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**DRAFT
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

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.

- 1 2. User-friendly. The current ordinance is organized by type of permit required. It
2 is necessary to read each permit section until you find the sign you want to
3 install.
4
- 5 3. Clear to enforce. The existing sign ordinance is generally clear to enforce. The
6 new ordinance should minimize subjective decisions required of the Code
7 Enforcement Officer. Updates are also recommended to reflect new technologies
8 and town customs.
9
- 10 4. Accommodate existing signage. The Ordinance Committee has tried to preserve
11 existing signage opportunities for property owners as much as possible within
12 the constraints of Reed. The attached spreadsheet summarizes the types of signs
13 and sizes currently allowed.
14

15 Organization of the new ordinance

16
17 The new ordinance has been drafted to be Reed compliant. Sign regulation is organized
18 by its location in the town.

19
20 Town-wide signage, which is composed of traffic control signage, both public and
21 private, is intended to meet the strict scrutiny test.
22

23 Signs are further regulated based on their location in a residential/other zone and in a
24 commercial zone. Subcategories are tied to road classification. Higher traffic roads are
25 allowed more signage than neighborhood roads. These sections of the ordinance are
26 intended to meet the "need to read test," that is the Code Enforcement Officer will not
27 need to read the sign to apply the Sign regulations. Regulation organized by sign
28 location should also be more user-friendly. The signage "budgets" allowed for
29 properties should be clear for both the Code Enforcement Officer and property owners.
30

31 Temporary signs are limited to 8 weeks per year and must include contact information
32 and the date the sign was installed on the sign. (This mirrors a requirement adopted by
33 the State of Maine.)
34

35 Highlights

- 36
37 1. Substitution clause. To be Reed compliant, non-commercial signage cannot be
38 regulated more strictly than commercial signage. The substitution clause allows
39 non-commercial signage to comply with commercial signage requirements if
40 application of the sign ordinance inadvertently applies more strictly to a non-
41 commercial sign.
42

- 1 2. Nonconformance. In order to bridge the challenges of a Reed compliant
2 ordinance (which could result in an explosion of additional signage allowed) and
3 preserve existing signage, a new approach to nonconformance is proposed.
4 Existing signs that become nonconforming with the new ordinance can remain
5 and also be replaced in kind. New signs must comply with the new ordinance.
6
- 7 3. Electronic message boards. The current ordinance is silent on this new
8 technology and the Code Enforcement Officer has asked for explicit direction.
9 The Ordinance Committee is recommending that electronic message board
10 signage be allowed in the business districts and on properties with frontage on
11 rural connector roads.
12
- 13 4. Banners. Banners are not allowed in the current ordinance, but have nonetheless
14 been installed. The Ordinance Committee is recommending that banners be
15 permitted on arterial and collector roads with a limit of 3 days per year per
16 banner.
17
- 18 5. Permit. The current ordinance includes a permit requirement, to be issued by the
19 Code Enforcement Officer. The permit procedure and submission requirements
20 have been updated.
21

22 Conclusion
23

24 The Ordinance Committee is pleased to have completed its work on the sign ordinance
25 prior to the appointment of the 2017 committee and looks forward to the public hearing
26 to be held by the Town Council.
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Existing Sign Ordinance provisions						
Type	Total size	Per face	Height	#	Time limit	Notes
Signs allowed in All Zones without a permit						
Traffic control						
Temporary civic sign					30 days	
Political sign	16 sq. ft.	8 sq. ft.	3.5'		6 wks before election to 1 wk after	Limited to issues on a ballot; maximum horizontal
Address sign	2 sq. ft.					
Yard sale sign		4 sq. ft.		5	24 hrs before and after	2 on premise, 3 off-premise signs; no more
Real estate sign	12 sq. ft.	6 sq. ft.		1		1 sign per abutting street
Real estate open house sign				3	1 hr before and after	off-premises
Home occupation fish and farm mkt not on arterial	12 sq. ft.	6 sq. ft.	3'	1		Off premises sign
Pick your own sign	12 sq. ft.	6 sq. ft.	3'	6		off-premises signs within 3 miles of operation, removed when products no
Private prop signs		2 sq. ft.				Must be kept in good repair
Newspaper box sign						No other advertising on
On premises info signs						Maybe like traffic control signs
Temporary construction sign		6 sq. ft.			48 hrs before and after construction	
Banner (non-advertising)		15 sq.				Max dimension
Municipal temporary sign						Per town

Type	Total size	Per face	Height	#	Time limit	Notes
Signs Permitted in All Zones with a Permit						
Temporary residential development sign	72 sq. ft.	36 sq. ft.		1	From PB approval to 30 days after project completed	CEO may grant 3 year permit, beyond 3 years from PB
Permanent neighborhood sign	72 sq. ft.	36 sq. ft.	7'	1		1 per entrance if 1,000' apart, 15' setback, shielded light
Home Occupation/business sign	4 sq. ft.	2 sq. ft.	5'	1		describes content of sign
Agricultural operation/fish market home business sign	32 sq. ft.	16 sq. ft.	5'	2	year round or	
Church/civic sign	72 sq. ft.	32 sq. ft.		1		1 sign per abutting street
Projecting/suspending sign	12 sq. ft.	6 sq. ft.	13'			Minimum clearance 13'; not over right-of-
Projecting/suspending sign residential	4 sq. ft.	2 sq. ft.	13'			Minimum clearance 13'; not over right-of-
Agricultural wall sign	32 sq. ft.	32 sq.		1+		
Nonresidential sign	12 sq. ft.	6 sq. ft.	5'	1		Lots on arterial, see TC District

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Type	Total size	Per face	Height	#	Time limit	Notes
Permitted Signs in the TC, BA, BB and BC Zones						
Freestanding permanent	40 sq. ft.	20 sq.	20'	1		
Freestanding permanent	40 sq. ft.	20 sq.	5'	1		
Wall Sign	40 sq. ft.		20'	1	Size limited to 40% of	
Projecting/Suspending sign	12 sq. ft.	6 sq. ft.	20'	1		
Banner	30 sq. ft.	15 sq.	20'	1		
Awning	4 sq. ft.	4 sq. ft.	10'	1	per	
Permanent Window Display	50%			1	Limit to 50% of glass storefront	
Message Boards	24 sq. ft.	12 sq. ft.	4'	1	Maximum dimension 4'	
Sandwich board sign		12 sq. ft.	4'	1	Business hours	1 per bus; can be in right-of-way; not lit; not included in max
Open Flag sign	30 sq. ft.	15 sq. ft.	8'	1	Business hours	minimum clearance over sidewalk 8'; not included in max
Shopping Center sign	100 sq. ft.	50 sq. ft.	20'	1		Add another 100 sq. ft. for directory; limits individual
Gas station signs	250 sq. ft.					Reference business sign limits plus multiple
Specialty signs						
Athletic Field sign	540 sq. ft.					

Zoning Ordinance, Appendix B

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ARTERIAL STREETS	COLLECTOR STREETS	RURAL CONNECTOR STREETS	FEEDER STREETS	LOCAL STREETS
Route 77	Mitchell Road	Charles E. Jordan Road	Broad Cove Road	All other public roads
	Scott Dyer Road	Fowler Road (south of Bowery Beach Road)	Cottage Farms Road	
	Shore Road	Old Ocean House Road	Eastman Road	
		Sawyer Road	Fessenden Rd.	
		Spurwink Avenue	Fowler Road (Ocean House Road to Bowery Beach Road)	
		Two Lights Road (Wheeler Road to Beacon Lane)	Hill Way	
		Wells Road	Oakhurst Road	
			Preble Street	
			Woodland Road	

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