

Meeting Date: June 28, 2016



Agenda Item #: 6A

CITY COUNCIL AGENDA ITEM

Contact Name: _____

Department Director: Becky Mendez *Becky*

Department/Contact #: _____

City Manager: Dale Arrington *Dale*

Type of Item:

- Public Hearing
- Ordinance First Reading
- Ordinance Second Reading
- Workshop

- Resolution
- Discussion & Action
- Consent Agenda
- Council Approval

Subject: Ord. No. 558. Second reading of sign regulation text amendment to the Land Development Code.

BACKGROUND:

The City Council adopted a revised sign code, Chapter 9, Land Development Code via Ordinance No. 518 in December 2014. Since that time, a content neutrality Supreme Court ruling occurred (Reed v. Town of Gilbert). Planning staff, along with the City Attorney, suggests revisions to the code to meet legal sufficiency.

Concurrently, and as with any major revision to the Land Development Code, periodic review and critique is necessary to ensure efficiency. Therefore, on December 17, 2015, City Council directed staff to conduct stakeholder meetings for public input on proposed amendments to the code. The goal is to streamline the code to increase user-friendliness, process efficiency and implementation, while maintaining quality design standards.

Staff held multiple stakeholder meetings, and subsequently proposes revisions to the code based on public comment. In addition to any content neutrality issue, the proposed revisions accomplish the following:

1. Eliminates duplicate, confusing or conflicting provisions.
2. Streamlines sign permit review process.
3. Deletes the Saxon/Enterprise sign district and increases copy area allowance for the Gateway sign district. No proposed revision to the Traditional Neighborhood sign district.
4. Relocates like provisions into one section.
5. Simplifies ground sign landscape requirements.
6. Allows changeable copy (electronic message boards) on all ground signs, but deletes the allowance for wall signs.
7. Deletes maximum copy area for wall signs and allows additional area for secondary signs.
8. Consolidated incidental ground and wall signs.
9. Revised window, vehicle and sandwich board sign standards.
10. Eliminated duplicate standards for temporary signs.
11. Simplified administrative waiver review requests.

This proposed ordinance does not contemplate any change to the amortization schedule for nonconforming signs. The purpose of these revisions is to meet legal sufficiency requirements for content neutrality and to streamline the sign review process and standards for new ground and wall signs in Orange City.

On April 13, 2016, the Planning Commission found the text amendment consistent with the comprehensive plan and forwarded to the City Council for approval, with three amendments, which are, 1) eliminate the Annual Sign Renewal Tag program, 2) increase the window sign exemption from 15% to 25%, and 3) eliminate a confusing provision in Section 9.17.5- Loss of Legal Nonconforming Status. Also since that time, the City Attorney and planning staff made revisions to further address content neutrality issues.

On May 24, 2016, the City Council approved the text amendment as presented by staff at first reading with revision. The City Council did not accept the Planning Commission recommendation to eliminate the Annual Sign Renewal Tag program. Attached is proposed Ordinance 558 ready for adoption.

COUNCIL DISTRICT:

NA

RECOMMENDATIONS:

Adopt Ordinance 558 at second reading.

ATTACHMENTS:

Ordinance 558

FINANCIAL IMPACT:

None

STRATEGIC PLAN:

NA

Reviewed by City Attorney:

Reviewed by Finance Dept.:

Reviewed by:

1st Discussion Date:

2nd Discussion Date:

3rd Discussion Date:

Other Discussion Date:

ORDINANCE NO. 558

AN ORDINANCE OF THE CITY OF ORANGE CITY, FLORIDA, AMENDING APPENDIX A – LAND DEVELOPMENT CODE OF THE CODE OF ORDINANCES; PROVIDING FOR AMENDMENTS TO SECTION 2.2, CHAPTER 2 SIGN DEFINITIONS, AND SECTION 3.6.4, CHAPTER 3, CODE ADMINISTRATION, ENFORCEMENT AND VIOLATIONS REGARDING VARIANCES TO SIGN HEIGHTS; AND REPLACING IN ITS ENTIRETY CHAPTER 9, SIGN REGULATIONS; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Orange City finds and determines that the updated and revised definitions to the sign code herein are consistent with all applicable policies of the City’s adopted Comprehensive Plan and not in conflict with the public interest; and

WHEREAS, the City of Orange City recognizes that definitions in the City’s Land Development Code need to be deleted, revised or added in light of the recent decision in *Reed v. Town of Gilbert, Ariz.*, 512 U.S. 43 135 S. Ct. 2218, 2221, 192 L. Ed. 2d 236 (2015); and

WHEREAS, the Supreme Court in *Reed v. Town of Gilbert*, 512 U.S. 43, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015), held that the government must speak, and in doing so is not regulated as private individuals under the First Amendment. While the Government often speaks directly, its speech can be found in requirements of law that demand members of a community, residents and property owners to post notices and addresses to protect the rights afforded by the government; and

WHEREAS, as noted in *Reed v. Town of Gilbert, id.*, some content based signs are necessary to protect the public and are likely to survive strict scrutiny. Signs prohibiting trespassing or solicitors; warning of the dangers of “high voltage” or other hidden dangers may be required for a person to assert property rights or to protect a property owner from liability; and

WHEREAS, this amendment allows property owners to place temporary signs on their property during certain time periods and allows the property owner to select whatever message the owner chooses during those periods. This provision complies with both *Reed v. Town of Gilbert, Id.*, and *City of Ladue v. Gilleo*, 512 U.S. 43, 114 S. Ct. 2038, 129 L. Ed. 2d 36 (1994), as it allows a property owner the ability to make use of the property for free expression but in a manner designed to reduce clutter and advance aesthetic interests of the community without any content based limitations; and

WHEREAS, the signs described in Section 9.5.1 A and B are an important component of measures necessary to protect the public safety and serve the compelling governmental interest of protecting traffic safety, serving the requirements of emergency response, and protecting property rights or the rights of persons on property; and

WHEREAS, the City of Orange City finds and determines that the purpose, intent and scope of its signage standards and regulations should be detailed so as to further describe the beneficial aesthetic and other effects of the City's sign standards and regulations, and to reaffirm that the sign standards and regulations are concerned with the secondary effects of speech and are not designed to censor speech or regulate the viewpoint of the speaker; and

WHEREAS, the City of Orange City finds and determines that the sign standards and regulations adopted hereby allow and leave open adequate alternative means of communications, such as newspaper advertising and communications, internet advertising and communications, advertising and communications in shoppers and pamphlets, advertising and communications in telephone books, advertising and communications on cable and satellite television, advertising and communications on UHF and/or VHF television, advertising and communications on AM and/or FM radio, advertising and communications on satellite and internet radio, advertising and communications via direct mail, and other avenues of communication available in the City of Orange City; and

WHEREAS, the City of Orange City recognizes that under established Supreme Court precedent, a law that is content-based is subject to strict scrutiny under the First Amendment of the U.S. Constitution, and such law must therefore satisfy a compelling governmental interest; and

WHEREAS, the City of Orange City recognizes that as a result of the *Reed* decision, it is appropriate and necessary for local governments to review and analyze their sign standards and regulations, beginning with their temporary sign standards and regulations, so as to make the necessary changes to conform with the holding in *Reed*; and

WHEREAS, the City of Orange City finds and determines that the regulation of signs within the City is a highly contributive means by which to achieve an orderly and pleasing community, and that the sign standards and regulations in Exhibit B attached to proposed Ordinance No. 2016-558 are prepared with the intent of enhancing the urban environment and promoting the continued well-being of the City; and

WHEREAS, the City of Orange City finds and determines that the regulation of signage for purposes of aesthetics is a substantial governmental interest and directly serves the policy articulated in Article II, Section 7, of the Florida Constitution, by conserving and protecting its scenic beauty; and

WHEREAS, the City of Orange City finds and determines that the regulation of signage was originally mandated by Florida's Local Government Comprehensive Planning and Land Development Regulation Act in 1985 (*see* Chapter 85-55, §14, Laws of Florida), and this requirement continues to apply to the City of Orange City through Section 163.3202(2)(f), Florida Statutes; and

WHEREAS, the City of Orange City finds and determines that consistent with the foregoing preambles, it is appropriate to prohibit and/or to continue to generally prohibit the sign types listed in Sec. 9.4, Prohibited Signs within Exhibit B to proposed Ordinance No. 558; and

WHEREAS, the City of Orange City agrees with the American Society of Landscape Architects' determination that billboards tend to deface nearby scenery, whether natural or built and the Sierra Club's opposition to billboard development and proliferation and the American Society of Civil Engineers Policy Statement 117 on Aesthetics that aesthetic quality should be an element of the planning, design, construction, operations, maintenance, renovation, rehabilitation, reconstruction, and security enhancement of the built environment; and

WHEREAS, the City of Orange City finds and determines that the prohibition of the construction of billboards and certain other sign types, as well as the establishment and continuation of height, size and other standards for on-premise signs, is consistent with the policy set forth in the Florida Constitution that it shall be the policy of the state to conserve and protect its scenic beauty; and

WHEREAS, the City of Orange City finds and determines that billboards attract the attention of drivers passing by the billboards, thereby adversely affecting traffic safety and constituting a public nuisance and a noxious use of the land on which the billboards are erected; and

WHEREAS, the City of Orange City finds, determines and recognizes that billboards are a form of advertisement designed to be seen without the exercise of choice or volition on the part of the observer, unlike other forms of advertising that are ordinarily seen as a matter of choice on the part of the observer [*see Packer v. Utah*, 285 U.S. 105 (1932); and *General Outdoor Advertising Co. v. Department of Public Works*, 289 Mass. 149, 193 N.E. 799 (1935)]; and

WHEREAS, the City of Orange City acknowledges that the United States Supreme Court and many federal courts have accepted legislative judgments and determinations that the prohibition of billboards promotes traffic safety and the aesthetics of the surrounding area; and

WHEREAS, the City of Orange City recognizes that Scenic America, Inc. recommends improvements in the scenic character of a community's landscape and appearance by prohibiting the construction of billboards, and by setting height, size and other standards for on-premise signs [*see* Scenic America's Seven Principles for Scenic Conservation, Principle #5]; and

WHEREAS, on May 4, 2016, the Orange City Planning Commission found the amendment consistent with the comprehensive plan and forwarded to the City Council for approval.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, AS FOLLOWS:

SECTION 1. The foregoing whereas clauses are incorporated here as legislative findings by this reference and made a part hereof for all intents and purposes.

SECTION 2. Section 2.2. Specific terms defined, of the City's Land Development Code, Chapter 2, Definitions, is hereby amended as indicated in attached **Exhibit A**.

SECTION 3. Section 3.6.4. Limitation on variances, is hereby amended as follows:

3.6.4. *Limitation on variances.* A variance may be granted only to modify setbacks, yard dimensions, building height, building floor area, sign requirements ~~excluding sign height~~, telecommunication tower separation distance to residential zoning districts as specified in chapter 8, section 8.7.20.G.4. of this code and to separate lots required to be combined under chapter 8, section 8.2.3 of this code. Under no circumstances shall the planning commission grant a variance to permit or expand a nonconforming use. A variance may be granted only if the applicant meets all of the conditions listed in section 3.6.1.A. through E. of this chapter. No nonconforming use of neighboring land, structures or buildings in the same zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance.

SECTION 4. Chapter 9 – Sign Regulations is hereby repealed and replaced in its entirety as indicated in attached **Exhibit B**.

SECTION 5. CODIFICATION. It is the intention of the City Council that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the City of Orange City, Florida and the word “ordinance” may be changed to “section”, “article”, or other appropriate word or phrase and the sections of the Ordinance may be renumbered or re-lettered to accomplish such intention.

SECTION 6. CONFLICTS. All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 7. SEVERABILITY: If any section, part of a section, paragraph, clause, phrase or word of this ordinance is declared invalid, the remaining provisions of this ordinance shall not be affected.

SECTION 8. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida.

ROLL CALL VOTE AS FOLLOWS:

First Reading this _____ day of _____, 2016.

Gary A. Blair, Vice Mayor	_____	Michael G. Wright	_____
Ronald L. Saylor	_____	Tom Abraham	_____
O. William Crippen	_____	Anthony J. Pupello	_____
Tom Laputka, Mayor	_____		

ROLL CALL VOTE AS FOLLOWS:

Second Reading this _____ day of _____, 2016.

Gary A. Blair, Vice Mayor	_____	Michael G. Wright	_____
Ronald L. Saylor	_____	Tom Abraham	_____
O. William Crippen	_____	Anthony J. Pupello	_____
Tom Laputka, Mayor	_____		

PASSED and ADOPTED this _____ day of _____, 2016.

ATTEST:

AUTHENTICATED:

Deborah J. Renner, CMC, City Clerk

Tom Laputka, Mayor

Approved as to form and legal sufficiency:

W. E. Reischmann, City Attorney