

Sign Ordinance Amendment
July 12, 2017

Introduction

The proposed amendment to the sign ordinance is in response to the decision made by the United States Supreme Court in *Reed v. Town of Gilbert*. The scope of this amendment is very limited and relates largely to addressing content-based sign regulations, as discussed in more detail below. As part of the Zoning Ordinance Modernization Project (zMOD), there will be a second sign ordinance amendment in 2018 that will deal with the policy oriented questions related to types, amounts, and heights of various signs and the zoning districts in which they can be located.

What is meant by content-based regulation?

Many jurisdictions throughout the country have local ordinances that regulate and/or classify certain sign types based, in whole or in part, on the message which they communicate — **meaning that a determination as to whether a sign complies with some provision of the Ordinance is based on the content or message contained on the sign.** For example, an Ordinance provision allowing a temporary banner that “announces the ‘grand opening’ or ‘going out of business’ of a business” would be content based, since the regulatory condition is based on a specific message that is to be found on the sign itself; as such, if the banner does not read “grand opening” or “going out of business,” it would be in violation of the Ordinance.

Gilbert Decision

On June 18, 2015, the United States Supreme Court decided the case of *Reed v. Town of Gilbert*, which drew a very distinct line concerning the use of content-based sign regulations. The facts concerned an ordinance in Gilbert, Arizona that had differing restrictions on political, ideological and directional signs. The regulations were challenged by Reed, a pastor of a local place of worship, on the basis that the Gilbert sign regulations violated both the First and Fourteenth Amendments of the United States Constitution. The Supreme Court decided that the Gilbert ordinance was “content-based” and could not survive the strict scrutiny required by the First Amendment to protect freedom of speech. As such, the Court found that the Gilbert regulations applied to particular speech because of the topics discussed and/or expressed on the sign itself, and, as such, regulated some kinds of speech differently from others:

“The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. 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.”

Justice Thomas — for the majority

The Effect of Gilbert

When a court applies the “strict scrutiny” test to a sign regulation, it must be narrowly tailored to address a compelling government interest with some rational basis. If it fails this test, it is presumed to be unconstitutional and will be struck down. Content-based sign restrictions (at least on non-commercial speech) are subject to this stringent test.

How are we doing?

Fairfax County’s sign ordinance needs to be amended to respond to the Gilbert decision, as some existing ordinance provision regulate certain sign types based, in whole or in part, on the message of the sign.

Example of provision that is not content-neutral (Par. 13.B. of Section 12-203):

*One (1) freestanding building identification sign may be permitted for each detached building which houses a principal use within an office park. **Such sign(s) shall be limited to identifying the name of the building and/or the individual enterprises located therein, the address, trademark or identifying symbol or any combination thereof.** No such sign shall exceed twenty (20) square feet in area or eight (8) feet in height or be located closer than ten (10) feet to any lot line.*

Proposed content-neutral text:

One (1) freestanding sign, up to twenty (20) square feet in area and eight (8) feet in height, may be permitted for each detached building which houses a principal use within an office park. Such sign cannot be located closer than ten (10) feet to any lot line.

The Amendment — what it is and what it is not.

The amendment focuses on re-writing the existing sign regulations to be content-neutral. In addition, staff is taking the opportunity to reorganize and reformat the sign regulations to be more user-friendly, and will propose certain, specific minor policy changes. As stated above, the in-depth policy-oriented sign amendment dealing with sign types, size, and related aesthetic issues will be initiated in 2018.

Where are we now?

A draft of this proposed amendment will be completed in July, at which time staff will undertake outreach and community engagement on the proposed amendment.