Sign Ordinance Amendment Overview

Planning Commission Land Use Process Review Committee 2018

Introduction

The focus of the current 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 specific and relates largely to content based regulations as discussed in more detail below. As part of the Zoning Ordinance Modernization Project, there will be a second sign ordinance amendment in 2018 that will deal with most of the policy oriented questions such as the types, amounts and heights of various sign types and the districts in which they can be located.

What do we mean 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 to determine whether a sign complies with some provision, the administrator must make some finding *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 biased since the regulatory condition is based on a specific message that is to be found on the sign itself – so if the banner does not read ‘grand opening’ or ‘going out of business,’ then it would be in violation.

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 1st and 14th 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 – thereby regulating 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.”*

The Effect of Gilbert

When a court applies the “strict scrutiny” test to a sign regulation, it must be narrowly tailored and to a compelling government interest with some rational basis. If it fails this test, it is presumed to be unconstitutional and will be struck down – meaning any local ordinance that contains restrictions that are content-based will probably be invalidated.

How are we doing?

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

Example:

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.”*

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

The amendment focuses on the re-write of existing regulations in a content neutral manner but staff is taking the opportunity to reorganize the ordinance in a more user-friendly format. However, staff cannot adequately rewrite some provisions in a content neutral manner without making more policy oriented changes, specifically temporary signs and off-site signs, and there are other areas, such as digital signs, that have not been previously regulated but staff recommends that it would be appropriate to do so now. Therefore, there are policy-oriented changes that will be proposed as part of this amendment but these have been limited to only those changes that are largely needed to further the content neutrality approach. As such, staff notes that there will be a future in- depth policy oriented sign amendment dealing with sign types, size and related aesthetic issues, which is scheduled for 2019 as part of the zMod project.