



Memo

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MEETING DATE: November 1, 2016
TO: Planning Commission
FROM: Jeff Boers, Principal Planner
SUBJECT: Sign Code Update

Introduction

The City has initiated a review of its sign regulations in response to the U.S. Supreme Court's decision in [Reed v. Town of Gilbert](#) (2015). The court held that a town sign code that treats various categories of signs differently based on the information they convey violates the First Amendment. The *Gilbert* sign code defined the categories of temporary, political, and ideological signs on the basis of their messages and then subjected each category to different restrictions such as on size, number of signs, and the permissible duration of display.

The court held that the sign code's provision were content-based regulations of speech that do not survive strict judicial scrutiny because the town did not demonstrate that the code's differentiation between temporary directional signs and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end.

Background

Fircrest's sign regulations, like most sign codes, rely on content to regulate various types of non-commercial signs. This is no longer permissible due to the *Reed* decision. For example, the City's code distinguishes among real estate signs, home occupation signs, political signs and other types of signs when it regulates their size, number, location and duration (how long these signs may be posted). One typically has to read the content of these signs to discern their type so as to be able to properly apply the sign code.

Staff has identified a number of sections in the current code that will need to be revised in order to become content neutral – consistent with *Reed*. Under *Reed*, the City can regulate signs in a content-neutral “time, place, or manner” approach, using such factors as:

- Location, such as commercial vs. residential locations or zoning districts;
- Size and height;
- Type of structure (for example, freestanding signs, monument signs, permanent façade signs, banner signs, and inflatable roof signs);

- Use of materials;
- Maximum number;
- Lighted vs. unlighted signage;
- Fixed message signs vs. signs with changing messages (electronic or otherwise);
- Moving parts;
- Portability (for example, A-frame or sandwich board signs).

In addition, staff has identified a number of provisions (unrelated to content) that would benefit from updating in order to improve clarity, simplify administration, achieve higher quality signage, and provide greater flexibility for property owners and tenants with respect to the types, sizes and locations that may be permitted. These provisions typically relate to commercial signage.

Process

The November 1st meeting will be the first study session review of a working draft of proposed amendments. If Commissioners have an interest in seeing the City regulate certain aspects of signage through different approaches or by applying different standards, this study session would be a good opportunity to identify these preferences and provide direction to staff.

Once the Commission is generally comfortable with the direction of the proposed sign code amendments, it should set a date to conduct a hearing on a formal public review draft. The Commission should consider public comment, direct staff to modify the draft as appropriate, and forward its recommendations to the City Council. Council is required to conduct its own hearing before taking action to amend the code.

Proposal

Staff proposes to amend the sign code (FMC 22.26) in response to *Reed* and in order to improve clarity, simplify administration, and achieve higher quality signage. The proposed amendments are also intended to provide greater flexibility for property owners and tenants with respect to the types, sizes and locations that may be permitted.

The working draft (attachment 1) borrows and adapts provisions from a *Model Sign Code* recently prepared by Fircrest special land use counsel, Carol Morris. This model code was funded by the Association of Washington Cities Risk Management Services Agency (AWC RMSA) for use by its member cities – including Fircrest. The draft also adapts a number of provisions recently adopted by the City of Lacey, some of which may also be found in the *Model Sign Code*.

Staff recommends the following sections be added, revised or deleted. A brief explanation is provided for the proposed changes below, and a comparison of key existing code provisions with proposed regulations is provided in attachment 2. The current sign code is provided in attachment 3.

22.26.001 Intent and purpose.

- Revised per the *model sign code* to include a broader intent and purpose statement that references free speech rights by regulating signs on a content-neutral manner.

22.26.002 Applicability and interpretation Authority.

- Text inserted from the *model sign code* in response to *Reed*. Existing permit approval language revised and relocated to *Permit Requirements and Authority* section in 22.26.004.

22.26.003 Application procedures.

- One clarification relating to “application type” is proposed.

22.26.004 Permit requirements and authority.

- Current permit approval language in Applicability and interpretation Authority section in 22.26.002 is revised and relocated to this section.

22.26.005 Submittal requirements.

- Photosimulations added to the list of items that could or should be submitted for plan review.

22.26.006 Master sign plans.

- Text added from the *model sign code* to provide more performance standards guidance.

22.26.007 Variances.

- Provisions moved from 22.26.015 and updated per *model sign code*, plus a first amendment exception/variance provision is added.

22.26.008 Nonconforming signs.

- Provisions moved from 22.26.014 and text added to require nonconforming signs to be modified or replaced to conform with code when the type of business changes or a property is substantially improved or modified.
- Current code allows nonconforming signs to remain indefinitely until the sign is removed, structurally or electrically changed.

22.26.009 Maintenance, removal and enforcement.

- Provisions moved from 22.26.016 and updated per *model sign code* to strengthen enforcement tools.

22.26.01007 Classification and regulation of signs.

- Sign classifications updated to reflect new categories of signs to be regulated.
- Sign groups updated to reflect recently revised (2015) zoning classifications.
- Table 1 added to summarize where each sign type would be allowed (by sign group).

~~22.26.008 — *Interpretation of sign allowance table.*~~

- Section deleted.

~~22.26.01109 *Sign standards applicable to all signs* General provisions.~~

- Section replaced and new/revised standards provided for measurement of sign area and sign height, sign structures and installation, and sign placement.

~~22.26.010 — *Special provisions by zone group and sign classification.*~~

- Section deleted.

22.26.0124 *Illumination standards.*

- Standards revised to accommodate changing lighting technology.
- Current code uses “luminous transmittance” standards that have proven difficult to administer and understand.
- Provisions that encourage/require dark background internally lit signs in lieu of white or light-colored signs are reworked.
- Proposed code encourages use of opaque backgrounds and translucent text/symbols and provides incentives for using darker background signs by allowing them to be larger than white or light-colored background signs. See also 22.26.017(f) on page 28 and 22.26.023 (a) on page 36.

22.26.013 *Accessory signs.*

- New section added to regulate signs formerly referred to as directional signs, plus drive-through lane signs.

22.26.014 *Awning, canopy and marquee signs.*

- New section added to regulate awning, canopy, and marquee signs.
- Awning signs are typically found on soft materials such as canvas, canopy signs are typically placed on rigid materials or structures, and marquee signs are often placed above a cover over the entrance to a theater or similar venue.

22.26.015 *Changeable copy signs.*

- New section added to regulate changeable copy signs (reader board signs that require information to be manually changed).

22.26.016 *Digital signs.*

- New section added to regulate digital signs (using monochrome LED) that provide a scrolling message. Examples include time/temperature signs.

- This sign type does not include electronic message center signs, which typically have variable message and/or graphic presentation capability that can be electronically programmed by computer or handheld device from a remote location.

22.26.017 Freestanding signs.

- New section added to regulate freestanding (monument) signs. This section regulates number (including spacing), form, placement, materials and design (framing with top/middle/bottom elements), landscaping, and maximum size and height.
- Maximum area and height determined by the length of street frontage and whether the sign has a white/very light or unshaded background – or a black, dark, or shaded background. Black, dark or shaded background signs may be taller/larger as they are usually less visible. Such signs are preferred under current and proposed code.

22.26.018 Portable signs.

- New section added to regulate portable signs, including sandwich board, pole-mounted, and feather signs. This section regulates number, location and spacing.

22.26.019 Projecting signs.

- New section added to regulate projecting signs (from buildings), which may be used in lieu of, or in addition to, wall, awning, canopy or marquee signs.

22.26.020 Service island signs.

- New section added to regulate service island signs, including canopy fascia and spandrel signs. “Spandrel” means a panel or box-type structure that spans between and/or is connected to the support columns of a canopy, usually for architectural embellishment and/or signage purposes.

22.26.021 Temporary signs.

- New section added to regulate temporary signs in all zones and locations, including city property, street rights-of-way, residential locations and non-residential locations.
- Regulates materials, placement, number, size and height, and other aspects.

22.26.022 Under-canopy signs.

- New section added to regulate under-canopy signs, which are those signs placed below awnings, canopies or marquees and placed perpendicular to a storefront.

22.26.023 Wall signs.

- New section added to regulate wall signs in terms of sign area, placement and design, and mounting.
- Current code limits the number of wall signs and sets a maximum area for each sign to 20 SF. Proposed code regulates total wall sign area rather than number of signs, and the maximum area is variable.

- Maximum area determined by the area of building facade and whether the sign has a white/very light or unshaded background – or a black, dark, or shaded background. The larger the building façade area, the larger the sign (up to a specified limit). Black, dark or shaded background signs may be larger as they tend to be less visible.

22.26.024 *Window signs.*

- New section added to regulate window signs in terms of number, percent coverage, location and design.

22.26.02512 *Exemptions.*

- Provisions updated per the *model sign code*, partly in response to *Reed*.

22.26.02613 *Prohibited signs.*

- Provisions updated per the *model sign code*, partly in response to *Reed*.

22.26.014 ~~*Nonconforming signs.*~~

- Provisions relocated to 22.26.008 and modified.

22.26.015 ~~*Variances.*~~

- Provisions relocated to 22.26.007 and modified.

22.26.016 ~~*Administrative provisions.*~~

- Provisions relocated to 22.26.004 and modified.

22.26.02747 *Liability.*

- Section renumbered.

22.98 *Definitions.*

- Definitions added, modified or deleted to reflect updated terminology in the sign code.

Summary of Key Provisions

The table in attachment 2 compares and contrasts key provisions. Staff will present an overview of the proposal and respond to questions at the November 1st meeting.

Attachments:

1. Working Draft Sign Code Amendments
2. Comparison of Current Sign Code and Working Draft
3. Current Sign Code FMC 22.26