**MEMORANDUM**

TO: Cape Elizabeth Town Council

FROM: Ordinance Committee

DATE: December 2, 2016

SUBJECT: Sign Ordinance

Introduction

One of the 2016 Town Council goals is to update the Sign Ordinance. The Ordinance Committee met 6 times, and received public comment both at meetings and by email. Advice from Town Attorney John Wall was also received. At the December 1, 2016 meeting, the Ordinance Committee voted 3-0 to recommend a replacement Sign Ordinance and a companion policy recommendation regarding use of municipal message board signs.

Objectives for a new ordinance

The Ordinance Committee was guided by the following objectives in preparing a replacement Sign Ordinance.

1. **Reed compliant**. In June, 2015, the U.S. Supreme Court issued its decision in Reed v. Gilbert, a case involving temporary sign regulations by the Town of Gilbert, Arizona. While prior court decisions constrained sign regulations in order to protect the first amendment right to free speech, Reed expanded the meaning of "content neutral" sign regulation. Following the Reed decision, if a code enforcement officer has to read a sign to determine how it is regulated, the regulation is probably not in compliance with Reed. The current sign ordinance fails the "Need to Read" test.

If a sign regulation is content-based rather than content-neutral, the regulation restricts first amendment free speech rights and must meet the "strict scrutiny test" to be upheld. It is very difficult to survive the strict scrutiny test. Traffic control signage, "narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers - such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private homes," might survive the strict scrutiny test. Content-based sign regulation for any other type of signage has a high risk of failing the strict scrutiny test.

Generally, the court has recognized permissible content neutral regulations include sign size, location, lighting, fixed v. moving message, placement on public or private property and location on commercial or residential land.

2. **User-friendly**. The current ordinance is organized by type of permit required. It is necessary to read each permit section until you find the sign you want to install.

3. **Clear to enforce**. The existing sign ordinance is generally clear to enforce. The new ordinance should minimize subjective decisions required of the Code Enforcement Officer. Updates are also recommended to reflect new technologies and town customs.

4. **Accommodate existing signage**. The Ordinance Committee has tried to preserve existing signage opportunities for property owners as much as possible within the constraints of Reed. The attached spreadsheet summarizes the types of signs and sizes currently allowed.

Organization of the new ordinance

The new ordinance has been drafted to be Reed compliant. Sign regulation is organized by its location in the town.

Town-wide signage, which is composed of traffic control signage, both public and private, is intended to meet the strict scrutiny test.

Signs are further regulated based on their location in a residential/other zone and in a commercial zone. Subcategories are tied to road classification. Higher traffic roads are allowed more signage than neighborhood roads. These sections of the ordinance are intended to meet the "need to read test," that is the Code Enforcement Officer will not need to read the sign to apply the Sign regulations. Regulation organized by sign location should also be more user-friendly. The signage "budgets" allowed for properties should be clear for both the Code Enforcement Officer and property owners.

Temporary signs are limited to 8 weeks per year and must include contact information and the date the sign was installed on the sign. (This mirrors a requirement adopted by the State of Maine.)

Highlights

1. Substitution clause. To be Reed compliant, non-commercial signage cannot be regulated more strictly than commercial signage. The substitution clause allows non-commercial signage to comply with commercial signage requirements if application of the sign ordinance inadvertently applies more strictly to a non-commercial sign.

2. Nonconformance. In order to bridge the challenges of a Reed compliant ordinance (which could result in an explosion of additional signage allowed) and preserve existing signage, a new approach to nonconformance is proposed. Existing signs that become nonconforming with the new ordinance can remain and also be replaced in kind. New signs must comply with the new ordinance.

3. Electronic message boards. The current ordinance is silent on this new technology and the Code Enforcement Officer has asked for explicit direction. The Ordinance Committee is recommending that electronic message board signage be prohibited at this time, based primarily on community aesthetics.

4. Banners. Banners are not allowed in the current ordinance, but have nonetheless been installed. The Ordinance Committee is recommending that banners continue to be prohibited. There is general agreement that ample opportunity exists for use of banners along the right-of-way instead of across it.

5. Permit. The current ordinance includes a permit requirement, to be issued by the Code Enforcement Officer. The permit procedure and submission requirements have been updated.

Companion Recommendation

In light of the Reed decision, the Ordinance Committee is recommending that the town prepare a written policy regarding the use of municipal message boards that is Reed compliant.

Conclusion

The Ordinance Committee is pleased to have completed its work on the sign ordinance prior to the appointment of the 2017 committee and looks forward to the public hearing to be held by the Town Council.



**Zoning Ordinance, Appendix B**

