



Date of Council Meeting: November 23, 2015

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Town’s Sign Ordinance (Article 15 of the Zoning Ordinance).

Staff Contact: Barbara Notar, Town Attorney
Chris Murphy, Zoning Administrator

Council Action Requested: Approve a Resolution to initiate amendments to the “Sign Ordinance” provisions of the Zoning Ordinance.

Staff Recommendation: Staff recommends that the Council initiate amendments to the Town’s Sign Ordinance as a result of the U.S. Supreme Court decision of Reed v. Town of Gilbert, Arizona, 135 S. Ct. 2218 (June 18, 2015), which may create constitutional challenges to certain provisions of the ordinance if not amended.

Commission Recommendation: None at this time. However, the Planning Commission will review the sign ordinance amendments and make a recommendation to the Town Council.

Fiscal Impact: None.

Work Plan Impact: The impact will be minimal because amendments to the sign ordinance will not be substantive, and will entail condensing the sign ordinance to eliminate content-based sign descriptions and posting requirements.

Executive Summary: Recently, the United States Supreme Court in Reed v. Town of Gilbert, Arizona, 135 S. Ct. 2218 (2015), struck down the Town of Gilbert’s sign ordinance as being unconstitutional. The Court found that the Town of Gilbert’s sign ordinance, which assigned different sizes and posting requirements based upon the type of noncommercial speech displayed, was an unconstitutional violation of the Free Speech Clause of the First Amendment. A review and amendment of the Town of Leesburg’s sign ordinance is necessary to ensure that it comports with the holding of Reed.

Background: The Town of Leesburg’s sign ordinance represents a traditional sign ordinance that lists and defines various types of signs based upon the content of the sign. For instance, the Town’s sign ordinance regulates “real estate signs” and “political signs”. After the U.S Supreme Court decision in Reed, signs regulated by the content of the speech are probably unconstitutional. Most, if not all jurisdictions throughout the Commonwealth, are in the process of reviewing and amending their sign ordinances to comport with the Reed ruling.

Initiation Resolution – Amendments to Sign Ordinance (Article 15 of the Zoning Ordinance)

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In the Reed decision, the Court ruled that where a local ordinance defines categories of temporary, political, and ideological signs solely on the basis of their message and then subjects each category to different restrictions, the ordinance is “content based” which requires a “strict scrutiny” review. “Strict scrutiny” review requires that an ordinance must further a “compelling government interest,” be “narrowly tailored” to achieve this compelling government interest, and must leave open “ample alternative channels of communication”.

However, the Court also stated that it will not prevent localities from enacting ordinances that are content neutral to “resolve problems with safety and aesthetics, including regulating the size, building materials, lighting, moving parts and portability”. The decision further states that localities “may be able to forbid postings on public property, so long as it does so in an evenhanded, content neutral manner”. The Court also suggested that an ordinance that is “narrowly tailored to the challenges of protecting the safety of pedestrians, drivers and passengers” (such as warning signs marking hazards on private property or signs directing traffic) might survive strict scrutiny.¹

Attachment:

- 1) Initiating Resolution

¹ The synopsis of the Reed decision contained in this Agenda Memorandum is based upon the Local Government Attorney’s Sign Ordinance Ad Hoc Committee memorandum to its members dated July 29, 2015.

PRESENTED: November 23, 2015

RESOLUTION NO. _____

ADOPTED _____

A RESOLUTION: INITIATING AMENDMENTS TO THE SIGN ORDINANCE (ARTICLE 15 OF THE ZONING ORDINANCE) AFTER THE U.S. SUPREME COURT DECISION OF REED V. TOWN OF GILBERT, ARIZONA, 135 S.Ct. 2218 (2015)

WHEREAS, the United States Supreme Court recently decided Reed v. Town of Gilbert, Arizona, 135 S.Ct. 2218 (2015), wherein the Supreme Court ruled the Town of Gilbert, Arizona’s sign ordinance was unconstitutional because it regulated temporary, noncommercial signs based upon the content of the sign; and

WHEREAS, the Town of Leesburg’s Sign Ordinance contained in Article 15 of the Zoning Ordinance is a traditional Sign Ordinance that sets forth different types of signs based upon the content of the sign (i.e., “real estate signs” and “political signs”); and

WHEREAS, as a result of the Reed decision, the Town’s Sign Ordinance may be unconstitutional and subject to legal challenge; and

WHEREAS, in order to withstand any constitutional challenge of the Town’s Sign Ordinance, review and amendments guided by the Reed decision are necessary.

THEREFORE, RESOLVED, the Council of the Town of Leesburg in Virginia directs Town staff to prepare draft amendments to the Town’s Sign Ordinance (Article 15 of the Town’s Zoning Ordinance) to comport with the United States Supreme Court decision of Reed v. Town of Gilbert, Arizona, 135 S.Ct. 2218 (2015), and forward them to the Planning Commission for review and recommendation to the Town Council.

PASSED this _____ day of _____, 2015.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council