

TO: Jennifer Jones, Spartyville City Manager
FROM: Samuel Hetherington, Spartyville Community and Economic Development Director
DATE: April 13, 2021
RE: Sign Ordinance Update

INTRODUCTION

This memo is regarding the City Council members concern over the proliferation of political yard signs in the community. The council has requested that Spartyville's sign ordinance be tightened up by restricting the type and number of signs because they want to move on after the contentious election we just had. The City of Spartyville currently regulates on-premise and off-premise signs, signs on commercial property and signs on residential property, portable signs and temporary directional signs with size, height, and locational considerations. The City does not currently regulate political signs. The Supreme Court case of *Reed v. Town of Gilbert* is used as a guide to my recommendations.

RECOMMENDATIONS

Think hard on whether Spartyville wants to go into the realm of regulating private expression and dealing with First Amendment challenges from citizens. Especially since this is not a matter of public safety or aesthetics.

If Spartyville does move forward, despite the First Amendment issues, then an ordinance update could possibly be made for all temporary signs as long it is viewpoint-neutral and content-neutral. All categories of temporary signs are included; political, church services, farmer's market, sporting and entertainment events, and even "Happy Birthday, Uncle Fred" signs. The updated ordinance should specify a reasonable duration the sign can be up after which the sign must be removed. Signs must be regulated on a content-neutral way.

Remove the current sign code regulations on temporary directional signs, all temporary signs must be treated equally.

DISCUSSION

In *Reed v Town of Gilbert*, the Town of Gilbert adopted a sign ordinance the imposed stricter limitations on temporary directional signs than signs that displayed political or ideological messages. A church using signs to advertise their religious service time and location filed suit against the town saying that the sign regulations violated its First Amendment right to free speech because it drew content-based distinctions and was not narrowly tailored to further any compelling government interest. The Supreme Court ruled for the church. The bottom line is all signs need to be treated equally. The case is about whether an ordinance can discriminate based on the content of the sign, it cannot. One cannot define sign types that require one to read the content of the sign to decide if it fits the category (*Reed v. Gilbert*, 2015). Thus,

Spartytown cannot make a specific political sign only ordinance nor can it regulate any type of sign which may be content specific.

As far as the ability for us to make distinctions between different types of signs. The court recognizes two forms of speech; commercial and noncommercial or private expression speech. The Spartytown On-premises and Off-premises sign definitions pertain to commercial speech signs and are easier to regulate, i.e. less protected by the courts. Both definitions of On-premises and Off-premises signs are view-point neutral and content-neutral. Political signs are classified as private speech and are highly protected in the courts. "The U.S. Supreme Court has ruled that the display of political and other types of signs on residential property is a unique, important, and protected means of communication and towns cannot restrict the display of such signs" (Janicki, 1998). This does not mean that cities can never legislate political signs. A city may regulate the size, shape and location of yard signs. Such regulations must qualify as content-neutral and reasonable "time, place and manner" restrictions on speech.

Reed v Gilbert does not prevent Spartytown from regulating the number, size, location, and duration of signs in its ordinance, it just must apply them equally in a content-neutral manner. (e) "This decision will not prevent governments from enacting effective sign laws. The Town has ample content-neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability. And the Town may be able to forbid postings on public property, so long as it does so in an evenhanded, content-neutral manner" (Reed v. Town of Gilbert).

CONCLUSION

Freedom of expression is one of our nation's most cherished right and is fiercely protected from government restrictions by the First Amendment. Much caution must be exercised in crafting the updated ordinance. It must regulate the manners and modes of speech rather than the content. Equal protection, meaning the law must be applied evenly, must be upheld. The updated ordinance should not distinguish temporary political signs from any other type of temporary sign. There is a fine line when regulating speech to obtain an outcome. It is important to have unity in a community but overstepping the First Amendment is the wrong way to go about doing so.

REFERENCES:

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Nolon, J. R., & Salkin, P. E. (2006). *Land use in a nutshell*. (pp. 315-323). St. Paul, MN: Thomson/West.

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Reed et al. v. Town of Gilbert, Arizona et al. (n.d.). Oyez. Retrieved April 6, 2021, from

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