding the proposed sign ordinance and will request Council direction regarding approaches for regulating temporary or portable signs on public streets and on the public right of way.

RECOMMENDATION:

Receive status report from Council subcommittee regarding status of sign ordinance revisions and provide direction to the subcommittee regarding temporary, portable signs on public sidewalks and the public right of way.

STAFF ANALYSIS:

The United States Supreme Court several months ago 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 site 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 it 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."

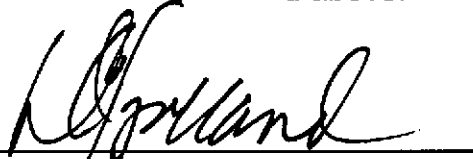
The immediate concern of the subcommittee is the issue regarding A-frame signs the City Council allowed in the Downtown for the last few years. From an administrative and enforcement standpoint, the easiest and most defensible position is to simply ban all privately owned signs from public sidewalks and all public rights of way. Downtown merchants, however, are concerned that banning such signs will adversely affect their businesses.

There are alternative approaches the Council may wish to consider:

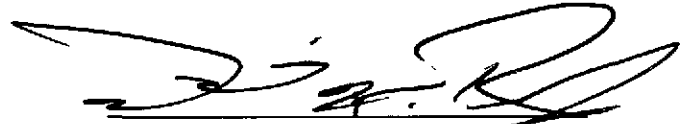
- Ban all temporary signs and liberalize other signage options; e.g., allow additional signage on private property including blade signs and/or increased window signage.
- Allow one temporary sign for each business with street frontage on a public sidewalk adjacent to the business with each sign placed and maintained on a specific portion of the sidewalk that will not adversely affect public access or impair handicap access.

- Consider whether the regulations should be limited to specific areas of the City (e.g., Downtown, Sunny Dunes) or within specific zone districts (e.g., commercial retail).
- Consider potential expansion of the use of sign districts.

The subcommittee will likely have additional ideas and approaches for Council's consideration; however, the ultimate solution should be structured so that it is consistent with the recent Supreme Court decision and the general direction outlined by Justice Alito and summarized above.



Douglas Holland
City Attorney



David H. Ready, Esq., Ph.D.
City Manager