



Town Council Regular Session

Item # 4.

Meeting Date: 09/02/2015

Requested by: Bayer Vella

Submitted By: Bayer Vella, Development Infrastructure Services

Department: Development Infrastructure Services

Information

SUBJECT:

*PUBLIC HEARING: ORDINANCE NO. (O)15-13, REGARDING SUSPENDING ENFORCEMENT OF TOWN ZONING CODE SECTION 28, SIGNS, REGARDING ALL PROVISIONS THAT REGULATE SIGN CONTENT WITHIN PUBLIC RIGHT-OF-WAYS AND PRIVATE PROPERTY FOR THOSE PROVISIONS THAT DO NOT COMPLY WITH THE CURRENT LAW (Amended on 8/27/15 at 3:30 p.m.)

RECOMMENDATION:

Staff recommends suspending enforcement of all provisions in the Zoning Code that regulate sign content in the public right-of-ways and those specific private code provisions which do not meet content neutrality.

EXECUTIVE SUMMARY:

The Town must take action to only enforce signs in its right-of-way in a "content neutral" way. The recent United States Supreme Court ruling regarding signs in public right-of-ways has a direct impact on Oro Valley's sign code. The court case, *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) ruled that local jurisdictions cannot regulate signs in the right-of-way based on content. In short, if you need to read the sign in order to determine if it is regulated, then the code is unconstitutional.

The Town's zoning code, like many in the nation, regulates signs in the right-of-way based on content (commercial vs. non-commercial, etc.). As a result, the Town must take steps to amend its sign code to comply with this ruling. In the interim, all elements of the code regulating a sign's content in the public right-of-ways must be suspended along with a few private property sign provisions. This action will allow staff time to draft amendments to the Zoning Code. Amendments will be presented to the Planning and Zoning Commission in November and to the Town Council in December.

BACKGROUND OR DETAILED INFORMATION:

On June 18, 2015, the United States Supreme Court released a decision in the case of *Reed v. Town of Gilbert* which addressed the constitutionality of sign codes. In this decision, the Supreme Court held that sign code enforcement would fall under a strict

scrutiny test. Under this test, if you have to look at a code provision for content, then the code is unconstitutional. Because our code tends to be more content based, it is currently unenforceable as it is currently written. As a result, it is necessary to suspended enforcement until the Town can draft and adopt a new sign code which conforms to the recent Supreme Court decision.

Eliminating any reference to the content on signs placed in the right-of-way will require the Town to re-write its sign code to be "content neutral". For example, we cannot allow a sign advertising a home for sale in the right-of-way, while at the same time prohibiting a sign advertising a sale on groceries. By law, our only other option is an outright ban prohibiting all signs in the right-of-way. To sum up, local jurisdictions in the United States now have two options, prohibiting all signs in the right-of-ways (and the current state law have already caused some concerns with this option) or allowing all signs in the right-of-ways.

A Zoning Code amendment is planned for the Planning and Zoning Commission's review in November and for Town Council's review in December. In the interim, the Town must take immediate action to only enforce signs in its right-of-way in a "content neutral" way. Currently, the following signs are allowed - and are regulated base on content:

- * Political signs and other signs currently allowed in the Sign Zones,
- * Open house real estate signs,
- * Special event signs for Town-sponsored activities such as the Farmer's Market or "Dive-in movies",
- * Community event signs such as HOA announcements,
- * Garage sale signs,
- * Kiosk signs currently used to advertise model home developments, and
- * Sign walkers.

Suspension of current rules would mean that all sign content will be allowed; however, the Town may still enforce safety, size, location and duration requirements within the sign type categories listed above. For example, a grocer wanting to post a sign can pick among the list of permitted right-of-way sign types and apply for a permit accordingly. The permit will be issued as long as the proposed sign meets the safety, size, location and duration requirements of a chosen category.

The Sign Walker category deserves special mention. The current Zoning Code includes standards for commercial Sign Walkers; however, it exempts all non-commercial Sign Walkers from permit requirements and all standards. Due to the Reed decision, the Town must enforce all Sign Walker provisions in the same content neutral manner. This disparity effectively means that we cannot enforce the more stringent requirements in the current code. There are a few other provisions on private property that also cause concerns that staff will need authority to not enforce those provisions until the changes are made.

FISCAL IMPACT:

N/A

SUGGESTED MOTION:

I MOVE to (adopt or deny) Ordinance No. (O)15-13 suspending enforcement of Oro Valley Zoning Code Section 28, Signs, regarding all provisions that regulate sign content within

the public right-of-ways and private property for those provisions that do not comply with the current law.

Attachments

(O)15-13 Suspension of Sign Code

ORDINANCE NO. (O)15-13

AN ORDINANCE OF THE TOWN OF ORO VALLEY ARIZONA, SUSPENDING ENFORCEMENT OF CHAPTER 28, SIGNS REGARDING ALL PROVISIONS THAT REGULATE SIGN CONTENT WITHIN PUBLIC RIGHT-OF-WAYS; AND PRIVATE PROPERTY FOR THOSE PROVISIONS THAT DO NOT COMPLY WITH THE CURRENT LAW; GIVING THE MANAGER AND STAFF AUTHORITY TO DETERMINE PRIVATE PROPERTY ISSUES BASED ON CONTENT NEUTRALITY AS THEY ARISE AND SUSPEND ENFORCEMENT WHILE THE CODE IS BEING AMENDED; REPEALING ALL RESOLUTIONS, ORDINANCES AND RULES OF THE TOWN OF ORO VALLEY IN CONFLICT THEREWITH; PRESERVING THE RIGHTS AND DUTIES THAT HAVE ALREADY MATURED AND PROCEEDINGS THAT HAVE ALREADY BEGUN THEREUNDER

WHEREAS, on March 13, 1981, the Mayor and Council approved Ordinance (O) 81-58, which adopted that certain document entitled "Oro Valley Zoning Code Revised" (OVZCR); and

WHEREAS, June 18, 2015, the United States Supreme Court issued a decision which made certain provisions of OVZCR Chapter 28, Signs, unconstitutional; and

WHEREAS, the Town will temporarily suspend the enforcement of content based signs within the public right of way and private property as necessary until OVZCR Chapter 28 can be appropriately updated; and

WHEREAS the Town will continue to enforce safety, size, location and duration requirements within the sign type categories only in a content neutral way; and

WHEREAS, the Town will suspended enforcement of the sign walker provision of OVZCR Chapter 28; and

WHEREAS, at a duly noticed Town Council Meeting on September 2, 2015, OVZCR Chapter 28, Signs, enforcement of content based signs on public rights-of-way, limited private property provisions, and sign walker provisions was suspended.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Oro Valley, Arizona that:

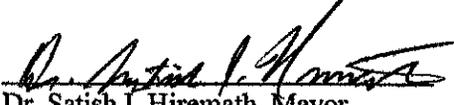
SECTION 1. The enforcement of the content based signs and sign walkers within Chapter 28, Signs, of the Oro Valley Zoning Code Revised and any non-complying private property provisions, is hereby suspended.

SECTION 2. All Oro Valley ordinances, resolutions, or motions and parts of ordinances, resolutions or motions of the Council in conflict with the provisions of this Ordinance are hereby repealed.

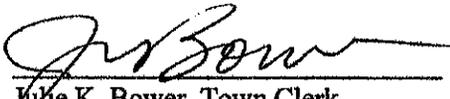
SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and Council of the Town of Oro Valley, Arizona, this 2nd day of September, 2015.

TOWN OF ORO VALLEY


Dr. Satish I. Hiremath, Mayor

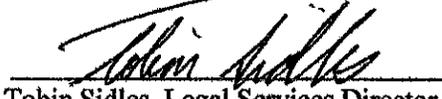
ATTEST:


Julie K. Bower, Town Clerk

Date: 9/3/15

PUBLISH: DAILY TERRITORIAL
SEPTEMBER 9, 10, 11, 14, 2015

APPROVED AS TO FORM:


Tobin Sidles, Legal Services Director

Date: 9/3/15

POSTED: 9/8/15 - 10/9/15