

**INDIAN RIVER COUNTY, FLORIDA
INTER - OFFICE MEMORANDUM**

**PUBLIC HEARING
LDR AMENDMENT
[LEGISLATIVE]**

TO: Jason E. Brown, County Administrator

THROUGH: Stan Boling, AICP
Community Development Director

FROM: Roland M. DeBlois, AICP
Chief, Environmental Planning and Code Enforcement

DATE: February 27, 2017

RE: Consideration of Proposed Amendments to County Sign Regulations (Land Development Regulations Chapter 901, Definitions, Chapter 956, Sign Regulations, and Chapter 912, Single-Family Development)

It is requested that the Board of County Commissioners formally consider the following information at the Board's regular meeting of March 7, 2017.

BACKGROUND

Indian River County's current sign ordinance (LDR Chapter 956, Attachment 1 to this report) was substantially developed in the mid-1980s through a series of extensive public workshops and has remained relatively unchanged since that time, albeit with some revisions over the years. The ordinance regulates various aspects of signs such as type, size, number and location, and contains different criteria depending on the category of sign, distinguishing between on-premises signs, off-premises signs, free-standing signs, façade signs, permanent signs and temporary signs. Objectives of the sign code, stated in the purpose and intent section of Chapter 956, include: avoidance of excessive sign proliferation and clutter; adequate accommodation of information to the public; protection of property values; creation of an attractive business climate; protection of the community's appearance and natural beauty; and improvement of vehicular and pedestrian safety. The ordinance prohibits certain types of signs, such as banners and animated signs, but also allows some signs (such as garage sale and real estate signs) without requiring a permit, provided certain criteria are met.

U.S. Supreme Court Decision: *Reed v. Town of Gilbert*

In 2015, the U.S. Supreme Court heard a case (*Reed et al. v. Town of Gilbert, Arizona, et al.*) in which a church contended that the Town of Gilbert regulated temporary signs differently based on the content of signs, and thus the Town's sign ordinance violated freedom of speech under the First Amendment of the U.S. Constitution. In rendering its decision, the Supreme Court sided with the church and invalidated the Town's sign code as content-based regulation of speech. Writing for the Court, Justice Thomas held that the Town's sign code distinctions among different types of signs were content based and did not satisfy strict scrutiny. In concurring opinions, the Court clarified that localities could regulate signs from the standpoint of size, location, physical characteristics, and duration of display, but on a "content-neutral" basis (see Court Syllabus and Opinions, Attachment 2 to this report).

The Supreme Court *Reed* decision has broad implications on local sign ordinances nationwide, in that most local sign ordinances contain some level of sign regulation based on content, and interpretations of the full impacts of the decision are still evolving. Although some localities in Florida have revised their sign ordinances following the *Reed* decision, most local ordinances have yet to be revised. The City of Sebastian has begun some incremental changes (i.e., to address political signs), but otherwise local ordinances in this county and region are pending revision. Regarding Indian River County's sign ordinance, the County's regulations currently contain a number of sign definitions that are based on content, and the County's ordinance makes distinctions in its regulation of temporary signs that appear to be inconsistent with the Supreme Court *Reed* decision. Those distinctions include regulation of political campaign signs differently than other types of temporary signs.

At the Board of County Commissioners' July 5, 2016 meeting, Commissioner Peter O'Bryan raised the issue that the County's sign ordinance needs to be reviewed and revised in light of the Supreme Court *Reed* decision. The Board agreed and directed staff to revise the ordinance, particularly LDR Section 956.15, *Regulations for temporary signs requiring permits* (see minutes, Attachment 3).

Staff has since reviewed the County's sign regulations in coordination with the County Attorney and has drafted proposed amendments narrowly focused on content-neutral items (see Attachment 5 to this report). Staff is now presenting those proposed amendments to the Board for consideration.

Planning and Zoning Commission Recommendations

At a public hearing opened at a December 8, 2016 meeting and continued to a January 26, 2017 meeting, the County Planning and Zoning Commission (PZC) considered the proposed ordinance (see minutes, Attachment 4 to this report).

At the December 8, 2016 meeting, PZC members reviewed the proposed revisions presented at that time and provided comments and recommendations, summarized as follows:

- Temporary signs on construction sites: revise to require a separation distance from easements (as well as rights-of-way); allow signs closer to property lines (10 foot setback instead of 20 foot setback); and accommodate a sign for a small developer/builder who owns fewer than 10 lots in a subdivision. *Staff revised the initial draft to address these issues.*
- On-premises yard or window signs (such as/including political signs): during periods of election, allow one sign per each candidate, issue, or topic on an election ballot rather than a set limit such as a maximum of 4 signs per lot or parcel; allow opportunity for more signs on parcels with extensive road frontage than allowed on standard sized lots. *Staff revised the initial draft to address this item.*
- Regulations for active subdivision or real estate development: in addition to allowing one sign for each authorized agent representing 10 or more lots within a development, allow signage for an agent representing less than 10 lots. *Staff revised the initial draft to address this item.*
- Temporary signs of limited geographic scope and number (permit exempt): consider allowing display of such signs for more days per year so as not to constrain frequent use of signs for real estate sales (e.g., off-premises signs for open houses). *To address this comment, staff changed the initially proposed 18 day sign display cap to 24 days, which allows more opportunity for off-premises display of such signs but retains a cap to deter proliferation and clutter.*

At its January 26, 2017 meeting, the PZC concluded its public hearing and voted 5-0 to recommend that the Board of County Commissioners adopt the proposed (revised) ordinance with some suggestions to staff to consider adding certain details. Since the January 26 meeting, consistent with suggestions

discussed at that meeting, staff has added certain details which are incorporated into the proposed ordinance.

ANALYSIS

The primary direction from the Board of County Commissioners to staff was to revise the County's regulation of temporary signs requiring permits (LDR Section 956.15) to eliminate content based regulation of signs. In reviewing the overall sign ordinance, however, staff determined that certain sign definitions, as well as categories of permit-exempt signs, also needed to be revised to serve content-neutral regulation of signs. In drafting the proposed amendments, staff's approach was to revise solely content-based regulations by tying those regulations to size, location, number, and duration of display, instead of to sign content.

Definitions

LDR Chapter 901, Definitions, currently contains 48 definitions relating to signs. Most of those sign definitions are content-neutral, such as descriptions of free-standing signs, animated signs, and canopy signs. Some of the definitions, however, are content based descriptions, and therefore are proposed to be removed from Chapter 901. The sign definitions proposed to be removed are listed as follows:

Sign, construction
Sign, political

Sign, development
Sign, real estate

Sign, directory
Sign, special event

Other sign definitions, such as *sign, directional* and *sign, memorial*, which could be construed as content based descriptions, are proposed to remain in Chapter 901, but with revised descriptions emphasizing location as the basis of the definitions.

Permit-exempt signs

Section 956.11 of LDR Chapter 956, Sign regulations, lists signs that are exempt from needing a county permit, provided certain criteria are met. Permit-exempt signs include signs required by law, such as traffic regulatory signs; real estate signs (subject to certain criteria); garage sale signs (subject to certain criteria); carried signs; and non-commercial decorative art. Some of the listed exempt signs, such as garage sale and real estate signs, are currently distinguished by content and have different criteria to meet based on content. Therefore, those regulations are in need of revision.

In an effort to eliminate content-based distinctions of permit-exempt signs, staff is proposing a new category of permit-exempt signs: "*temporary signs of limited geographic scope and number.*" This new category is to apply to signs that are currently exempt from needing a permit, such as garage sale signs and real estate signs, by regulating the size, number and duration of temporary signs displayed, irrespective of sign content. Although this new category of permit-exempt signs will eliminate content based distinctions, it will still generally maintain the criteria for permit-exempt signs in the existing ordinance, such as allowing for but limiting garage sales signs and real estate signs, but with minor adjustments in duration of display to provide for uniformity of regulation within the category.

Also under Section 956.11, staff is proposing to revise the description of "*temporary construction signs*" to "*temporary signs on constructions sites,*" and revise the description "*free expression sign*" to "*on-premises yard or window sign.*" In both cases, the new distinctions are based on location instead of sign content.

Temporary signs requiring permits

LDR Section 956.15 provides requirements for temporary signs requiring permits. This is the section of the code that applies to temporary signs posted off-premises countywide for temporary events, such as for fairs, shows, concerts, grand openings, seasonal sales, and political campaigns.

As currently written, LDR Section 956.15 contains certain content based distinctions, such as specifying different timeframes and numbers of sign allowed depending on whether posted signs are for political campaigns or for other events. Under the proposed revisions, those content based distinctions are removed, by deeming campaigns as “temporary events,” in the same category as other events and subject to the same regulations with respect to such things as the number of off-premises signs allowed, size, location, and duration of display (i.e., concurrent with the timeframe of the approved event).

No change is proposed with respect to the application process for temporary sign permits, which entails completion of an application form with contact information, proposed locations of signs, duration of event, and sign characteristics. A \$60 application fee is currently charged for countywide temporary event signs, except for countywide campaign signs, for which there is currently no application fee. Under the proposed ordinance revisions, however, since political campaign signs are to be treated as the same as other temporary signs requiring permits (without content based distinction), the \$60 application fee will now apply to countywide campaign signs as well as to other temporary event signs.

Other proposed revisions

Under the proposed amendments, Section 956.15.1, *Regulations of active subdivisions or real estate development signs*, is being revised to eliminate content based references and instead focus the regulations as applied to location (i.e., regulations applicable to signs on active subdivision/real estate development sites). Staff is also taking this opportunity to propose an amendment to this code section to allow more flexibility in the number of signs allowed based on the number of authorized agents (e.g., developer / builder) active within a development, instead of just limiting such signs to one per common roadway along the project perimeter. Staff has become aware that many of the newer and larger subdivisions and developments have more than one authorized agent, and the proposed revision is intended to provide equal sign allowances among developers/builders within an overall development. Under the proposed amendment, the number of active subdivision / real estate signs allowed will be limited to one sign per authorized agent of ten lots or more, plus one additional sign for an authorized agent of fewer than ten lots, in order to prevent an over-proliferation of signs along a development project’s given roadway frontage.

Section 912.05(5), *Garage sales and yard sales*, of Chapter 912, Single-Family Development, is being revised to be consistent with the proposed sign regulation revisions described herein, as cross-referenced in Section 912.05(5).

Consistency with Comprehensive Plan Policies

County Comprehensive Plan Future Land Use Element Objective 9 provides that, “*through the implementation of land development regulations, Indian River County will have aesthetically pleasing buildings, signs, landscaping, parking areas, and roads.*” In serving that objective, Future Land Use Element Policy 9.6 provides that “*Indian River County shall enforce sign code regulation standards, including standards contained in corridor plans, for the type, location, size, number, and maintenance of signs.*” Moreover, Future Land Use Policy 9.13 provides that “*the county shall control the visual clutter created by temporary signs by adopting development regulations that establish limits on where temporary signs are to be allowed, on the number of temporary signs allowed, and on the duration that temporary*

signs may be posted.” The proposed LDR amendment is consistent with Future Land Use Element Objective 9 and Policies 9.6 and 9.13, and does not conflict with the public interest or any other LDRs.

Impacts on Development Costs and Affordable Housing

Indian River County has had sign regulations substantially as they currently exist since the mid-1980s. The proposed revisions will not have a substantial impact on development costs associated with sign regulations. In fact, with respect to the duration of temporary signs displayed, the amendments will allow some temporary signs to be displayed for longer periods of time than are currently allowed, such as garage sale signs, but still with limits to meet the County’s objectives as specified in the sign code and referenced herein. The proposed LDR amendment will not have a significant effect on the cost of development, and no discernable impact on affordable housing.

Balance of Sign Regulations and Private Development Rights

The County’s sign regulations were drafted to strike a reasonable balance between community aesthetics, public safety, and private property rights. The proposed revisions will maintain that reasonable balance.

SUMMARY

The proposed amendments substantially address the Supreme Court *Reed* decision as it calls for content-neutral sign regulations to satisfy strict scrutiny under the First Amendment of the U.S. Constitution. In doing so, however, the proposed amendments largely retain the County’s current regulation of signs from the standpoint of size, number, and location. Certain types of signs, such as animated signs and banner signs, will continue to be prohibited as they are now. With respect to the duration of temporary signs displayed, the amendments will allow some temporary signs to be displayed for longer periods of time than are currently allowed, such as garage sale signs, but still with limits to meet the County’s objectives as specified in the sign code and referenced herein.

RECOMMENDATION

Staff recommends that the Board of County Commissioners adopt the proposed LDR amendment ordinance.

ATTACHMENTS

1. Current sign ordinance, LDR Chapter 956.
2. Supreme Court *Reed* decision syllabus and opinions.
3. BCC 7/5/16 meeting minutes and back-up.
4. PZC 12/8/16 and 1/26/17 meeting minutes.
5. Proposed LDR amendment ordinance.

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