

---

**Code Amendments: Chapter 26 “Signs”****Background Information.**

The purpose of the proposed amendments to the City of Lakeway’s Sign Ordinance is the need to bring the codes into concert with changes in Federal and State Statute and Case Law. There has always been a question regarding a municipality’s authority to regulate signs. The answer to that question that a city may prohibit or regulate most signs and all billboards in the city or within the city’s extra-territorial jurisdiction (ETJ), so long as the ordinances do not interfere with the constitutional rights of a sign owner or conflict with any state statutes. There have always been traditional limitations on a municipalities’ ability to regulate signs such as the First Amendment and Equal protections, for example:

- A municipality cannot treat commercial signs more favorably than non-commercial signs;
- A municipality cannot regulate signs based on the content of the sign, such as allow signs only for certain churches or only signs **for** an issue and not **against** an issue.

However, in the 2015 court case of *Reed vs. Town of Gilbert*, the Supreme Court of the United States further described content based signage for a non-commercial sign (special event signs, church signs, etc.) as being “if you have to read a non-commercial sign to regulate it, then it is a content-based restriction and likely cannot be enforced. This holding does not mean that non-commercial signs such as political signs and church signs cannot be regulated, but cities are limited to regulations that are not content based such as:

- Placement of signs on private and public property, including right-of-way
- Size and height of signs
- Lighted and unlighted signs
- Fixed messages and electronic signs

The need to make the changes to the Sign Ordinance (Chapter 26) in order to be in compliance with the Supreme Court decision of *Reed vs. Town of Gilbert*, has allowed city staff with the assistance of Bojorquez Law Firm to review the entire Sign Ordinance and make other revisions that reflect changes in state law; needed clarification or better definition of terms; and the placement of signs within certain zoning districts.

**Staff Analysis**

City Staff along with the Assistant City Attorney, Laura Mueller began looking at making changes to the City of Lakeway’s Sign Ordinance in order to bring it into compliance with current Federal and State Law. To allow both City Council and ZAPCO to review the proposed changes to Chapter 26 “Signs” of the Lakeway Municipal Code a joint work session between City Council and ZAPCO was held on April 11, 2018. The attached Amendments (Exhibit A) take into account the comments and direction that was provided to staff and the Assistant City Attorney during the work session.

Provided below are some of the main points that Staff thought should be brought forward:

- The proposed corrections and deletions will bring the City of Lakeway's Sign Ordinance into compliance with Federal and State Law and in particular in compliance with *Reed vs. Town of Gilbert*. This meaning that all of the material has been removed that would suggest the City of Lakeway is trying to regulate signs based on content. The proposed amendments will not regulate signs based on content when dealing with non-commercial signs.
- The City of Lakeway has two main types of signs, commercial and non-commercial (residential). Within the two sign types, there are various categories such as temporary signs and permanent signs.
- When looking at City of Lakeway's commercial sign regulations, not much has changed in the City's ability to regulate location, size, amount of lettering, type of material, and type of sign in regards to commercial signs. During the Joint Work Session comments were made about how does a commercial business promote a candidate during elections and how can a commercial businesses promote themselves through the use of temporary banners. The language was below was developed based on those comments and is provided in the attached amendments:

(b) Temporary signs in commercial areas.

(1) At any given time, a property owner may place up to two (2) signs no larger than two (2) square feet each on the property.

(2) One (1) additional sign not to exceed nine (9) square feet may be placed on a property for a period of ninety (90) days prior to an election involving candidates for a federal, state, or local office that represent the district in which the property is located or involving an issue on the ballot of an election within the district where the property is located per issue and per candidate.

(3) A commercial property owner may apply for one (1) additional temporary sign not to exceed ten (10) square feet to be placed for up to thirty (30) days. Each property may only apply for and receive one (1) such permit a year.

There is also an allowance for "Banners in Commercial Areas". This takes the place of Public Information Banners and would be called Noncommercial Banners. It would allow for the placement of a banner on a commercial property with a noncommercial message for a maximum of 30 days per permit and allowance for 2 permits per calendar year.

- With the issue of not regulating signs based on content then how do you regulate signs or the number of signs on a residential lot? The language below is provided in the attached amendments:

(a) Temporary signs in residential areas.

(1) At any given time, a property owner may place up to one (1) sign no larger than four (4) square feet each on the property.

(2) A property owner may apply for a temporary sign permit for placement on the property for up to seven (7) days. A temporary sign permit under this section may not be larger than four square feet. Only one temporary sign under this subsection may be approved and placed at any time.

In looking at the proposed Sign Ordinance Amendments and looking back at the past local election, it is Staff' opinion that the toughest obstacle is going to be campaign and election signs and how to properly administer their placement. One comparison, the City of Westlake Hills allows one temporary sign not to exceed 6 square feet in size per residential lot for a period of 90 days prior and 72 hours after an election involving candidates for a federal, state, or local office that represents the area in which the property is located. Staff has provided as an attachment, a copy of the City of Westlake Hills Sign Ordinance as a comparison.

### **Staff Recommendation**

Staff recommends approval proposed amendment to Chapter 26 (Signs) Lakeway Municipal Code pertaining to permitted signs within the City of Lakeway and its Extraterritorial Jurisdiction (ETJ).

### **References: Chapter 26 “Signs”**

### **Attachments**

- Draft Ordinance
- City of Westlake Hills Sign Ordinance