



MEMORANDUM

TO: Mayor and Members of City Council

FROM: Montique McClary, Interim City Manager
Kellen Long, Community Development Director

DATE: September 12, 2022

RE: Consideration: Call for a Public Hearing –TA 01-22-Signage in the Public ROW

BACKGROUND:

The placement and regulation of signage in public-right-of ways has always been a confusing topic with many different situations to consider. Staff has combined the guidance provided in General Statute 136-32, that sets forth the rules allowing for “political signage” in NC DOT right-of-ways during a specified period of time, General Statute 160A-296, provides Municipalities broad authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits, and guidance from Coates’ Canons NC Local Government Law.

Three attachments have been provided with this staff analysis that has guided staff’s proposed text amendment. Those attachments include G.S. 136-32, G.S. 160A-296, and a blog written by Adam Lovelady from UNC School of Government titled “Temporary Signs in the Right-Of-Way”.

In addition to the attachments mentioned above, staff has also attached an email correspondence from our Division Engineer with the North Carolina Department of Transportation, David Otts. Staff has been working directly with the Department of Transportation to provide a solid text amendment that both parties have agreed will tackle the issue.

ANALYSIS:

The blog referenced above produced by the UNC School of Government breaks down the ruling from the U.S. Supreme Court in Reed v. Town of Gilbert. During this ruling the

U.S Supreme Court made clear that categorizing noncommercial signs by the content of the message is content-based regulation subject to strict scrutiny. In that case, the town's sign ordinance distinguished between campaign signs, ideological signs, and event-based signs, among other categories. The following example was given during the case "If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treaties of Government, that sign will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government".

This blog goes on to describe that General Statute 136-32 specifically allowing political signage in NC DOT right-of-ways is subject to constitutional challenge under the Reed decision, because it advocates for political signs, but not other noncommercial signage. To address this issue in our sign ordinance, staff has furthered defined noncommercial signs. This proposed text amendment treats NC DOT right-of-ways and City maintained public-right-of-ways in the same manner, however, staff identifies the signage based on commercial and noncommercial signage and where they are each prohibited. The proposed text amendment prohibits commercial signs (temporary or permanent) in any NC DOT or City maintained right-of-way within the City's municipal limits. Non-commercial signs are excluded from this ordinance. The definition of non-commercial signs includes signs expressing political views, religion views, or signs of for-profit organizations related to their tax-exempt purposes. Staff took this approach specifically so that political signage was not the only type of noncommercial signage identified.

In the email provided to staff from our Division Engineer with NC DOT, Mr. David Otts. Mr. Otts states that "we have similarly noticed that specifically "yard signs", advertising services offered by small businesses, are becoming increasingly prolific. These compact corrugated plastic advertisements atop wire stakes are often unmaintained and are not biodegradable. During high wind events, the placard will often separate thereby increasing trash adjacent the roadside and leaving an inconspicuous sharp metal object behind which could injure a pedestrian, puncture a tire, or damage a mower. With simply this in mind, we would value the City's assistance removing what is already restricted by General Statute 136-32 on property maintained by the Department of Transportation. While I am unaware of any formal agreements to delegate enforcement between Division One and any municipalities we encompass, illegal signs are essentially litter and can be handled accordingly."

As requested, Staff has researched a couple of other municipalities, and their current signage ordinance.

The Town of Nags Head's signage ordinance states the following for temporary signage in the public right of way:

"10.22.6.1. It shall be unlawful for any person, except a public officer or employee in the performance of his public duty, to affix, post, paint, nail, fasten, place, or locate any sign, card, banner, handbill, poster, or advertising or notice of any kind, or cause the same to be done, upon public streets, highways, public right-of-way or any publicly

owned or maintained property within the Town of Nags Head, or upon any curbstone, traffic control device, street sign, hydrant, fence, guardrail, or any other structure situated within any such areas or to affix the same to a wire or appurtenance thereof, except as may be authorized by the ordinances, laws, or regulations of the Town of Nags Head, the State of North Carolina or the United States.”

The Town of Southern Shores’ Ordinance states the following for prohibited signage:

Prohibited signs. The following signs, sign construction, and displays are prohibited:

a. Any sign erected or maintained which is a copy or imitation of an official highway sign and carrying the words "STOP" or "DANGER" except such signs installed to regulate bicycle traffic on town-owned multipurpose pathways.

b. Any sign that obstructs corner visibility or visibility at a driveway between a height of two feet and ten feet.

c. A sign attached to any traffic sign, utility pole or structure, or tree.

d. Any sign that obstructs ingress and egress to any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any room or building as required by law.

e. Any sign that violates any provision of any law of the state relative to outdoor advertising.

f. Any off-site signs.

g. Any sign which contains, employs, or utilizes lights or lighting which rotates, flashes, moves or alternates.

h. Any sign located within a public or private right-of-way.

i. Any signs painted on or affixed to a roof surface.

j. Vehicle signs.

k. Signs supported in whole or in part by water, air or gas.

l. Tourist-oriented directional signs.

TEXT AMENDMENTS:

A document has been attached (Attachment A) to your staff memo to reflect all the proposed text amendments. In order to read this document properly, please note that the text underlined in red is new language that staff is purposing to be added to the Unified

Development Ordinance, while, text ~~stricken in red~~ is language that staff is proposing to be deleted.

Underlined in red – new language to be added

~~Strikethrough in red~~ – language to be deleted

PLANNING COMMISSION RECOMMENDATION:

The Elizabeth City Planning Commission heard this text amendment on three different occasions from April 2022 to June of 2022. The Planning Commission voted unanimously to recommend approval during their regularly scheduled meeting on June 7th.

STAFF RECOMMENDATION:

By motion, call for a public hearing to be held on Monday, September 26, 2022 at 7:00 PM in City Council Chambers of the Gardner Municipal Building, located at 306 East Colonial Avenue, Elizabeth City, NC.

Attachment A

ARTICLE XI

DEVELOPMENT STANDARDS

11-1 SIGNS

The purpose and intent of this Section is to recognize that signs serve a legitimate public service and that they complement and support trade, tourism and investment within Elizabeth City. These regulations are intended to establish standards which maximize the effectiveness of permitted signs while limiting visual distraction to motorists and preserving the land values and natural attractiveness of the area.

All signs except those specifically listed in Section 11-1.3 shall be erected, installed, or modified only in accordance with a duly-issued and valid sign permit issued by the Zoning Administrator. Sign permits shall be issued in accordance with the requirements and procedures of Article IV, Permits and Procedures, and the submission requirements of Appendix 1. If plans submitted for a zoning, special use, or conditional use permit include sign plans in sufficient detail, as determined by the Planning Director, that the permit issuing authority can determine whether the proposed sign(s) comply with the provisions of this Section, then issuance of the requested zoning, special use, or conditional use permit shall constitute approval of the proposed sign(s).

11-1.1 Definitions

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this Section should have the meaning indicated when used throughout Section 11-1.

(A) Sign

Any words, lettering, numerals, parts of letters or numerals, figures, phrases, sentences, emblems, devices, designs, or trade names or trademarks by which anything is known (including any surface, fabric or other material or structure designed to carry such devices such as are used to designate or attract attention to an individual, firm, an association, a corporation, a profession, a business, or a commodity or product) which are exposed to public view and used to attract attention.

(B) Advertising Signs (Billboards)

A sign which publicizes and directs attention to a business, profession, commodity, activity, product, service or entertainment not conducted, sold or offered upon the premises where such sign is located.

(C) Animated Sign

Any sign which flashes, revolves, rotates or swings by mechanical means, or which uses a change of lighting to depict action, or to create a special effect or scene.

(D) Banner

A sign of light weight fabric or similar material which is rigidly mounted to a pole or a building by a rigid frame at two or more edges. National, state or municipal flags, or the official flag of any institution or business shall not be considered banners.

(Section 11-1.1(D) amended by City Council 02/07/2000.)

(E) Building Marker

A sign indicating the name of a building and date and incidental information about its construction, which sign is cut into a masonry surface, or made of bronze or other permanent material.

(F) Canopy Sign

Any sign which is a part of or attached to an awning, canopy or other fabric-like or plastic protective structure which is extended over a door, window, or entranceway. A marquee is not a canopy.

(G) Changeable Copy Sign

Any sign on which copy is changed manually and copy is shown on the same sign face such as reader boards with changeable letters or changeable pictorial panels but not limited to the above. Poster panels and painted boards are not changeable copy signs.

(H) Commercial Message

Any sign wording, logo, or other representation that directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity. This definition does not include company nameplates or logos on instructional signs.

(I) Construction Sign

A sign on a construction site during the period of construction on which is printed or written the name of the owner, developer, contractor, architect, planner, engineer, or development title.

(J) Entry Marker (Halstead Overlay District only)

A sign identifying primarily the name of commercial and residential developments or subdivisions, or an office, industrial or business park with a minimum of 10 acres or developments with at least four buildings with a total of over 150,000 square feet. The entry marker is permitted to contain logos,

trademarks or other identifying symbols for up to three individual properties, tenants, or information relating to a permanent leasing office. The entry marker is not intended to be used for a single business. Message Area on an entry marker is the advertising surface (or area) devoted to the name of the development, logos, trademarks or other identifying symbols. *(Amended 3/10/08)*

(K) Electronically Controlled Message Sign

A sign on which the copy changes automatically on a lamp bank, such that the message or display does not run continuously in the travel mode, and any message or display remains stationary for a minimum of two seconds. Any sign on which the message or display runs continuously in the travel mode and/or on which any message or display does not remain stationary for a minimum two seconds shall be considered a flashing sign.

(L) Feather Signs

A form of temporary sign composed of durable lightweight fabric with a sturdy frame enclosing only a portion of the material's edge so that it can remain upright and still be flexible in the breeze, generally shaped to be tall and narrow when affixed into the ground or other bottom support, affixed to a pole which is located outdoors and contains language for advertisement, greeting or similar messaging purposes, which is activated by the wind and is used by businesses or organizations to promote events, products or services.

(M) ~~(L)~~ Flashing Sign

A type of animated sign which contains an intermittent, blinking, scintillating, or flashing light source, or which includes the illusion of intermittent or flashing light, or an externally mounted intermittent light source. An electronically controlled message sign is not a flashing sign.

(N) ~~(M)~~ Freestanding Sign

Any sign which is supported by structures or supports which are placed on, or anchored in the ground, and which structures or supports are independent from any building or other structure.

(O) ~~(N)~~ Governmental Sign

Any sign erected by or on behalf of a governmental body to post a legal notice, identify public property, convey public information, and direct or regulate pedestrian or vehicular traffic.

(P) ~~(O)~~ Identification Sign

A permanent sign announcing the name of a subdivision, manufactured home park, campground/RV park, multifamily or townhouse development, planned unit development, church, school, park or quasi-public structure or facility, and uses permitted in residential zoning districts.

(Q) ~~(P)~~ Incidental Sign

A sign which provides only information for the convenience and necessity of the public. Company logos may be displayed on such signs but must not occupy more than 25% of the sign area. Incidental signs include directories, entrance, exit and other necessary directional signs.

(R) ~~(Q)~~ Menu Sign

A permanent on-premises sign located at businesses which provide drive-up or drive-through services such as fast food restaurants, banks, laundries, etc. Menu signs shall be located so as not to create vehicle stacking problems which will interfere with the flow of traffic.

(S) ~~(R)~~ Noncommercial Sign

A sign that carries no commercial message, statement, or expression. Non-commercial signs include signs expressing political views, religious views, or signs of for-profit organizations related to their tax-exempt purposes.

(T) ~~(R)~~ Nonconforming Sign

Any sign which does not conform to size, height, location, design, construction, or other requirements of this Ordinance. The nonconformity may result from adoption of this Ordinance or any subsequent amendment.

(U) ~~(S)~~ On-Premises Sign

A sign which publicizes and directs attention to a profession, commodity, activity, product, service or entertainment conducted, sold or offered upon the premises where such sign is located. On-premises signs include pole and ground mounted signs.

(V) ~~(T)~~ Political Sign

A sign relating to the election of a person to public office, relating to a political party, or relating to a matter to be voted upon at an election called by a public body.

(W) ~~(T)~~ Portable Sign

A sign not permanently attached to any surface. Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported. Portable signs include, but are not limited to, signs designed to be transported by means of wheels.

(X) ~~(U)~~ Portal Monument (Halstead Corridor Overlay Only)

A cohesively designed element(s) to a subdivision or development of at least 150 acres, intended to create a unique, identifying entrance area with the

expressed purpose of identifying or drawing attention to the development and/or exercising control of ingress and egress to the development. There shall be only one portal monument per subdivision or development.

(Section 11-1.1(U) amended by Council on 3/10/08)

(Y) ~~(W)~~ Professional or Occupational Sign or Name Plate

A sign which publicizes and directs attention to a home occupation or to a profession.

(Z) ~~(W)~~ Projecting Sign

Any sign which is end mounted or otherwise attached to an exterior wall of a building which forms an angle with said wall.

(AA) ~~(X)~~ Real Estate Sign

A sign which advertises the sale, rent, or lease of property.

(BB) ~~(Y)~~ Sandwich Board Sign

Sandwich Board signs are self-supporting A-frame freestanding moveable signs with only two visible sides.

(CC) ~~(Z)~~ Sign Area

The area of a sign shall be measured in conformance with the following:

- (1) The area of the face of a sign shall be calculated to include the outermost part which forms the shape or display. Necessary supports and trim moldings shall not be included when calculating the area of the sign. Aprons below advertising signs shall not exceed 3 feet in height. Aprons serve an aesthetic function and shall not be used for any purposes other than to identify, by name, the sign company responsible for the sign.
- (2) In computing the area of a sign, standard mathematical formulas for common regular geometric shapes (triangle, parallelogram, circle and ellipse, or combinations thereof) shall be used.
- (3) In the case of an irregularly shaped sign or a sign with letters and/or symbols affixed to or painted, displayed or incorporated into or upon a wall, canopy, awning or decorative facade of a building, the area of the sign shall be the area within the singular continuous perimeter, outlining the limits of the writing, representation, emblem, or any figure of similar character.
- (4) Back-to-back and V-type signs mounted so as to be connected and not spread more than 15 feet will be considered as one sign location when calculating horizontal separation between signs. Advertising signs

(billboards) shall not be stacked, horizontally or vertically.

~~(DD)~~ ~~(AA)~~ Sign Height

The vertical distance measured from the ground elevation where the sign is located, to the highest point of the sign except as follows: When the ground elevation is different from the elevation of an adjacent street, the height of a sign shall be measured from the street elevation of the adjacent street at the edge of the pavement.

~~(EE)~~ ~~(BB)~~ Special Event Sign

A sign which relates to such events as grand openings, closeout sales, fund raising membership drives, or events of civic, fraternal, philanthropic, educational, or religious organizations. After the issuance of a special event permit, the following signs may be erected: on-premise portable signs, banners, and windblown signs such as pennants, spinners, flags, and streamers for a period not to exceed thirty days. Signs with blinking lights are prohibited. This permit is limited to a maximum of two per calendar year per premise.

(Section 11-1.1(Y) amended by City Council 02/19/2001.)

~~(FF)~~ ~~(CC)~~ Temporary Signs

Temporary signs are those signs which relate to such events as ~~elections~~, farm auctions, yard sales, agricultural production sales, horse shows, festivals, and home show openings.

~~(GG)~~ ~~(DD)~~ Wall Sign

A sign which is attached to a wall or facade of a building or canopy.

~~(HH)~~ ~~(EE)~~ Warning Sign

Any sign with no commercial message that displays information pertinent to the safety or legal responsibilities of the public such as signs warning of 'high voltage', 'no trespassing', and similar directives.

11-1.2 Sign Standards

- (A)** All signs, except those attached flat against the wall of a building, shall be constructed to withstand minimum wind loads as specified by the NC State Building Code. Sufficient documentation shall be submitted to the Zoning Administrator for review to assure that wind and stress requirements have been met prior to any permit being issued. Such documentation shall be signed and sealed by a registered North Carolina Architect or Engineer.
- (B)** All signs shall be installed and maintained in compliance with the North Carolina State Building Code and the National Electrical Code and shall have

appropriate permits and inspections. Electrical signs and fixtures shall bear labels of a nationally accepted testing laboratory.

- (C)** All signs shall be maintained in a state of good repair, in compliance with all building and electrical codes and this Ordinance, and shall present a neat, well-kept appearance.
- (D)** All lights used for the illumination of a sign shall be shielded so that the light will not shine directly on surrounding areas or create a traffic hazard or distraction to operators of motor vehicles on the public thoroughfares. The Zoning Administrator shall have the power to order a change in the illumination of any sign that becomes a hazard or a nuisance.
- (E)** No illuminated sign, other than professional or occupational signs or nameplates, on-premises signs, incidental signs, back-lit awnings or identification signs shall be permitted within 100 feet of any residential zone. Illuminated signs other than those listed above which are located within 300 feet of a residence or residentially zoned district shall not be illuminated between the hours of 12 midnight and 6 a.m.
- (F)** The Zoning Administrator or his authorized representative shall have the authority to order the painting, repair, alteration or removal of a sign, at the expense of the owner of such sign, which shall constitute a hazard to safety, health or public welfare by reasons of inadequate maintenance, dilapidation or obsolescence. The existence of a sign (excluding billboards) or its support structure with no message display for a period of 90 days, shall be justification to declare the sign abandoned and require its removal.
- (G)** Any sign erected without proper permits or in violation of this Ordinance shall be brought into compliance within 7 days of notification by the Zoning Administrator or said sign shall be removed immediately.
- (H)** Any permitted sign projection over a public sidewalk shall be no lower than 10 feet above the level of the sidewalk or lower than 15 feet above the level of a vehicular driveway. An encroachment agreement must be obtained from the City of Elizabeth City or the NC DOT, as applicable.

11-1.3 Exempt Signs

The following listed signs are subject to all placement and dimensional requirements of this Section and shall comply with the North Carolina Department of Transportation sight distance and street rights-of-way clearances. The following listed signs shall, however, be exempt from permit and fee requirements, except that any illuminated sign shall require an electrical permit. Exempt signs shall be maintained in good condition and shall not constitute a hazard to safety, health or public welfare. Exempt signs which are found to be in violation shall be ordered corrected or removed.

- (A) Any directional, instructional or warning signs; utility signs; signs for public use; and no trespassing, no hunting, or neighborhood watch signs provided such signs contain no commercial message except for a business logo or name.
- (B) Any sign that is required by law or erected at the direction of a governmental agency.
- (C) Signs erected to regulate traffic.
- (D) Mailboxes, house numbers, nameplates, and building markers not exceeding 4 square feet in area.
- (E) Religious symbols at a place of worship or at a church-owned or operated facility. Such symbols must meet all setbacks and lighting requirements for signs.
- (F) Construction signs having a maximum area of 32 square feet and a maximum height of 6 feet and limited to one sign per construction site per street frontage. Exempt construction signs must be removed within 15 days following the completion of the project.
- (G) Real estate signs having a maximum area of 4 square feet and a maximum height of 3 feet in residential districts and 32 square feet in other districts and a maximum height of 6 feet. Real estate signs are limited to one per site or one per 300' of street frontage. Real estate signs shall not be placed in NC DOT or City maintained right-of-ways at any time, including directional signage for a real estate listing.
- (H) Temporary real estate signs associated with the marketing of a subdivision shall be limited to one sign per subdivision entrance and 32 square feet in area and 6 feet in height. This type of sign must be set back a minimum of 2 feet from all exterior property lines of the subdivision and shall remain clear of the roadway sight distance easement. An additional directory-type sign of the same dimension, height and setback requirements may be located within the interior of a subdivision. Real estate signs must be removed within 30 days following completion of the project or transaction.

~~(I) — Temporary signs shall not be placed more than 30 days prior to the event or~~

~~election and must be removed within 10 days following the event or election. Such signs are limited to 32 square feet in area and 6 feet maximum height.~~

- (J) Works of art with no commercial message.
- (K) Lights and decorations with no commercial message temporarily displayed on traditionally adopted civic, patriotic or religious holidays.
- (L) Hand-carried signs.
- (M) Signs located on the interior of buildings, courts, lobbies, stadiums, or other structures which are not intended to be seen from the exterior of such structures.
- (N) Flags of the United States, State of North Carolina, local governmental jurisdictions, foreign nations, and any other flags adopted or sanctioned by the City. No more than six flags per premise.
- (O) Signs affixed to vehicles and trailers used in the normal transport of goods or persons where the sign is incidental and accessory to the primary use of the vehicle or trailer.
- (P) Flags, emblems or insignia of corporate, political, professional, fraternal, civic, religious, or educational organizations.
- (Q) Historical or memorial plaques, tablets, or markers.
- (R) Signs painted or attached to vending machines, gas pumps, ice machines, or similar devices which indicate the contents of the machine, name or logo of supplier, the price or operating instructions.
- (S) Window signs painted on the inside of a window.
- (T) Changing copy of existing sign(s) without enlarging; however, a drawing of the new sign face must be submitted to the Planning Department prior to changing the sign face.
- (U) Banners on or across public streets upon the approval of the City Manager.
- (V) Portable signs subject to the following conditions:
 - (1) The sign shall not be placed within the site triangle (this will prevent visual obstruction);
 - (2) The sign must be properly maintained at all times;
 - (3) There shall be only one (1) portable changeable copy sign per premise;
 - (4) The sign face shall be secured to the frame of the sign so as to sustain winds up to 30 miles per hour as determined by the Code Enforcement

Officer;

- (5) Flashing lights are prohibited in accordance with Section 11-1.4;
- (6) All commercial banners must be located on the premises of the business it is advertising;
- (7) Banners, Spinners permitted. Non-commercial event banners shall only be displayed within 30-days prior to the event and shall be removed within seven (7) days after commencement of the event; and
- (8) Violations of this section will be fined according to Article V- Enforcement.

(Section 11-1.3 (U) (1-8) added by City Council 02/19/2001.)

(W) Political Signs in State and City maintained right-of-ways shall be subject to the following conditions according to GS 136-32.:

Political signs on privately owned properties are exempt from these regulations.

1. Political signs shall not be placed more than 30 days prior to the beginning date of "one-stop" early voting and must be removed within 10 days following the election.
2. Political Signs in City and State maintained right of ways must be placed in compliance with the following conditions as indicated in GS 136-32.
 - a. No sign shall be permitted in the right-of-way of a fully controlled access highway.
 - b. No sign shall be closer than three feet front the edge of the pavement of the road.
 - c. No sign shall obscure motorist visibility at an intersection.
 - d. No sign shall be higher than 42 inches above the edge of the pavements of the road.
 - e. No sign shall be larger than 864 square inches.
 - f. No sign shall obscure or replace another sign.
 - g. The permittee must obtain the permission of any property owner of a residence, business, or religious institution fronting the right-of-way where a sign would be erected.

11-1.4 Prohibited Signs

The following signs shall not be permitted, erected or maintained within the Elizabeth City planning and zoning jurisdiction.

- (A)** Signs with moving, revolving or rotating parts, optical illusions or movement or mechanical movements by any description or other apparent movement achieved by electrical, electronic or mechanical means, except for time, temperature, date

signs; traditional barber poles; three (3) message displays on billboards, and electronically controlled message signs.

- (B) Signs with lights or illuminations which flash, move, rotate, scintillate, blink, flicker, vary in intensity, vary in color or use intermittent electrical pulsations, except for: time, temperature, date signs; traditional barber poles; and electronically controlled message signs.
- (C) Strings of light bulbs used in connection with commercial premises for commercial purposes other than traditional holiday decorations, during the appropriate holiday period.
- (D) Portable signs, including signs painted on or displayed on vehicles or trailers used to serve primarily as a sign in residential districts, shall be prohibited except that portable signs used as temporary signs as defined in 11-1.1(Z) and in compliance with 11-1.3(H) are permitted.
- (E) Signs erected, maintained, painted or drawn on any tree, rock or other natural feature.
- (F) Signs attached to a building which extends vertically above the highest portion of the roof of any structure. Signs on roofs are permitted; however, they shall not exceed the maximum height requirement for the applicable zoning district.
- (G) Signs which obstruct any fire escape, required exit, window, door opening, or wall opening intended as a means of ingress or egress or signs which interfere with any opening required for ventilation.
- (H) Signs which imitate traffic control devices or interfere with any warning or instructional sign.
- (I) Signs which project over a public right-of-way, except that wall signs may project up to 18 inches over a public right-of-way in zoning districts which permit structures to be built at the property line adjoining the street.
- (J) Commercial signs located temporarily or permanently in any State or City maintained right-of-ways within the City of Elizabeth City's municipal limits. Non-commercial signs excluded from this ordinance include any sign that carries no commercial message, statement, or expression. Non-commercial signs include signs expressing political views, religious views, or signs of for-profit organizations related to their tax-exempt purposes.
- (K) Any bills, posters, signs or advertisements on any telegraph, telephone, electric, light, or other pole, along any of the streets of the City; provided that, this ordinance shall not be construed to include street signs and other required signage placed on poles by a City or State official or employee in the performance of their public duty.
- (L) Any bills, posters, signs or advertisements fix upon any traffic control device, street sign, hydrant, fence, or guardrail located within the State or City

maintained right of ways within the City of Elizabeth City; provided that this ordinance shall not be construed to include required signage placed on these devices by a City or State official or employee in the performance of their public duty.

11-1.5 Sign Placement, Size, Height, Setback, Separation, Clearances and Construction by Sign Type

(A) Advertising Signs (Billboards) (Reference also Section 11-4.3.1)

- (1) Maximum height: 30 feet. (In the event that unique conditions exist on a site which renders the 30-foot maximum height requirement impracticable, the Board of Adjustment may, upon proper finding of facts, grant a height variance not to exceed a maximum height of 40 feet.)
- (2) Minimum separation from another billboard: 300 feet measured along the same side of the street and 100 feet radius along an intersecting or adjacent street.
- (3) Billboards shall maintain a minimum separation of 150 feet from any residence as measured along the street beginning at a point projected perpendicular from the near side of an existing residence to the street right-of-way and 150 feet from any residential zoning district boundary. Billboards can be located within 150 feet of a residence if the property owner of the residence gives consent.
- (4) Maximum sign size:
 - (a) 320 square feet in area on streets with four or more lanes and 200 square feet in area on streets with less than four lanes.
 - (b) Top outs and side outs are permitted in addition to the above sign area dimensions. Top outs and side outs shall be confined to the immediate plane of the sign and may extend above and/or to the side of the sign face a maximum of two feet. Top outs and side outs shall not exceed a total of 32 square feet in area.
- (5) There shall be a minimum setback of 10 feet from the street right-of-way of all streets. However, there shall be a minimum setback of 50 feet at the intersection of major thoroughfares.
- (6) Minimum separation from other structures and side or rear property lines: 10 feet, except that a billboard shall be set back 150 feet from any residential use.
- (7) Minimum separation from utility lines shall be in compliance with the requirements of the utility having jurisdiction.

- (8) All structures, blank surfaces, backs and supports shall be uniformly painted in a neutral finish when exposed to any street and shall be maintained in good repair.

Minimum requirements contained within the North Carolina Outdoor Advertising Control Act (North Carolina General Statute 136-126 et seq.) which are more stringent or in addition to those contained in this Section shall apply.

(B) On-Premises Signs (freestanding pole or ground mounted on-premises signs)

- (1) Maximum height and area: For businesses that have 100 or less linear feet of property frontage facing a public street, a sign may not exceed 15 feet in height and 100 square feet in area. For businesses that have more than 100 linear feet of frontage facing a public street, a sign may not exceed 20 feet in height and 150 square feet in area.
- (2) Maximum number of freestanding or ground mounted on-premises signs per parcel: 1 sign per adjoining public street frontage.
- (3) Minimum separation from rights-of-way, property lines and structures: 10 feet.
- (4) Minimum separation from utility lines shall be in compliance with the requirements of the utility having jurisdiction.
- (5) No unfinished surfaces or structures shall be exposed on on-premises signs.

(C) Wall Signs (including canopy, awning and building facade signs)

- (1) Maximum area: 2 square feet of sign area per linear foot of building frontage (facing a street) if the parcel is not permitted a free standing sign, and 1.5 square feet of sign area per linear foot of building frontage (facing a street) if the parcel is permitted a free standing sign.
- (2) Minimum guaranteed wall signage area at any individual premises is 40 square feet.
- (3) The maximum projection of a wall sign shall not exceed 18 inches.
- (4) The height of a wall sign shall not exceed the height of the building or canopy facade.

(D) Professional or Occupational Name Plates and Incidental Signs

- (1) Maximum sign area: 6 square feet.
- (2) Maximum height: 30 inches if ground mounted, signs in this category may also be mounted against the structure.

- (3) Minimum setback from all property lines: 2 feet.
- (4) Maximum number of signs per business establishment: 1

(E) Identification Signs

- (1) Maximum sign area: 32 square feet.
- (2) Maximum height: 6 feet.
- (3) Minimum setback: 10 feet from all property lines.
- (4) Maximum number of signs per adjoining street frontage: 1.

(F) Menu Signs

- (1) Maximum sign area: 45 square feet.
- (2) Maximum height if ground mounted: 8 feet.
- (3) Minimum setback from all property lines: 10 feet.
- (4) Maximum number of signs per business establishment: shall be limited to two (2) each per drive-thru aisle and/or station.

(G) Construction Signs

- (1) Maximum sign area: 16 square feet in residential zoning districts and 64 square feet in nonresidential zoning districts.
- (2) Maximum height: 6 feet in residential zoning districts and 10 feet in nonresidential zoning districts.

(H) Multi-establishment Signs

To achieve a congruity, unity of development, and to avoid conflicts within any premise with more than one principal building, no sign permit shall be issued to any development containing more than one establishment until a set of written unified sign criteria is submitted to and approved by the Planning Director or his designee. No permit will be issued in violation of the adopted sign criteria. Such criteria shall be as follows:

- (1) Specified allowed type of script which shall be observed.
- (2) Maximum and minimum letter height which shall be observed.
- (3) Specified allowed sign types; all other signs are prohibited.
- (4) Sign placement by specifying sign panel location or elevation.

- (5) Specified maximum of three colors to be applied to the sign and its background which shall be observed. Notwithstanding the three color limit, such criteria may allow the use of one additional color of either black or white or a color that matches the building material color of the wall on which it is attached. Federal and state registered trademarks or service marks may employ additional colors, provided that they do not exceed twelve and one-quarter feet in any dimension. Only those signs which are erected or altered after the unified sign criteria are established shall be affected by the adopted unified sign criteria. The unified sign criteria can be amended by the owner of the multi-establishment property. However, any sign that does not comply with the revised sign criteria must be removed within 30 days of adoption of the revised sign criteria.

(I) Changeable Copy Signs

(Section 11-1.5 (I) Changeable Copy Signs deleted by Council 08/06/2001)

(J) Sandwich Board Signs

Sandwich board signs shall only be allowed for use in conjunction with retail stores or shops, and on-premises eating or drinking establishments within the Central Business District and General Business district. Sandwich board signs to be located in the Central Business District that are also within the local historic district, do not require a Certificate of Appropriateness.

(Section 11-1.5 (J) Sandwich Board Signs amended by Council on 9/28/09)

- (1) The maximum display area shall be eight (8) square feet per side of sign. The display width of the sign shall not exceed two (2) linear feet. The maximum display height shall be four (4) feet. The maximum exterior dimensions of a sandwich board sign shall not exceed thirty (30) inches in width by fifty-four (54) inches in height
- (2) Only one sandwich board sign per business establishment shall be permitted. Sandwich Board signs shall be placed directly in front of the associated establishment. In cases of commercial buildings with multiple tenants, the primary entrance to the building may be considered for sign placement. The sign shall be placed on that part of the sidewalk closest to the associated business at a right angle to the building façade in order to reduce visibility from the adjacent roadway.
- (3) A sign permit is required prior to the installation of a sandwich board sign. Only one permit for a sandwich board sign is allowed per business and such permit may be transferred with the sale of the business. Premises with more than one business establishment are encouraged to apply for a Multi-Establishment sign permit as per § 11-1.5(l). Permits are valid for one year. Annual renewals and inspections are required by September 1, but without additional fees or assessments.

- (4) Any person erecting a sandwich board sign shall indemnify and hold harmless the City and its officers, agents, and employees from any liability or claim arising from the presence or placement of the sandwich board sign on City property or public rights-of-way. The person placing the sandwich board sign shall sign an indemnification agreement, approved by the City Attorney, prior to the issuance of a sign permit. The indemnification agreement shall be accompanied by evidence of insurance covering the liability assumed in this subsection and the agreement.
- (5) Sandwich Board signs shall not be placed so as to interfere with or obstruct pedestrian or vehicular traffic (as per City Code Section 74-5 and the Department of Justice Americans with Disabilities Act current standards), cause the width of the sidewalk to be reduced below four (4) feet in width, nor shall they be erected or maintained in a manner that prevents free ingress or egress from any door, window or fire escape.
- (6) A sketch including dimensions, content, materials, and location of the sandwich board sign must be attached to the permit application. The permit application must be approved and signed by the Zoning Administrator before the sandwich board sign can be displayed. If a sign is displayed prior to obtaining a sandwich board sign permit, application shall be denied.
- (7) Sandwich Board signs shall not be illuminated, nor shall they contain moving parts or have balloons, streamers, pennants, or similar adornment attached to them. Sandwich Board signs shall be self-supporting and shall not be anchored to the sidewalk. Additional exterior supports, sandbags, bricks, concrete blocks, etc. are strictly prohibited. Attaching sandwich board signs to newspaper vending boxes, poles, objects, structures, or other appurtenances by means of chains, cords, rope, wire, cable, etc. is prohibited.
- (8) Sandwich Board signs shall only be displayed during the business's operating hours.
- (9) Sandwich Board signs shall be removed from public sidewalks if there is any snow accumulation (the sign may not be displayed until the snow is removed), except those signs located entirely on private property.
- (10) Sandwich Board signs within the public right-of-way may be moved or removed temporarily by the City for municipal purposes (i.e. code enforcement, snow removal, traffic issues, maintenance, situations involving an imminent public safety hazard etc.).
- (11) Sandwich Board signs placed in violation of this section will be enforced according to Article V of this Ordinance and will be disposed of at the owner's expense. Assessed fines will not exceed thirty dollars (\$30) per day. Each day is considered a separate violation.

(Section 11-1.5 (J) Sandwich Board Signs adopted by Council 03/2009.)

**Table 11-1-1
Table of Permitted Signs By Type of Sign**

Sign Type	Residential Districts	CB	GB	O&I	HB	NB	CMU	I1	I2	HEBO District
Advertising (Billboards)*			S*	S*	X*	S*	S*	X	X	
On-Premises		X	X	X	X	X	X	X	X	X
Wall		X	X	X	X	X	X	X	X	X
Professional or Occupational Nameplate, Incidental	X	X	X	X	X	X	X	X	X	X
Identification	X	X	X	X	X	X	X	X	X	X
Menu		X	X	X	X	X	X	X	X	X
Construction	X	X	X	X	X	X	X	X	X	X
Real Estate	X	X	X	X	X	X	X	X	X	X
Temporary	X	X	X	X	X	X	X	X	X	X
Exempt	X	X	X	X	X	X	X	X	X	X
Entry Marker										X
Portal Monument										X
Sandwich Board		X	X							
<u>Feather Signs</u>			<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>		<u>X</u>	<u>X</u>	
<u>Political Signs</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

Notes:

X = Indicates permitted with sign permit.

S = Indicates permitted by Special Use Permit (See Section 11-4.3.1).

Blank = Indicates not permitted.

* Advertising signs in this category shall also comply with the permit procedures contained in the current edition of the North Carolina Department of Transportation outdoor advertising manual.

<https://canons.sog.unc.edu/2018/10/temporary-signs-in-the-right-of-way/>



Coates' Canons NC Local Government Law

Temporary Signs in the Right-of-Way

Published: 10/16/18

Author Name: Adam Lovelady

It's that time of year again. Leaves are falling and campaign signs are rising. Along with the signs come the questions about the laws and limits for regulating campaign signs. This can be a confusing topic because of the ruling from the U.S. Supreme Court in *Reed v. Town of Gilbert* and because of the overlapping authority between local governments and the North Carolina Department of Transportation (NCDOT).

Legal issues affecting the regulation of campaign signs include:

- Free speech protections limiting the regulation of sign content;
- Differences between regulations on private property and regulations on public property; and
- Differences between regulations on state maintained rights-of-way and municipally maintained rights-of-way.

This blog describes the basic aspects of these legal issues with a focus on regulations in the public right-of-way.

Free Speech Issues

The U.S. Supreme court has ruled that regulations of signs that are based on what the signs say (content-based regulations) are subject to strict scrutiny—a standard that requires compelling government justification and will likely be struck down. In contrast, content-neutral regulations of the time, place, and manner of speech are subject to intermediate scrutiny and are more likely to survive judicial review. Regulation of commercial speech also is subject to intermediate judicial scrutiny.

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In *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), the U.S. Supreme Court made clear that categorizing noncommercial signs by the content of the message is content-based regulation subject to strict scrutiny. In that case the town's sign ordinance distinguished between campaign signs, ideological signs, and event-based signs, among other categories. Justice Thomas offered the following example: "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." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2227 (2015). The Court found those categories to be unconstitutional content-based restrictions that could not survive strict scrutiny. I wrote more about the *Reed* decision [here](#).

Following the *Reed* case, sign regulations need to treat noncommercial speech equally. So, if a sign regulation is going to permit temporary campaign signs, then it must equally permit temporary signs stating "Jesus Saves," "Anarchy Now," and "Save the Earth." Many local ordinances had (and still have) content-based distinctions that would not withstand constitutional challenge after *Reed*.

Content-neutral regulations that distinguish signs based on the characteristics of the sign generally survive judicial review under intermediate scrutiny. So, for example, reasonable regulations of the size or location of signs are generally acceptable. Distinctions among types of sign construction—monument signs, wall signs, temporary signs, and air-blown signs, for example—also are allowed generally. Such restrictions are based on the characteristics of the sign, not the content of the message. To be clear, these content-neutral regulations still must meet intermediate judicial scrutiny: The regulation must further a substantial governmental interest (such as public safety and community aesthetics), that governmental interest must be unrelated to limiting free expression, and the regulation must be no greater than necessary to support the governmental interest.

Even after *Reed*, commercial messages may still be distinguished from noncommercial messages. To be sure, that distinction formally is a content-based distinction, but courts applying the *Reed* decision have re-affirmed that regulations of commercial speech remain subject to intermediate scrutiny under the *Central Hudson* case (447 U.S. 557 (1980)). For application of *Central Hudson* after *Reed*, see for example *Lone Star Sec. & Video, Inc. v. City of Los Angeles*, 827 F.3d 1192 (9th Cir. 2016) and *Geft Outdoor LLC v. Consol. City of Indianapolis & Cty. of Marion, Indiana*, 187 F. Supp. 3d 1002 (S.D. Ind. 2016)(*appeal dismissed sub nom*). As such, a government might permit temporary noncommercial signs (campaign signs and others) but still restrict temporary commercial signs.

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In addition to the differences between content-based, content-neutral, and commercial speech regulations, courts have held that regulations may differentiate between signs on private property and signs on public property. As Justice Thomas noted in his opinion for the Court in *Reed*, “on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner.” *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2232(2015) (citing *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 817(1984)). The discussion below first outlines considerations for temporary noncommercial signs on private property and then outlines additional considerations for temporary noncommercial signs on public rights-of-way.

Temporary Signs on Private Property

An ordinance or regulation may set reasonable content-neutral limits on noncommercial speech (including political signs) on private property. Such restrictions might include limits on the size, number, and location of temporary noncommercial signs.

Importantly, regulations of temporary noncommercial signs on private property must not be overly restrictive. The U.S. Supreme Court has noted the import of the residential signs because residential signs are inexpensive and convenient, they convey a message with a close connection to the speaker, and there are not adequate substitutes of expression if residents are completely prohibited from posting residential signs. In *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), the city ordinance prohibited homeowners from displaying signs on their property, with limited exceptions. A resident challenged the ordinance when she was prevented from posting a sign protesting the Gulf War. The Court struck down the city’s ban of almost all residential signs, but allowed that the city can still address residential signs with reasonable regulations. Similarly in *Arlington County Republican Committee v. Arlington County*, 983 F.2d 587 (4th Cir. 1993), the Fourth Circuit Court of Appeals ruled that limiting property owners to only two campaign signs was overly restrictive.

Can a local government set a time limit on temporary noncommercial signs on private property?

Durational limits that are not overly restrictive likely may be used, but local governments should be wary of the potential legal pitfalls. Even before *Reed* courts around the country struck down durational limits that were too short (routinely striking down sign codes that limited campaign signs to less than sixty days). This is a reminder that anytime the government is regulating noncommercial speech it must not be overly restrictive—especially as related to residential property and possible political speech.

The *Reed* decision did not directly address the question of durational limits for noncommercial signs, but did discuss it indirectly. Justice Thomas implies that a regulatory provision related to “whether and when an event is occurring” may be permissible if it permits “citizens to post signs on any topic whatsoever

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within a set period leading up to an election.” 135 S. Ct. at 2231. Along that line of thinking, a local government could establish a set amount of time (for example, ninety days before an election until ten days after the election) and permit a greater amount of temporary noncommercial signage during that time period.

Note, though, that such preference for campaign season may lack the tailoring necessary to justify a sign regulation. If the additional signage is permitted during campaign season, then what is the justification to prohibit a resident from posting a temporary sign during the Easter season, or the summer solstice, or at the start of the school year? While prior caselaw and Justice Thomas’ language in *Reed* indicates that time periods tied to campaign season may be permissible, there is some lack of clarity around this issue.

Temporary Signs in Public Rights-of-Way

As noted above, courts distinguish between regulations of signs on private property and regulations of signs on public property. This section explores statutory authority and Free Speech considerations for regulations of temporary signs in the public right-of-way in North Carolina.

Rules for NCDOT Rights-of-Way

The State of North Carolina has specific rules for signs in public rights-of-way controlled and maintained by the NC Department of Transportation. General Statute 136-32 outlines a general prohibition on posting signs on public highways and authorizes NCDOT to remove impermissible signs. The statute then sets forth the rules allowing for “political signs.” Political signs are permitted in the NCDOT right-of-way during the time period from 30 days prior to the first date of “one-stop” early voting until the tenth day after the primary or election day. (Note that the regulation is for public rights-of-way, not private property, so the shorter time period is likely permissible.)

The statute gives specific parameters for placement of qualifying signs:

- No sign shall be permitted in the right-of-way of a fully controlled access highway.
- No sign shall be closer than three feet from the edge of the pavement of the road.
- No sign shall obscure motorist visibility at an intersection.
- No sign shall be higher than 42 inches above the edge of the pavement of the road.
- No sign shall be larger than 864 square inches.
- No sign shall obscure or replace another sign.

Notably, the individual placing the sign must obtain permission of the owner of the property fronting the right-of-way where the sign is erected, although there is no detail about the form or evidence of such permission.

<https://canons.sog.unc.edu/2018/10/temporary-signs-in-the-right-of-way/>

NCDOT is authorized to remove noncompliant signs. It is a Class 3 misdemeanor for an unauthorized individual to steal, deface, vandalize, or unlawfully remove a political sign placed in compliance with the statute.

This NCDOT rule as written is subject to constitutional challenge under the *Reed* decision. The statute allows “political sign”—defined as “any sign that advocates for political action”—but not other noncommercial signs. This preferential treatment of one category of noncommercial speech is precisely the kind of content-based regulation that the Court struck down in *Reed*.

Local Rules for Municipal Rights-of-Way

Under General Statute 160A-296, North Carolina municipalities have broad authority over their public streets, including the power to regulate the use of the streets and the duty to keep the streets free from unnecessary obstructions. This authority includes the power to regulate signs in the right-of-way. Moreover, the statute about NCDOT authority, 136-32(f), confirms that cities may use their police powers to adopt regulations of signs in the rights-of-way within their jurisdiction and maintained by the city. A municipality may prohibit temporary signs in the municipal right-of-way, or permit them subject to certain even-handed, content-neutral restrictions. As with other restrictions, this may include limits on size, location, time-frame, and other content-neutral aspects. A municipality may permit noncommercial temporary signs in the right-of-way, but still restrict commercial temporary signs.

Rules for When There Is No Local Ordinance

If a municipality does not adopt an ordinance prohibiting or regulating the placement of signs in the right-of-way, then the NCDOT rules under G.S. 136-32 apply to municipal rights-of-way. That section does not specifically address enforcement, but presumably the municipality would handle enforcement.

There is a common question concerning municipal enforcement of the NCDOT rule: If the NCDOT rule runs afoul of the *Reed* decision, how should the municipality enforce the rule? Some take the stance that although the state law may be challenged as unconstitutional, it is the applicable rule until a court says otherwise or until the General Assembly chooses to amend the statute. That stance, though, leaves the municipality open to legal challenge—your town might be the one that winds up in court. Alternatively, a municipality could use its enforcement discretion and apply the NCDOT rule to noncommercial speech, not just political campaign signs. In practice, most of the temporary signs in the right-of-way during campaign season will be campaign signs. When enforcing the NCDOT rule, the zoning enforcement officer or city transportation staff could pick up any temporary commercial signs, but leave any temporary noncommercial signs such as signs with religious messages, non-campaign political messages, and other noncommercial messages.

Rules for State Roads in a Municipality

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What about NCDOT roads within a municipality? G.S. 136-32(b) sets forth the provisions allowing placement of “political signs in the right-of-way of the State highway system.” G.S. 136-32(f) makes clear that municipal rules, if adopted, apply to streets “located within the corporate limits of a municipality and maintained by the municipality.” With that phrasing, it appears that NCDOT rules would apply to a state road in a municipality unless the municipality maintains the state road. That said, it may be possible for NCDOT to contract with a municipality to handle enforcement along NCDOT-maintained highways within the municipal boundary. G.S. 136-66.1 outlines the responsibilities for streets inside municipalities, including authority for a municipality to undertake certain maintenance and construction duties related to state roads within the municipality.

Summary

Regulation of campaign signs requires some attention to detail. Given the ruling of the U.S. Supreme Court in *Reed v. Town of Gilbert*, a government regulation must treat noncommercial speech equally. So, if a local or state government wants to permit campaign signs it must equally permit other noncommercial signs. Our courts have recognized the importance of residential signs, so officials must be careful not to over-regulate them. With regard to signs in the public rights-of-way in North Carolina, the applicable rules will depend upon the location of the road, the responsibility for maintaining the road, and whether the municipality has adopted local rules.

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§ 136-32. Regulation of signs.

(a) Commercial Signs. – No unauthorized person shall erect or maintain upon any highway any warning or direction sign, marker, signal or light or imitation of any official sign, marker, signal or light erected under the provisions of G.S. 136-30, except in cases of emergency. No person shall erect or maintain upon any highway any traffic or highway sign or signal bearing thereon any commercial or political advertising, except as provided in subsections (b) through (e) of this section: Provided, nothing in this section shall be construed to prohibit the erection or maintenance of signs, markers, or signals bearing thereon the name of an organization authorized to erect the same by the Department of Transportation or by any local authority referred to in G.S. 136-31. Any person who shall violate any of the provisions of this section shall be guilty of a Class 1 misdemeanor. The Department of Transportation may remove any signs erected without authority or allowed to remain beyond the deadline established in subsection (b) of this section.

(b) Compliant Political Signs Permitted. – During the period beginning on the 30th day before the beginning date of "one-stop" early voting under G.S. 163-227.2 and ending on the 10th day after the primary or election day, persons may place political signs in the right-of-way of the State highway system as provided in this section. Signs must be placed in compliance with subsection (d) of this section and must be removed by the end of the period prescribed in this subsection. Any political sign remaining in the right-of-way of the State highway system more than 30 days after the end of the period prescribed in this subsection shall be deemed unlawfully placed and abandoned property, and a person may remove and dispose of such political sign without penalty.

(c) Definition. – For purposes of this section, "political sign" means any sign that advocates for political action. The term does not include a commercial sign.

(d) Sign Placement. – The permittee must obtain the permission of any property owner of a residence, business, or religious institution fronting the right-of-way where a sign would be erected. Signs must be placed in accordance with the following:

- (1) No sign shall be permitted in the right-of-way of a fully controlled access highway.
- (2) No sign shall be closer than three feet from the edge of the pavement of the road.
- (3) No sign shall obscure motorist visibility at an intersection.
- (4) No sign shall be higher than 42 inches above the edge of the pavement of the road.
- (5) No sign shall be larger than 864 square inches.
- (6) No sign shall obscure or replace another sign.

(e) Penalties for Unlawful Removal of Signs. – It is a Class 3 misdemeanor for a person to steal, deface, vandalize, or unlawfully remove a political sign that is lawfully placed under this section.

(f) Application Within Municipalities. – Pursuant to Article 8 of Chapter 160A of the General Statutes, a city may by ordinance prohibit or regulate the placement of political signs on rights-of-way of streets located within the corporate limits of a municipality and maintained by the municipality. Any such ordinance shall provide that any political sign that remains in a right-of-way of streets located within the corporate limits of a municipality and maintained by the municipality more than 30 days after the end of the period prescribed in the ordinance is to be deemed unlawfully placed and abandoned property, and a person may remove and dispose of such political sign without penalty. In the absence of an ordinance prohibiting or regulating the placement of political signs on the rights-of-way of streets located within a municipality and maintained by the municipality, the provisions of subsections (b) through (e) of this section shall apply. (1921, c. 2, s. 9(b); C.S., s. 3846(r); 1927, c. 148, ss. 56, 58; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1991 (Reg. Sess., 1992), c. 1030, s. 39; 1993, c.

539, s. 981; 1994, Ex. Sess., c. 24, s. 14(c); 2011-408, s. 1; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1; 2019-119, s. 1.)

Article 15.

Streets, Traffic and Parking.

§ 160A-296. Establishment and control of streets; center and edge lines.

(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited to all of the following:

- (1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper repair.
- (2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary obstructions.
- (3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent domain.
- (4) The power to close any street or alley either permanently or temporarily.
- (5) The power to regulate the use of the public streets, sidewalks, alleys, and bridges.
- (6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the surface. To the extent a municipality is authorized under applicable law to impose a fee or charge with respect to activities conducted in its rights-of-way, the fee or charge must apply uniformly and on a competitively neutral and nondiscriminatory basis to all comparable activities by similarly situated users of the rights-of-way. No fee or charge for activities conducted in the right-of-way shall be assessed on businesses listed in G.S. 160A-206(b), except the following:
 - a. Fees to recover any difference between a city's right-of-way management expenses related to the activities of businesses listed in G.S. 160A-206(b) and distributions under Article 5 of Chapter 105 of the General Statutes.
 - b. Payments under agreements subject to G.S. 62-350.
- (7) The power to provide for lighting the streets, alleys, and bridges of the city.
- (8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273.

(a1) A city with a population of 250,000 or over according to the most recent decennial federal census may also exercise the power granted by subdivision (a)(3) of this section within its extraterritorial planning jurisdiction. Before a city makes improvements under this subsection, it shall enter into a memorandum of understanding with the Department of Transportation to provide for maintenance.

(b) Repealed by Session Laws 1991, c. 530, s. 6, effective January 1, 1992. (1917, c. 136, subch. 5, s. 1; subch. 10, s. 1; 1919, cc. 136, 237; C.S., ss. 2787, 2793; 1925, c. 200; 1963, c. 986; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1979, c. 598; 1991, c. 530, s. 6; 2001-261, s. 1; 2006-151, s. 14; 2016-103, s. 9(a).)

Otts, David B dbotts@ncdot.gov
RE: [External] Signs in Public ROW

Hello Kellen,

Thank you for taking the time to solicit comments from the Department regarding the City of Elizabeth City's proposed text amendment to prohibit commercial signs within the right-of-way. We have similarly noticed that specifically "yard signs", advertising services offered by small businesses, are becoming increasingly prolific. These compact corrugated plastic advertisements atop wire stakes are often unmaintained and are not biodegradable. During high wind events, the placard will often separate thereby increasing trash adjacent the roadside and leaving an inconspicuous sharp metal object behind which could injure a pedestrian, puncture a tire, or damage a mower. With simply this in mind, we would value the City's assistance removing what is already restricted by General Statute 136-32 on property maintained by the Department of Transportation. While I am unaware of any formal agreements to delegate enforcement between Division One and any municipalities we encompass, illegal signs are essentially litter and can be handled accordingly.

Although unauthorized commercial signs erected within the right-of-way can be treated as refuse and therefore picked up and disposed of at any time, political signs are allowed "during the period beginning on the 30th day before the beginning date of "one-stop" early voting... and ending on the 10th day after the primary or election day." These advertisements for a person or party participating in an election for public office must then be removed within 30 days else they can be considered abandoned. As campaigning is an important part of the electoral process, "it is a Class 3 misdemeanor for a person to steal, deface, vandalize, or unlawfully remove a political sign that is lawfully placed." For this reason alone, we would prefer that the City notify the Department of any political signage on our property believed to be non-compliant so that we can take appropriate action. In an effort to prevent any misunderstandings, it may be beneficial to provide all candidates with a copy of the rules regulating size and placement of political signs during filing, and / or add to the "Candidate Resource Center" found on the Pasquotank County Board of Elections website.

I hope that this brief reply will express our support for your proposed text amendment. I believe the General Assembly put it best when composing their Declaration of Policy for the Outdoor Advertising Control Act by stating, "the erection and maintenance of outdoor advertising signs and devices in areas in the vicinity of the right-of-way...within the State should be controlled and regulated in order to promote the safety, health, welfare and convenience and enjoyment of travel on and protection of the public investment in highways within the State, to prevent unreasonable distraction of operators of motor vehicles and to prevent interference with the effectiveness of traffic regulations and to promote safety on the highways, to attract tourists and promote the prosperity, economic well-being and general welfare of the State, and to preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the State highways and to promote the reasonable, orderly and effective display of such signs, displays and devices, and to secure the right of validly permitted outdoor advertising to be clearly viewed by the traveling public."

If we can be of any further assistance, please don't hesitate to contact us at any time.

Sincerely,

David B. Otts, P.E.
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Sign Litigation: A Brief Analysis of Reed v. Town of Gilbert

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Temporary yard signs are springing up all around town. Town council wants to reduce the clutter, but also wants to respect the free speech rights of the community. Council is considering new rules that will allow *campaign signs* during election season, *event signs* within a day of the event, and *ideological signs* anytime. It seems like a reasonable balance—allowing the signs but limiting them to a relevant time-frame. Can the town's regulations distinguish among signs this way?

A recent U.S. Supreme Court decision says no. Such distinctions are unconstitutional content-based regulation of speech.

To be clear, every sign ordinance distinguishes among signs. Ordinances commonly distinguish between locations (commercial property, residential property, public property, etc.), between types of signs (free-standing, wall signs, electronic signs, etc.), and between messages on the signs (commercial, safety, political, etc.). Reasonable distinctions concerning *location* and *types* of signs remain permissible.

The *Reed* decision, though, clearly invalidated some distinctions based on the message content of signs, and it will require adjustments to many local ordinances and some state statutes. The decision, with its four separate concurring opinions, also left open several legal questions.

This blog considers the decision of [Reed v. Town of Gilbert, 576 U.S. ____ \(2015\)](#), and its impact on local sign ordinances.

Context of Free Speech Caselaw

In thinking about the *Reed* decision it is helpful to recall a few key points about Constitutional protections of free speech and local government sign regulation. This area of the law is complex—far beyond the scope and space of this blog—but some context is helpful in understanding the impact of the new decision.

Content-Neutral Sign Regulations. Some sign regulations concern the form and nature of the sign, not the content of the message. These regulations—called *reasonable time, place, or manner restrictions*—include regulation of sign size, number, materials, lighting, moving parts, and portability, among other things. These regulations are allowed, provided

they are “[1] justified without reference to the content of the regulated speech, [2] that they are narrowly tailored to serve a significant governmental interest, and [3] that they leave open ample alternative channels for communication of the information” (*Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753, 105 L. Ed. 2d 661 (1989)). Over the years the courts have allowed a variety of content-neutral sign regulations.

Content-Based Sign Regulations. Some sign regulations, however, restrict the content of the message. The Supreme Court requires that content-based regulation of noncommercial signs must meet strict scrutiny. As phrased in the *Reed* majority opinion, a regulation is content-based if the rule “applies to a particular [sign] because of the topics discussed or the idea or message expressed” (slip op., at 6). The strict scrutiny standard demands that the local government must show that the regulation is (i) designed to serve a *compelling* governmental interest and (ii) *narrowly tailored* to achieve that interest. That is a steep hill to climb, and in practice few, if any, regulations survive strict scrutiny review.

It is worth noting that commercial speech is subject to yet another test—a version of intermediate scrutiny outlined in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987). That test is described in David Owens’ blog on [Offensive Signs](#), and as discussed below, the impact of the *Reed* decision on the *Central Hudson* test is unclear.

Case Summary

The Town of Gilbert, Arizona, had a sign code requiring permits for signs, but outlining a variety of exemptions. The *Reed* decision focused on the exemptions for three types of signs: Political Signs, Temporary Directional Signs, and Ideological Signs. Under the local code, Political Signs were signs designed to influence the outcome of an election; they could be up to 32 square feet and displayed during political season. Temporary Directional Signs were defined to include signs that direct the public to a church or other qualifying event; they could be up to six square feet and could be displayed 12 hours before and 1 hour after the qualifying event. Ideological signs were defined to be signs that communicate a noncommercial message that didn’t fit into some other category; they could be up to 20 square feet.

A local church—after being cited for violation of the rules for Temporary Directional Signs—challenged the sign code as abridging their freedom of speech. The Town argued (and the lower courts found) that its regulations were content-neutral. The distinctions among types of signs, they said, were

based on objective factors not the expressive content of the sign. The distinctions did not favor nor censor a particular viewpoint or philosophy. And, the justification for the regulation was unrelated to the content of the sign.

Justice Thomas, writing for the Court, disagreed. He found that the distinctions were plainly content-based and thus subject to strict scrutiny. The distinctions—between Political Signs, Temporary Directional Signs, and Ideological Signs—“depend[ed] entirely on the communicative content of the sign” (slip op., at 7). “Regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints with that subject matter” (12). And, “an innocuous justification cannot transform a facially content-based law into one that is content neutral” (9).

In its failed attempt to meet the strict scrutiny standard, the Town offered two governmental interests to support its distinctions: aesthetic appeal and traffic safety. Even if these were considered compelling governmental interests (which the Court assumed without ruling), the Town’s distinctions were not narrowly tailored. Justice Kagan noted in her own opinion (concurring in the judgment only) that the Town’s distinctions did “not pass strict scrutiny, or intermediate scrutiny, or even the laugh test” (slip op., at 6, Kagan, J., concurring in judgment).

Impact of Local Ordinances

So what does this decision mean for local ordinances? In the end, some distinctions among signs clearly are allowed and will withstand judicial review. Some code provisions, though, must be revised. And then, there are the open questions.

The Court was unanimous in judgment: The particular provisions of the Town of Gilbert’s sign code violate Constitutional protections for free speech. The Court was fractured, though, in the opinions, making it harder to discern the full scope of the decision. Justice Thomas offered the majority opinion of the court with five justices joining. Justice Alito offered a concurring opinion to further clarify the impact of Justice Thomas’ opinion. He was joined by Justices Kennedy and Sotomayor. Three justices concurred in judgment only, and they offered two separate opinions to outline their legal reasoning and their concerns with the majority’s reasoning.

So we have a split court. Three joined the majority only; three joined the majority, but also joined an explanatory concurrence; and three disagreed with the majority’s legal reasoning. This three-three-three split,

unfortunately, causes even more head-scratching for an already complex topic.

Content-Based Distinctions. In thinking about your sign ordinance, ask this: Does this regulation apply to a particular sign because of the non-commercial content on the sign? If yes, the regulation must meet strict scrutiny under *Reed*. The government must show that the regulation is designed to serve a *compelling* governmental interest and *narrowly tailored* to achieve that interest.

If your ordinance distinguishes among noncommercial sign types—political v. ideological v. religious—those distinctions are unconstitutional and must be changed.

Justice Thomas did offer some content-based regulations that may survive strict scrutiny if they are narrowly tailored to address public safety. These include warning signs for hazards on private property, signs directing traffic, or street numbers associated with private houses.

Content-Neutral Distinctions. The several opinions of the court outline some valid distinctions for regulation. In his majority opinion, Justice Thomas noted that local governments still have “ample content-neutral options available to resolve problems with safety and aesthetics” (slip op., at 16). These include regulation of, among other things,

- size
- building materials
- lighting
- moving parts
- portability

Moreover, “on public property the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner” (slip op., at 16). A local ordinance or state statute can prohibit all signs in the public right-of-way. But, if signs are allowed, the regulations must not distinguish based on the content of the message. Regulations that allow some, but not all, noncommercial signs run afoul of the *Reed* decision.

For example, NCGS § 136-32 allows for “political signs” (as narrowly defined) in the public right-of-way of state highways during election season. That statute and similar ordinances will need to be revised to either, prohibit all signs in the right-of-way, or allow compliant signs with any noncommercial message in the right-of-way during election season.

Justice Alito, in his concurring opinion, provided further explanation (although not an exhaustive list) of what distinctions may be valid, content-neutral distinctions. He included:

- Size (including different sizes for different types of signs)
- Location, including distinguishing between freestanding signs and attached signs
- Distinguishing between lighted and unlighted
- Distinguishing between fixed message and electronic signs
- Distinguishing between signs on public property and signs on private property
- Distinguishing between signs on commercial property and signs on residential property
- Restricting the total number of signs allowed per mile of roadway
- Distinguishing between on-premises and off-premises signs*
- And time restrictions on signs advertising a one-time event*

* These last examples—distinguishing between on-premises/off-premises and restricting signs for one-time events—seem to conflict with the majority opinion in *Reed*. Here, we get back to the issue of the fractured court and multiple opinions (discussed below).

Open Questions

Content-ish Regulations

Justice Alito's concurrence (discussed above) listed many regulatory distinctions that are clearly authorized. He listed two distinctions that do not clearly square with the reasoning of the majority opinion. But, if you consider the three justices concurring with Alito plus the three justices concurring in judgment only, there are six justices that took the question of content neutrality with more practical consideration than Justice Thomas' hard line. Thus, Alito's opinion may in fact hold the greatest weight of this case. Only time will tell—time and more litigation.

First, Justice Alito listed signs for one-time events. This seems to be precisely what the majority stuck down in this case. It is unclear how a local regulation could structure such regulation without relying on the content of the message itself. But the inclusion on Justice Alito's list points to some room for defining signs based on function.

And second, Justice Alito listed the distinction between on-premises and off-premises signs. The enforcement officer must read the sign in order to determine if a sign is off-premises or on-premises. As such, these would

seem to be facially content-based and subject to strict scrutiny. But, prior Supreme Court caselaw has upheld the on-premise/off-premise distinction and that precedent is not overruled by the majority opinion.

Commercial and Noncommercial Speech. In past decisions the Supreme Court has treated commercial speech to slightly less protection than noncommercial speech. Commercial speech regulation needs to meet a version of intermediate scrutiny, not the strict scrutiny applied to regulation of non-commercial speech (See, generally, *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987)).

Arguably, the *Reed* decision opened the door to challenge a sign ordinance that distinguishes between commercial and noncommercial speech. Justice Alito's concurring opinion noted that distinguishing based on the *type of property*—commercial or residential—would be valid. Regulating based on the *content of the sign*—commercial or noncommercial—arguably is undermined by the *Reed* decision.

Notably, though, the majority in *Reed* did not overrule its prior decisions. The *Reed* decision was focused on the Town code's distinctions among types of noncommercial speech. Presumably the long-held standards for regulation of commercial speech still apply.

Conclusion

In the wake of *Reed*, some things are clear. Governments still have an array content-neutral regulations to apply to signs. But, content-based distinctions such as the ones in the Town of Gilbert's code must survive strict scrutiny to stand. Because of mix of opinions from the Court, there are several open questions. We will not know the full scope and meaning of *Reed v. Town of Gilbert* until the federal courts begin to apply this decision to other sign litigation.