PLANNING COMMISSION AGENDA
June 7, 2018
6:30 PM

CALL TO ORDER

ROLL CALL
Chair Chele Dimmett, Vice Chair David Caudle, Jennifer Gilbert-Smith, Jennifer Harjehausen, Jonathan Ingram, Elizabeth Porter, & Murray Williams

PLEDGE OF ALLEGIANCE

APPROVAL OF CONSENT AGENDA
C1. Minutes from May 3, 2018

CITIZEN COMMENTS - Note: The Citizen Comment period is to provide the opportunity for members of the audience to address the Commission on items either not on the agenda or not listed as a Public Hearing. The Chair will open this portion of the meeting and ask for a show of hands of those persons wishing to address the Commission. When recognized, please approach the podium, give your name and city of residence, and state the matter of your interest. If your interest is an Agenda Item, the Chair may suggest that your comments wait until that time. Citizen comments will be limited to four minutes for Citizen Comments and four minutes for Unfinished Business. If you require more than the allotted time, your item will be placed on the next agenda. If you anticipate your comments taking longer than the allotted time, you are encouraged to contact the Planning Department ten days in advance of the meeting so your item may be placed on the next available agenda.

UNFINISHED BUSINESS – (No Action Required)
1. Review & Status of Proposed Sign Code Amendments

PUBLIC HEARING – None

NEW BUSINESS- None

ATTENDANCE VOTE

PUBLIC COMMENT: (Same rules apply as stated in the 1st CITIZEN COMMENTS)

COMMENTS AND COMMUNICATIONS OF STAFF AND COMMISSIONERS

ADJOURN

Any person requiring a disability accommodation should contact the City at least 24 hours in advance. For TDD relay service please use the state’s toll-free relay service (800) 833-6384 and ask the operator to dial (253) 480-2400

Web Page: www.covingtonwa.gov
Planning Commission Minutes

May 3, 2018

CALL TO ORDER
The regular meeting of the Planning Commission was called to order at 6:32 p.m. by Chair Dimmett.

MEMBERS PRESENT
Chele Dimmett, Jennifer Gilbert-Smith, Jennifer Harjehausen, Jonathan Ingram, and Murray Williams

MEMBERS ABSENT - David Caudle, Elizabeth Porter

STAFF PRESENT
Brian Bykonen, Associate Planner and Code Enforcement Officer
Salina Lyons, Principal Planner
Kelly Thompson, Planning Commission Secretary

APPROVAL OF MINUTES AND AGENDA
- C1. Commissioner Ingram moved and Commissioner Williams seconded to approve the March 15, 2018 minutes and meeting agenda for May 3, 2018. Motion carried 5-0.

CITIZEN COMMENTS – None

UNFINISHED BUSINESS – None

PUBLIC HEARING

Chair Dimmett opened the public hearing.

Associate Planner and Code Enforcement Officer, Brian Bykonen provided the staff report proposing the zoning code amendment to reduce the current 10’ setback to 0’ on the east side of SE Wax Road. Jenkins Creek, the associated wetlands, and the required roadway dedications limit the buildable areas on several parcels. Exhibits were provided as part of the packet which help demonstrate what development could look like with a 0’ setback.
Public Testimony

Marlin Gabbert, architect and planner representing Dr. Goraya. They are developing a project on SE Wax road and they support the 0’ setback. The current 10’ setback creates unusable space along the sidewalk. The buffer requirements, the 40’ right-of-way dedication, and the 10’ setback limit the developable area.

Peter Wilkins, Kent resident, requested clarification of a 0’ setback.

The record is noted that a letter from Jennifer Anderson, representing the Master Builders Association of King and Snohomish Counties, was submitted in support of reducing the setbacks.

No further comments were received from the public.

Chair Dimmett closed the public hearing.

Mr. Bykonen explained that a 0’ setback means that the building could be placed up next to the sidewalk. There are two buildings along SE Wax Road that were constructed with a 0’ setback (Daniel Ross Salon and the Apex Building).

Commissioner Ingram asked for the setback on the west side of SE Wax Road. Mr. Bykonen noted the west side of the road is the Town Center (TC) zone and the current setback is 0’.

Commissioner Ingram also asked if staff considered proposing a setback between 0’ – 10’. Ms. Lyons responded that staff proposed the 0’ setback to match the existing buildings and similar to the code that was in effect at the time they were constructed. Ms. Lyons noted that the four other zones in the downtown have a 0’ setback and street frontage requirements. Changing the setback back to 0’ would align with the other zones.

Commissioner Gilbert-Smith moved to recommend to the City Council to adopt the amendment to CMC 18.31.090 to reduce the street setbacks on the east side of SE Wax Road from 10’ to 0’ in the Mixed Housing Office (MHO) zone. Commissioner Williams seconded the motion.

The record is noted to reflect that when Chair Dimmett asked for a vote, Commissioner Ingram was still considering his vote. The Commissioners all agreed to restate the motion.
Commissioner Gilbert-Smith moved to recommend to the City Council to adopt the amendment to CMC 18.31.090 to reduce the street setbacks on the east side of SE Wax Road from 10’ to 0’ in the Mixed Housing Office (MHO) zone. Commissioner Williams seconded the motion. Motion carried 5-0.

NEW BUSINESS - None

ATTENDANCE VOTE
Commissioner Ingram moved and Commissioner Gilbert-Smith seconded to excuse the absence of Commissioner Porter and Vice Chair Caudle. Motion carried 5-0.

PUBLIC COMMENTS - None

COMMENTS AND COMMUNICATIONS FROM STAFF AND COMMISSIONERS
Staff and Commissioners welcomed Commissioner Harjehausen to the Planning Commission.

Ms. Lyons noted that the regularly scheduled Planning Commission meeting on May 17, 2018 will be cancelled. Staff will continue working on the Shoreline Master Program and the sign code updates. The public hearing for the 2018 Annual Comprehensive Plan Docket will be going before the City Council next week. The applications include a request from Oakpointe to increase the commercial and residential building square footage in the Lakepointe Development and a request from Soos Creek Water & Sewer District to change the zoning on the Calhoun Pit.

Commissioner Ingram asked if Oakpointe’s request to increase the building square footage is approved, would their fees increase accordingly? Ms. Lyons responded that noise, transportation, environmental impacts, and fees would be reevaluated.

Commissioner Ingram gave kudos to staff on traffic control for the Chick-Fil-A.

Commissioner Gilbert-Smith gave her wishes for a Happy Mother’s Day.

Chair Dimmett thanked staff for the communication regarding traffic for Chick-Fil-A.
ADJOURN
The May 3, 2018 Planning Commission Meeting adjourned at 7:05 p.m.

Respectfully submitted,

_____________________________________________
Kelly Thompson, Planning Commission Secretary
To: Planning Commission  

From: Richard Hart, Community Development Director  
Brian Bykonen, Senior Planner/Code Enforcement Officer  

CC: Salina Lyons, Principal Planner  
Liz Thompson, Contract Planner  

Date: June 7, 2018  

Re: Discussion of Sign Code Changes for Temporary Signs in Public Right-of-Way  

Background  
The interim sign code, CMC 18.55, was written with the intention to be highly defensible based on the U.S. Supreme Court’s ruling in Reed v. Town of Gilbert. The more content neutral the sign code is, the less risk the city has of being challenged. Content neutral regulations for temporary signs in the public right-of-way should only consider the following:

a. the time or duration the temporary sign can be placed in the ROW  
b. the size of sign  
c. the number of signs  
d. the height of signs  
e. the location in the public right-of-way (ROW) of the temporary signs based upon safety factors; and certain prohibited locations for signs  

The current interim code allows all noncommercial message signs, such as signs by political candidates and organizations, religious institutions, philosophical viewpoints, public events, or non-profit agencies to be placed in the public right-of-way, subject to limited sign requirements and safety standards. However, the interim code does not allow any temporary commercial signs within public right-of-way (including real estate signs).  

Purpose of Discussion  
The Planning Commission has been tasked with discussing and providing direction to staff on how to proceed with preparing the permanent sign code regarding the display of temporary commercial signs in the public right-of-way (ROW). It is important for the Planning Commission to provide direction to staff so staff can complete the permanent sign ordinance by November 2018, prior to expiration of the existing interim sign ordinance.
**Temporary Commercial Signs in the Public Right-of-Way (ROW)**

Options 1 and 2 are presented to consider how the city should regulate temporary commercial signs in public ROW. The Planning Commission must evaluate these options based on time, place, and manner, and not the content of the sign. Further, any regulations applied to a certain type of temporary commercial sign in the ROW should be applied to all temporary commercial signs in the ROW.

**Option 1**: No temporary commercial signs allowed within the public ROW. This means that any business, including real estate, would not be permitted to have a temporary sign in public ROW. This does not preclude a business from placing signs on their property. There are currently regulations in the sign code that allow temporary commercial signs on private property.

**Option 2**: Permit all temporary commercial signs within public ROW. This means that any business, including real estate, would be permitted to place temporary signs within the public ROW. The Planning Commission will need to provide staff feedback and direction pertaining to how these signs would be regulated for time, place, and manner (i.e. number, size, height, duration, and location).

At the September 21, 2017, Planning Commission meeting, staff provided a memo in response to the Board of Realtors request to consider real estate signs differently from other temporary commercial signs within the ROW. After discussions with the city attorney, staff has concluded the best way to address the concerns of the Planning Commission and public is a slightly more simplistic approach that best meets the content neutrality provisions of the *Reed v. Town of Gilbert* US Supreme Court decision. This is Option 2, which regulates real estate signs in the same manner as all other temporary commercial signs. This option also enables easier enforcement of the regulations.

However, staff has found that some jurisdictions have concluded that signs associated with the sale and lease of properties are different from standard commercial signs and could warrant their own specific and unique regulations. An additional Alternative 1 is presented to ask and answer the question “*should our sign regulations provide specific regulations for signs associated with the sale and lease of property*”?

Alternative 1 can be in addition to either Option 1 or 2, and could include different regulations for real estate signs pertaining to time, place, and manner.

Staff has also included Attachment 1, our staff memo to the city council from their past study session in October 2015, which outlines background information on *Reed v. Town of Gilbert* and how best to apply and implement its provisions.

~Temporary Commercial Signs in Public ROW Chart on Next Page~
<table>
<thead>
<tr>
<th>Number of signs (Manner)</th>
<th>Sign Type (Manner)</th>
<th>Duration (Day)</th>
<th>Duration (Time)</th>
<th>Size (Manner)</th>
<th>Material (Manner)</th>
<th>Location (Place)</th>
<th>Permit required</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Option 1</strong></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>No Temporary Commercial Signs in ROW (signs for all business and real estate)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Option 2</strong></td>
<td></td>
<td>3, 4, or 5</td>
<td>Everyday OR Fri, Sat, Sun &amp; Holidays OR # of days a week</td>
<td>No Time Limit OR Sunrise to Sunset OR # of days a week</td>
<td>8 sq. ft. total w/ no sign face over 4 sq. ft. (2’x2’) OR 12 sq. ft. total w/ no sign face over 6 sq. ft. (2’x3’) AND no sign over 3’ tall</td>
<td>Durable Material Only</td>
<td>Public ROW (not permitted in/on medians, roundabouts, utility poles, fences, etc.)</td>
</tr>
<tr>
<td>All Temporary Commercial Signs Allowed in ROW (signs for all business and real estate)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td>If yes: Staff needs to establish a program and fee.</td>
</tr>
<tr>
<td><strong>Alternative 1</strong></td>
<td></td>
<td>3, 4, or 5</td>
<td>Everyday OR Fri, Sat, Sun &amp; Holidays OR # of days a week</td>
<td>No Time Limit OR Sunrise to Sunset OR # of days a week</td>
<td>8 sq. ft. total w/ no sign face over 4 sq. ft. (2’x2’) OR 12 sq. ft. total w/ no sign face over 6 sq. ft. (2’x3’) AND no sign over 3’ tall</td>
<td>Durable Material Only</td>
<td>Public ROW (not permitted in/on medians, roundabouts, utility poles, fences, etc.)</td>
</tr>
<tr>
<td>Temporary Commercial Signs- Signs Associated with Sale and Lease of Properties (separate regulations)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>If yes: Staff needs to establish a program and fee.</td>
</tr>
</tbody>
</table>
Sign Examples

Lawn Signs

A-frame (Sandwich Board) Signs

Next Steps
Based on tonight’s discussion and specific direction regarding Options 1 and 2, and Alternative 1 related to temporary commercial signs located in public right of way, staff will return with a final draft sign code for final discussion, public hearing, consideration, and recommendation to the city council.

Planning Commission Action

~Discussion and Direction Only Tonight~
GENERAL INFORMATION:
The study session is an informal meeting involving discussion between and among the City Council, Commissioners, and city staff regarding policy issues. Study sessions may involve presentations, feedback, brainstorming, etc., regarding further work to be done by the staff on key policy matters.

CALL CITY COUNCIL STUDY SESSION TO ORDER

ROLL CALL

APPROVAL OF AGENDA

ITEM(S) FOR DISCUSSION
1. Sign Code Revisions (Hart)

PUBLIC COMMENT Speakers will state their name, address, and organization. Comments are directed to the City Council, not the audience or staff. Comments are not intended for conversation or debate and are limited to no more than four minutes per speaker. Speakers may request additional time on a future agenda as time allows.*

ADJOURN

*Note* A Regular Council meeting will follow at approximately 7:00 p.m.
SUBJECT: POLICY DISCUSSION REGARDING OBJECTIVES OF NEW SIGN CODE

RECOMMENDED BY: Richard Hart, Community Development Director

ATTACHMENT(S): None

PREPARED BY: Sara Springer, City Attorney
Richard Hart, Community Development Director
Salina Lyons, Principal Planner
Brian Bykonen, Associate Planner/Code Enforcement Officer

EXPLANATION:

1. BACKGROUND
In 2013, the city council directed staff to study potential sign code amendments for temporary civic/non-profit banner signs for events. Staff spent the first part of 2014 examining the city’s sign code, discussing with other city staff their needs as they related to temporary signs for city-sponsored events and programs, and reviewing current case law and best practices regarding sign regulations. The city council held a study session regarding temporary sign policies in June of 2014.

During this same time, staff noted that the prevailing case in the Ninth Circuit Court of Appeals regarding the regulation of signs, Reed v. Town of Gilbert, was on petition for review before the United States Supreme Court (“USSC” or “the Court”). Accordingly, staff recommended tabling any discussion or consideration of changes to the city’s sign code until the Reed case was resolved by the USSC. The Court ultimately granted review of the case and issued their decision on June 18, 2015. As anticipated, the Court’s decision in Reed has dramatically changed the landscape for drafting constitutionally defensible sign regulations.

The following sections include a brief overview of the Court’s ruling in Reed; followed by staff’s analysis regarding how to best apply the Reed decision; and a final section guiding general policy considerations and direction needed from the council to inform the next steps staff will take in drafting revisions to the city’s sign code.

2. OVERVIEW OF REED v. TOWN OF GILBERT
Good News Community Church is a small church located in Gilbert, Arizona. The church rented space in temporary locations for its weekly service. It used small, temporary signs to invite and direct the community to its services. The Town of Gilbert’s sign code imposed strict limits on the size, location, number, and duration of the church’s signs, but did not impose the same restrictions on political, ideological, and homeowners’ association signs. The church filed suit against the town in 2007, arguing that the town’s sign code—both as written and as applied—regulated signs based on what they say and therefore violated the Free Speech Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment.
The district court found that the town’s sign code was constitutional because they found it to be content-neutral and reasonable in light of the government’s interests. The U.S. Court of Appeals for the Ninth Circuit affirmed and held that, even though an official would have to read a sign to determine what provisions of the sign code applied, the restrictions were not based on the content of the signs, and the sign code left open other channels of communication. The town petitioned the USSC for a writ of review and the Court granted the town’s writ and heard oral arguments on the case last spring.

On June 18, 2015, in a 9-0 majority opinion, the USSC overturned the Ninth Circuit and held that the town’s sign restrictions were subject to strict scrutiny because they were content-based restrictions—restrictions that were applied differently depending on the message of the sign. Because these restrictions were content-based on their face, the Court need not examine justifications or the town’s motives in determining whether the restrictions are subject to strict scrutiny. Despite the town’s argument that the restrictions do not single out a specific nonprofit or church but rather restrict all such signs for events, the Court stated that the First Amendment prohibits censorship of all speech on a whole topic. The Court also held that the restrictions cannot survive strict scrutiny because they had no compelling interest in adopting restrictions to only a certain type of sign.

In his concurring opinion, Justice Alito wrote that the Court’s decision does not preclude cities from continuing to regulate signs, but it does stop them from restricting signs in an unconstitutional manner. Justice Kennedy and Justice Sotomayor joined in the concurrence.

Justice Breyer wrote a separate concurring opinion in the judgment in which he argued that content discrimination should have been the consideration and legal analysis, and that this case did not trigger strict scrutiny. He further argued that the presumption against constitutionality is too strong to use automatically and was unnecessary in this case as there was another, more appropriate method of analysis available.

In her separate opinion concurring in the judgment, Justice Kagan wrote that constantly using strict scrutiny to judge government-regulated communication is too restrictive and would water down the meaning of strict scrutiny. She reasoned that the risk that the government will limit the public’s ability to debate ideas with these regulations is very low and does not warrant strict scrutiny. In this case, the restrictions were not brought on by any reason or need, therefore all the Justices concurred that they did not pass any level of scrutiny (according to Kagan, they didn’t even pass a “laugh test”). Justices Ginsburg and Breyer joined in Kagan’s concurring opinion.

3. APPLYING AND IMPLEMENTING REED

The legal, planning, and development communities all agree that the Court’s decision in Reed affects every local government in the country that regulates signs and has made many current sign codes, either in full or in part, unconstitutional. Pursuant to the Court’s majority decision, sign regulations that are content-based on their face—by category, subject matter, speaker, viewpoint, or the like—face strict scrutiny by the court. To survive strict scrutiny a regulation must be narrowly tailored to advance a compelling government interest. As the Court has frequently opined, regulations seldom survive a strict scrutiny analysis.
Even though a regulation may be content-neutral on its face (i.e. as written), the Court’s analysis does not end there. The regulation will then be subject to intermediate scrutiny by the Court. To survive an intermediate scrutiny analysis a regulation must be narrowly tailored to advance a substantial government interest. The Court will indeed look at the government’s justification and intent for the regulation and if the underlying motive is ultimately content-based the regulation will be found unconstitutional (e.g. if a city prohibits a certain type of structural sign, and there is only one type of business or organization or person that uses that type of structural sign, the city would bear the burden of demonstrating how the regulation is not intended to target only that category and/or speaker).

What is clear from the Court’s ruling in Reed (not only in the majority opinion, but also in the commentary included in the concurring opinions) is that cities must develop regulations and a record that robustly support the objectives of a sign regulation and how the regulation specifically supports and/or advances that objective. The Town of Gilbert had no discernable reason for the sign regulations it had enacted other than standard objectives of traffic safety and aesthetics, and had no record to speak of to demonstrate how the subject regulations advanced those generalized objectives—again, as the Court stated, the regulations at issue didn’t even pass a laugh test.

Accordingly, the standard objectives of traffic safety and aesthetics will no longer pass muster with the Court on their own. A city must develop specific purposes for why they are seeking to adopt certain regulations, and then the city must also create a record to demonstrate how those regulations actually specifically address the city’s stated objectives and purposes (to either survive strict or intermediate scrutiny from the Court). Sign regulations that do not support a compelling or substantial government interest will not pass the court’s scrutiny, nor will regulations that are over-broad, under-inclusive, or are not narrowly tailored to support and advance the objectives of the regulation. In short, local governments must draft a sign code and create a record that “shows their work”.

The Court’s decision in Reed presents a marked change and restriction on how cities may regulate signs. However, the regulation of signs should be viewed not as a land use regulation, but rather a regulation of speech, and under that framing the Court’s decision in Reed arguably becomes exponentially more palatable to implement and enforce.

4. INITIAL CODE REVIEW
To assess the city’s current sign code given the Court’s decisions in Reed, city staff first reviewed the city’s entire sign code to determine what provisions, as currently drafted, would pass strict or intermediate scrutiny by the Court under Reed and which would be found unconstitutional. Upon completion of this review, though much of the city’s current code is enforceable, it is staff’s recommendation and intent to redraft the entire sign code, in part for administrative ease and efficiency.

5. POLICY CONSIDERATIONS AND INITIAL DIRECTION FROM COUNCIL
As noted above, given the Court’s ruling in Reed, the foundation of a constitutional sign code must include specific objectives and a substantial purpose. The purpose and objectives then guide the development of the sign standards and specifications and the administration and enforcement of the code.
The purposes subsection of the city’s current sign code is actually much more specific and robust than most sign codes. However, those purposes were adopted in 2002 and much development and maturity of the city’s character and vision has occurred since then. Therefore, at this study session, staff would like to take the opportunity to lead the council through a series of brainstorming exercises to extract from councilmembers general core objectives and values for the city that will then be used by staff to update the purpose provision for the city’s new sign code.

**This session will be interactive and on the surface will not directly relate to signs**—staff encourages councilmembers to come to this session with a blank slate and an understanding that this is a first step of many in the development of the city’s new sign code.

**6. NEXT STEPS**
Staff will take the comments and feedback gathered from the council at this initial study session and combine it with the city’s vision and planning goals to develop a detailed purpose provision to serve as the foundation of the new sign code. Staff will then schedule a second council study session to review the revised purposes and objectives and to present a general outline of recommended sign standards and specifications that support the revised purposes and objectives. Upon the council’s approval of the general outline for the new sign standards and specifications, staff may consider with council a public engagement process and a timeline for drafting, review, and adoption of the new sign code.

**ALTERNATIVES:** NA

**FISCAL IMPACT:** NA

**CITY COUNCIL ACTION:**  ___Ordinance  ___Resolution  ___Motion  ___X Other

**PARTICIPATE IN INTERACTIVE EXERCISES LED BY STAFF AND CONTINUE DISCUSSION AT SUBSEQUENT STUDY SESSION**

**REVIEWED BY:** Community Development Director, City Attorney, City Manager