MEMORANDUM
OFFICE OF THE CITY ATTORNEY

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

DATE: December 15, 2016

TO: Sign Ordinance Review Committee
FROM: Ariel Pierre Calonne, City Attorney
SUBJECT: December 15, 2016 Materials

On July 21, 2016, the Sign Ordinance Review Committee received a legal and policy introduction to the City's sign issues. Staff asked the Committee to consider the policy objectives of sign regulation as a first step to begin analyzing potential changes needed to the City's Sign Ordinance as a result of *Reed v. Town of Gilbert, Arizona.*

The Committee found that approach too cumbersome, and instead asked staff to prepare an analysis of the potential problem areas and potential solutions. This meeting will focus on that task.

Accompanying this memo as an attachment, the Committee will find a matrix that examines each potentially content-based section of the City's Sign Code. The Matrix identifies the legal concerns related to each section of the ordinance, and offers possible policy solutions for the Committee's consideration. This approach should greatly streamline the Committee's work. It must be noted, however, that the Committee should feel free to offer possible solutions based upon policy objectives staff may not have offered or considered. The Sign Ordinance sections of concern that are examined in the matrix are as follows:

- Temporary Warning Signs
- Temporary Construction Signs
- Temporary Signs for Holidays
- Noncommercial Signs
- Election Signs
- Civic Event Signs
- Flags
- Changeable Copy Signs

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Our review further indicated the advisability of what is called a “substitution clause.” In essence, in order to prevent the risk of improperly favoring commercial speech over non-commercial speech, these clauses allow the substitution of non-commercial copy any place commercial copy is allowed. We have attached our substitution clause proposal.

Finally, we took a beginning look at El Pueblo Viejo sign regulations. Attached please find a research memorandum I prepared in conjunction with our Law Clerk Noah Ickowitz, a third year student at Berkeley Law. In a nutshell, the City cannot regulate trademarked sign colors due to federal preemption, and the code requirement for “[c]olors consistent with . . . Hispanic styles” should be repealed. This memorandum is meant to provide background information. We recommend taking up EPV issues in another meeting.

Attachments:
1. Content-based Sign Code Matrix
2. Proposed Substitution Clause
3. Research Memo on El Pueblo Viejo Issues

cc: City Council

APC/apc