Agenda Item No._____

File Code No.

CITY OF SANTA BARBARA

AGENDA REPORT

DATE: October 20, 2015

TO: Planning Commission
Architectural Board of Review
Historic Landmarks Commission
Sign Committee

FROM: Ariel Calonne, City Attorney

SUBJECT: Selection of Members for Sign Ordinance Review Committee

RECOMMENDATION:

That your board, commission or committee designate an appointee to the City Council's new 11 member Sign Ordinance Review Committee. The new Committee will review the City's sign regulations in order to assure compliance with the First Amendment.

DISCUSSION:

On September 8, 2015, we briefed the City Council on sign regulations after the United States Supreme Court's June 2015 decision in *Reed v. Town Of Gilbert, Arizona*. A copy of that Council Agenda Report is attached for your reference.

The Council appointed Council Members Hart and Hotchkiss as its representatives on the Sign Ordinance Review Committee. They requested the City Attorney to seek the direction of the four boards and commissions named above with respect to which of their members should be appointed to the Sign Ordinance Review Committee.

Because so many divergent business, residential and governmental interests are at stake, the committee will include a broad cross-section of the community. We recommend that the Committee (which would be subject to the Brown Act's open meeting requirements) consist of the following 11 members:

- Two City Council Members
- One Sign Committee Member
- One Architectural Board of Review Member
- One Historic Landmarks Commission Member

- One Planning Commissioner
- One Chamber of Commerce Representative
- One Santa Barbara Association of Realtors Representative
- Two At-Large Residential Community Representatives
- One News Media Representative or First Amendment Advocate

The Committee would be charged with undertaking a comprehensive review of the City's existing sign regulations in order to assure compliance with the First Amendment. The Committee would make ordinance amendment and public process reports to Council during several check-in sessions, and in a final report to the Ordinance Committee and Council. We expect this effort would take at least a year.

ATTACHMENT: September 8, 2015 Council Agenda Report

PREPARED BY: Ariel Calonne, City Attorney

SUBMITTED BY: Ariel Calonne, City Attorney

APPROVED BY: City Administrator's Office

Agenda Item No. 24

File Code No. 640.02

CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: September 8, 2015

TO: Mayor and Councilmembers

FROM: City Attorney's Office

SUBJECT: Sign Regulations After The United States Supreme Court's Decision In *Reed v. Town Of Gilbert, Arizona*

RECOMMENDATION:

That Council appoint an 11-member Sign Ordinance Review Committee to review the City's sign regulations in order to assure compliance with the First Amendment. The Committee would make check-in reports to Council at strategic points during the process and offer recommended ordinance amendments in a final report to the Ordinance Committee and Council.

EXECUTIVE SUMMARY:

A recent United States Supreme Court ruling potentially renders portions of Santa Barbara's sign ordinance unconstitutional. Cities around the country are working to respond to this landmark decision. Council should take action to begin the process of revising the ordinance to meet these new constitutional requirements.

DISCUSSION:

On June 18, 2015, the United States Supreme Court issued its landmark ruling in *Reed v. Town of Gilbert, Arizona* (2015) 135 S. Ct. 2218. The Court held that the Town of Gilbert had violated the First Amendment free speech rights of a church group by enforcing "content-based" sign regulations against temporary event signs the church used to advertise its meetings.[1] "Content-based" means that the nature and degree of the regulation depends upon what the sign says.

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[1] The Town failed to justify its sign regulations under the so-called "strict scrutiny" test. When a governmental regulation discriminates against or restricts speech on the basis of the *content* or *viewpoint* of the message being expressed, the courts will *strictly*

The ruling dramatically changes local sign ordinance law because the Court expansively redefined what most commentators had thought to be content-based regulation. Like hundreds of cities around the country, the Town of Gilbert (southeast of Phoenix with a population of over 200,000) had stricter rules for temporary signs directing the public to nonprofit group events than it did for signs conveying other messages. The Court determined that by *categorizing* different sign regulations, such as temporary, political and ideological signs, based upon the signs' messages, the town had regulated on the basis of content. It did not matter that the Town had a benign motive for the law; nor did it matter that the Town's regulations treated all similar events identically and neutrally.[2]

The Supreme Court explained:

> The Town's Sign Code is content based on its face. It defines "Temporary Directional Signs" on the basis of whether a sign conveys the message of directing the public to church or some other "qualifying event." It defines "Political Signs" on the basis of whether a sign's message is "designed to influence the outcome of an election." And it defines "Ideological Signs" on the basis of whether a sign "communicat [es] a message or ideas" that do not fit within the Code's other categories. It then subjects each of these categories to different restrictions.

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scrutinize the regulation. Under the strict scrutiny test, the government must show that the regulations are ***narrowly tailored*** to serve ***compelling*** government interests. The government regulation almost always fails under this standard.

[2] By way of contrast, the Ninth Circuit Court of Appeals (whose decision was overturned by the Supreme Court) had previously "held that distinctions based on the speaker or the event are permissible where there is no discrimination among similar events or speakers. 587 F.3d at 979 ('We conclude that § 4.402(P) is not a content-based regulation: It does not single out certain content for differential treatment, and in enforcing the provision an officer must merely note the content-neutral elements of who is speaking through the sign and whether and when an event is occurring.'). Thus, under *Reed,* the distinctions between Temporary Directional Signs, Ideological Signs, and Political Signs are content-neutral. That is to say, each classification and its restrictions are based on objective factors relevant to Gilbert's creation of the specific exemption from the permit requirement and do not otherwise consider the substance of the sign. (*Reed v. Town of Gilbert, Ariz.* (9th Cir. 2013) 707 F.3d 1057, 1069 *cert. granted,* (2014) 134 S.Ct. 2900 [189 L.Ed.2d 854] and *rev'd and remanded,* (2015) 135 S.Ct. 2218.)

> 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. 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. On its face, the Sign Code is a content-based regulation of speech. We thus have no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny. (*Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2227; internal citations omitted.)

The *Reed* opinion was unanimous, but it included three separate concurring opinions that, while agreeing with the result, added their own gloss to the ruling. Justice Alito, joined by Justices Kennedy and Sotomayor, wrote the concurrence that might be the most informative to cities. Justice Alito laid out a road map to the kinds of regulation which may still be available to cities:

> As the Court holds, what we have termed "content-based" laws must satisfy strict scrutiny. Content-based laws merit this protection because they present, albeit sometimes in a subtler form, the same dangers as laws that regulate speech based on viewpoint. Limiting speech based on its "topic" or "subject" favors those who do not want to disturb the status quo. Such regulations may interfere with democratic self-government and the search for truth.
>
> As the Court shows, the regulations at issue in this case are replete with content-based distinctions, and as a result they must satisfy strict scrutiny. This does not mean, however, that municipalities are powerless to enact and enforce reasonable sign regulations. I will not attempt to provide anything like a comprehensive list, but here are some rules that would not be content based:
>
> Rules regulating the size of signs. These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.

> Rules regulating the locations in which signs may be placed. These rules may distinguish between free-standing signs and those attached to buildings.
>
> Rules distinguishing between lighted and unlighted signs.
>
> Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
>
> Rules that distinguish between the placement of signs on private and public property.
>
> Rules distinguishing between the placement of signs on commercial and residential property.
>
> Rules distinguishing between on-premises and off-premises signs.
>
> Rules restricting the total number of signs allowed per mile of roadway.
>
> 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.
>
> 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.
>
> Properly understood, today's decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate esthetic objectives. (*Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2233-34; citations and footnote omitted.)

Santa Barbara's sign regulations, like those of most cities in the state and country, categorize some signs based upon their content.[3] The City's regulations distinguish construction signs, election signs, real estate signs and open house signs, among

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[3] The City's sign regulations from Santa Barbara Municipal Code Chapter 22.70 are attached for review and reference.

others, based upon the content of their messages. In other words, the City's ordinance establishes different size, location and timing criteria based upon the content of the sign's copy.

For example, Santa Barbara Municipal Code section 22.70.030 B establishes exemptions from the general sign permit requirement. Temporary construction signs are exempt from permitting so long as the sign:

> (i) does not exceed six (6) square feet in one- and two-family residence zones and does not exceed twenty-four (24) square feet in all other zones, (ii) is used only to indicate the name of the construction project and the names and locations (city or community and state name only) of the contractors, architects, engineers, landscape designers, project or leasing agent, and financing company, (iii) is displayed during construction only, (iv) does not exceed the height limitations of a ground sign, and (v) meets all other applicable restrictions of this Chapter. (SBMC, § 22.70.030 B.3.)

The temporary construction sign rules thus apply only to signs that bear a specific message – the name of the construction project and the names and locations of the project professionals.

Temporary real estate signs, on the other hand, are regulated very differently, based solely upon their content:

> A temporary real estate sign which indicates that the property is for sale, rent, or lease. Only one such sign is allowed on each street frontage of the property. A temporary real estate sign may be displayed only for such time as the lot or any portion of the lot is actively offered for sale, rent, or lease. Such a sign may be single-faced or double-faced and is limited to a maximum area on each face of four (4) square feet or less on property in residential zones and twelve (12) square feet or less on property in nonresidential zones. Signs allowed pursuant to this exemption shall not exceed the height limitations of a ground sign (six feet (6')). (SBMC, § 22.70.030 B.7.)[4]

Thus, under the *Reed* analysis, different rules apply depending upon whether the sign is talking about construction or real estate.

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[4] It should be noted that the constitutionality of Civil Code section 713, which limits local government real property for-sale sign regulations based upon their content, is also in doubt.

We believe Santa Barbara's sign regulations need to be reevaluated comprehensively so that revisions comporting with the Supreme Court's new content-neutral sign paradigm can be developed. New sign regulations should not refer to the content of the sign to establish different regulatory requirements, unless a compelling government interest, like traffic safety, can be substantiated.

This does not mean that the City is powerless to regulate signs effectively to promote esthetic and safety concerns. As described by Justice Alito's concurrence, quoted above, there remain many ways the City might regulate signs using only the "intermediate" scrutiny applicable to time, place and manner regulations.[5] Size, location, lighting, movable copy, placement on public property, commercial vs. residential distinctions, on-premises vs. off-premises, restrictions on the total number of signs in a given location, and time restrictions for one-time events all appear to be subjects still open for regulation under the intermediate scrutiny standard. Moreover, it is at least conceivable that traffic safety and other legitimate, substantiated safety concerns might support content-based regulation under the strict scrutiny standard. For example, different rules for off-site real estate open house signs conceivably might be justified due to driver distraction.[6]

PROCESS

The City Administrator and City Attorney recommend appointment of a Sign Ordinance Review Committee. Because so many divergent business, residential and governmental interests are at stake, the committee should include a broad cross-section of the community. We recommend that the Committee (which would be subject to the Brown Act's open meeting requirements) consist of the following 11 members:

- Two City Council Members

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[5] The Council may generally enact reasonable time, place and manner restrictions upon constitutionally protected speech, provided that the regulations are content-neutral, narrowly drawn, necessary to further a significant government interest, and allow for ample alternative channels for communication.

[6] Please note that, as of August 7, 2015, the rationale of the *Reed* case has been extended to panhandling regulations by the Seventh Circuit of the United States Court of Appeals. (*Norton v. City of Springfield, Ill.* (7th Cir., Aug. 7, 2015, 13-3581) 2015 WL 4714073; see also *Thayer v. City of Worcester, Mass.* (2015) 135 S.Ct. 2887 [First Circuit decision upholding panhandling "bubble" ordinance remanded for further consideration in light of *Reed.*].) Santa Barbara's panhandling regulations may need to be revisited if the Ninth Circuit determines that panhandling regulations are content-based.

- One Sign Committee Member
- One Architectural Board of Review Member
- One Historic Landmarks Commission Member
- One Planning Commissioner
- One Chamber of Commerce Representative
- One Santa Barbara Association of Realtors Representative
- Two At-Large Residential Community Representatives
- One News Media Representative or First Amendment Advocate

In addition, City staff support from the City Administrator, City Attorney, Community Development and Public Works Departments would be required.

The Committee would be charged with undertaking a comprehensive review of the City's existing sign regulations in order to assure compliance with the First Amendment.[7] The Committee would make ordinance amendment and public process reports to Council during several check-in sessions, and in a final report to the Ordinance Committee and Council. We expect this effort would take at least a year.

BUDGET/FINANCIAL INFORMATION:

This work effort will require significant staff resources for support and implementation. These resources will be provided within existing budget authorizations to the greatest extent possible. It is possible that supplemental resources may be necessary. If so, staff will return to Council with an appropriations request.

ATTACHMENT: Santa Barbara Sign Ordinance, SBMC Chapter 22.70

SUBMITTED BY: Ariel Calonne, City Attorney

APPROVED BY: City Administrator's Office

[7] We do not believe it necessary or advisable to reopen every policy issue presented in the sign ordinance. To the contrary, we would advise retaining as much of the existing ordinance's policy perspective as possible.