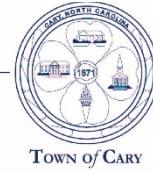


## Staff Report for Town Council

**Meeting Date:** December 8, 2016



### Round 35 Land Development Ordinance Amendment

**Purpose:** Consider proposed Round 35 Land Development Ordinance (LDO) amendments

**Prepared by:** Mary Beerman, Planning

**Speaker:** Mary Beerman, Planning

**Recommendation:** Staff recommends council approval of the proposed Round 35 amendment to the Land Development Ordinance.

**Executive Summary:** The proposed Land Development Ordinance amendment would enact a new sign ordinance.

This LDO Amendment has an associated Consistency and Reasonableness Statement.

**Planning and Zoning Board Recommendation:** The Planning and Zoning Board recommended approval of the proposed amendment by a vote of 7-2. The motion to approve included removal of the previously-proposed requirement for a 15-foot separation between temporary signs.

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## OVERVIEW

### SCHEDULE:

Public Hearing	October 27, 2016
Planning and Zoning Board Work Session	November 14, 2016
Planning and Zoning Board Meeting	November 21, 2016
Final Action by Town Council	December 8, 2016
Effective	December 8, 2016

### BACKGROUND:

In June 2015, the United States Supreme Court issued its opinion in the case of *Reed v. Town of Gilbert*, and held that the Town of Gilbert's sign ordinance was unconstitutional. Gilbert's ordinance made distinctions between categories of temporary signs (political signs, temporary directional signs, and ideological signs) based on the message written on the signs. Such content-based distinctions subjected the sign ordinance to "strict scrutiny" analysis by the Court, meaning that the sign ordinance, to be constitutional, had to further a "compelling" government interest and be "narrowly tailored" to serve that interest. The Court assumed that Gilbert's interests in aesthetics and traffic safety were "compelling," but found the distinctions between signs were not "narrowly tailored" because, for example, an unlimited number of ideological signs could be placed while smaller temporary directional signs were limited to four signs. As a result of *Reed*, local governments across the country are revising their sign ordinances.

## SUMMARY OF PROPOSED AMENDMENT

Staff proposes amendments to the Town’s sign ordinance (Chapters 9, 9A, and 9B of the Land Development Ordinance) to ensure continued compliance with *Reed* and to unify the sign ordinance back into one chapter again. In 2011, during the pendency of the *Bowden v. Town of Cary* lawsuit, Chapters 9A and 9B were created to regulate permanent non-residential signs and temporary non-residential signs, leaving Chapter 9 in place to regulate all residential signs. That separation was always envisioned as temporary. Because of the extensive structural reorganization recombining the chapters will entail, staff proposes to delete Chapters 9, 9A, and 9B in their entirety and replace them with the attached Chapter 9 (the “Sign Ordinance”).

Most of the amendments to the Sign Ordinance are structural or simply serve to clarify or update definitions or names of sign types. As noted in the chart below, the substantive provisions regarding most sign types are not changing.

Sign Types in Current LDO [ <i>new name in revised Chapter 9</i> ]	Substantive Change from Current Regulations	
	No Change	Change
Awning Sign	✓	
Directory Sign [ <i>Directional Sign</i> ]	✓	
Permanent Flag Poles with Flags	✓	
Incidental Sign	✓	
Menu Board [ <i>Drive-through Lane Sign</i> ]	✓	
Principal Ground Sign	✓	
Entry Monument Alternative to Principal Ground Sign	✓	
Projecting Sign	✓	
Suspended Sign	✓	
Verandah Sign	✓	
Wall Sign	✓	
Mailbox Sign	✓	
Alternative to Permanent Wall Sign [ <i>Façade Renovation Alternative to Permanent Wall Sign</i> ]	✓	
Subdivision/Construction Marketing Sign [ <i>New Construction Alternative to Principal Ground Sign</i> ]	✓	
Sandwich Board Sign [ <i>A-frame Sign</i> ]	✓	
Window Sign	✓	
New Business Sign [ <i>New Business Alternative to Permanent Wall Sign</i> ]	✓	
Menu Box [ <i>Wall Sign at Entrance to Restaurant or Café</i> ]	✓	
Neon Sign	✓	
Free Expression Sign [ <i>Temporary Sign</i> ]	✓	

Sign Types in Current LDO [ <i>new name in revised Chapter 9</i> ]	Substantive Change from Current Regulations	
	No Change	Change
Identification Sign		✓
Election Sign		✓
Agricultural Sign		✓
Real Estate Sign		✓
Signs for Temporary Uses, Structures, Sales, or Events		✓
Institutional Uses Sign		✓

The bulk of the substantive amendments occur to former Chapter 9B, regarding temporary signs. The current ordinance categorizes temporary signs by type, and regulates each type differently in terms of size, number of signs allowed, and other factors. The amendments, which were drafted in consultation with William D. Brinton, a First Amendment sign expert, will simplify temporary sign regulation while continuing to further the Town's significant interests in preserving the character and quality of residential neighborhoods, maintaining and protecting high quality aesthetic standards for development, conserving the value of buildings and land, and other purposes as outlined in the Land Development Ordinance. The regulations regarding temporary signs will no longer involve individual categories for different types of signs, and thus will be easier to understand.

As outlined below, all temporary signs, other than A-frame (sandwich board) signs, will be subject to the same requirements. Property being used for residential purposes will be permitted a total of eight temporary signs, limited to five square feet in area, only two of which may contain a commercial message. Property being used for non-residential purposes will be permitted a total of four temporary signs, only two of which may contain a commercial message. Of the four signs, one may be 16 square feet in area while the rest are limited to five square feet in area. These size limitations are similar to what is permitted today.

PROPOSED STANDARDS FOR TEMPORARY SIGNS <i>Not applicable to sandwich boards [A-frame signs]</i>		
Requirement	Land Use <sup>1</sup>	
	Residential	Non-residential
Maximum Number <sup>2</sup>	8	4
Maximum Sign Area <sup>3</sup>	5 sf	3 @ 5 sf. 1 @ 16 sf.
Maximum Sign Height	42"	42"
Minimum Setback from Side Property Line <sup>4</sup>	5 ft.	5 ft.
<sup>1</sup> Uses may be permitted in zoning district or legal non-conforming uses.		
<sup>2</sup> No more than two temporary commercial signs are allowed on a single parcel. Off-site commercial signs are prohibited.		
<sup>3</sup> The maximum sign area applies to the size of the sign itself. Signs may be double-sided and contain messages on both sides.		

**PROPOSED STANDARDS FOR TEMPORARY SIGNS**

*Not applicable to sandwich boards [A-frame signs]*

Requirement	Land Use <sup>1</sup>	
	Residential	Non-residential

<sup>4</sup> Signs in the right-of-way are prohibited except as allowed by state or federal law.

In addition to this new approach to temporary sign regulation, the new proposed ordinance also:

- Expands upon the purpose and intent of the Sign Ordinance to emphasize the importance of sign regulation to the Town
- Updates and modernizes many definitions and other administrative provisions
- Updates and clarifies the list of prohibited sign types
- Renames several sign types
- Reclassifies several sign types as permanent, rather than temporary, signs either because they typically operate as permanent signs (“window sign”) or because they function as alternatives to permanent signs (“new construction alternative to principal ground sign,” “façade renovation alternative to permanent wall sign,” and “new business alternative to permanent wall sign”)
- Provides consistent minimum allowed sign area of 1.5 square feet per linear foot of building frontage in all zoning districts, including Town Center (Portions of Town Center are currently limited to 1 square foot per linear foot of building frontage)

**PROCESS AND ACTIONS TO DATE:**

**Town Council Public Hearing (*October 27, 2016*)**

There were no speakers at the public hearing. Staff responded to questions from council members concerning how the proposed temporary sign regulations differed from current regulations. Staff explained that the proposed regulations focused on the total number of signs allowed and the minimum spacing between signs. It was noted that distinctions could be made between a commercial and non-commercial message. (*Under established Supreme Court precedent, commercial speech may be subject to greater restrictions than noncommercial speech.*) There was discussion concerning the number of signs allowed. A council member asked if consideration had been given to basing the number of signs on lot characteristics such as lot size or amount of road frontage. Staff responded that various options were considered, and that the proposed approach was believed to provide the best balance between minimizing aesthetic impacts and maintaining compliance with federal case law, while minimizing enforcement challenges.

**Planning and Zoning Board Meeting (*December 8, 2016*)**

Several Planning and Zoning Board members opposed requiring a 15-foot separation between temporary signs, a provision included in the original proposal. There were concerns that eight temporary signs could not be placed on lots on cul-de-sacs or other lots with minimal lot frontage. Enforcement of separation requirements was also of concern.

**Changes Since the Planning and Zoning Board Meeting**

The proposed amendment has been modified to eliminate a minimum spacing requirement between temporary signs based on the concerns expressed by the Planning and Zoning Board. Staff concurs with the Planning and Zoning Board recommendation. Although the spacing requirement may further minimize aesthetic impacts, including such a requirement may on balance result in a greater negative impact, due to enforcement challenges and the perception that smaller lots have less opportunity for speech.

**PROPOSED TEXT:** See attachment

**FISCAL IMPACT:**

Implementation of the proposed amendment is expected to have a minimal impact on resources.

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