

**Town of Cape Elizabeth
Ordinance Committee Minutes**

September 15, 2016

1:30 p.m.

Town Hall

Present: Caitlin Jordan, Chair
Sara Lennon
Jessica Sullivan

Staff: Maureen O'Meara, Town Planner

Councilor Jordan called the meeting to order. The minutes of the August 11, 2016 meeting were approved.

Public Comment

No member of the public was present.

Sign Ordinance

Councilor Jordan began by referencing the Reed v. Gilbert decision and asking members how they want to begin with deficiencies in the town's sign ordinance. Do we want to review our ordinance or write a new ordinance? Staff did not find good template examples.

Councilor Sullivan is leaning toward writing a new ordinance because of the huge impact of the Reed decision. When asked for advice on amending existing or drafting new, Ms. O'Meara referred to the meeting materials and suggested the committee discuss how much risk of legal challenge you are comfortable with?

Councilor Sullivan noted that the sign ordinance should include the government purpose of traffic safety and aesthetics, and be content neutral per Reed decision. The committee discussed why someone might sue the town and Councilor Jordan suggested they would sue if the town did not allow the sign. Councilor Sullivan said first amendment rights claims would be made in a lawsuit and Councilor Jordan noted sign issues in the news.

Signs on private, as well as public property, can be regulated. They noted the MMA sign outline. There was general sentiment to write a new ordinance. Councilor Sullivan suggested we start with what we can regulate. Regulation should follow government purpose.

When asked where to start, Ms. O'Meara said the current ordinance includes many sign definitions based on type of sign. To be in compliance with Reed, the Code Enforcement Officer should not have to read the sign in order to determine what regulations apply. Most of the current sign ordinance provisions are problematic because they are tied to the content of the sign. Content based regulations will need to survive the "strict scrutiny" test if you are challenged in court. Once commenter compared the "strict scrutiny" test to a stomach wound during the Civil War, which is almost always fatal. Governments should be able to regulate signs for traffic safety.

Councilor Sullivan used an example of a private commercial sign which town residents may not like, but which the town cannot prohibit without clearing tying it to public safety. Councilor Lennon asked if the signs in the medians restriction must be eliminated. It's not that you must prohibit signs in the median, but if you allow some signs in the median, you have to allow any sign message in the median.

Councilor Jordan said agricultural signs installed in the median are a perfect example of the inconsistency between the town sign ordinance and the Reed decision. The town ordinance allows agricultural signs, but not political signs in the median and this is content based regulation. It was suggested that all political signs be banned, which would be a violation of first amendment rights to free speech.

Councilor Sullivan is concerned that content neutral may also protect signs that are defamatory. This would be addressed in a civil action, not by town regulation.

The committee reviewed what types of sign regulation are allowed. Staff read a list of "content neutral" regulations. It appears a majority of the Supreme Court would accept regulation of sign size, location, lighting (yes or no), fixed or changing message board, placement on public or private property and placement on commercial or residential land. Limiting regulation to these areas is the "low-risk" option. Once you add exceptions, risk increases.

Councilor Lennon said to just regulate these features and no exceptions. Shouldn't we stick to what we have always done, which is not to have a lot of signs. Councilor Jordan pointed out that we have exceptions in the current ordinance. Councilor Lennon said we don't want businesses putting up sandwich boards and happy hour signs. Councilor Jordan pointed out that we have businesses that put up sandwich board signs now and we should be sensitive to the needs of local businesses.

Councilor Sullivan would like to mitigate the impact of signs by limiting lit signage or rolling message board signs.

Staff noted that every exception allowed for commercial activity must also be available for other types of signage, such as political speech. The committee discussed the signs

currently allowed in residential areas and how political speech must be allowed the same. The committee decided to review the current ordinance to look at exceptions and what is allowed.

Committee members noted the changes to the sign ordinance in the last few years. Now bringing in the Reed decision will require substantial changes.

Staff was asked for a brief overview. Sign regulations have always needed to not restrict first amendment rights. If you restrict free speech, you need to survive the "strict scrutiny" test, which is very difficult to meet. Councilor Lennon asked if someone in a neighborhood wanted to put up a sign with offensive wording, can they do that? Yes, it is free speech under your first amendment rights.

Councilor Jordan said the only way to avoid that is to not allow any signs. Councilor Lennon suggested making the regulations very strict and Councilor Jordan cautioned that local businesses will not support that.

Councilor Sullivan asked about grandfathering, which you can't do. Staff said there is some phasing in allowed by prorating the value of the sign. Councilor Jordan said is there a sign problem now? Shouldn't we continue to allow what we allow now, but make changes as needed to comply with Reed? Look at existing sizes and accommodate. The committee discussed the aesthetic appeal of existing signs in town.

As sign regulation options were discussed, staff summarized that the Reed case was about special events, a religious activity and treated as an exception. These features increase risk. The committee talked about avoiding regulations that require the Code Enforcement Officer to read the sign to determine the regulation that applies. There is support for putting time limits on temporary signs, and consensus that any temporary sign would be permitted. Councilor Jordan encouraged fellow committee members to think about all the types of temporary signs when deciding on a time limit and not to be too restrictive.

Councilor Lennon asked about event signs. If a business said they are having a cappuccino event three times a week, then they can have a sign up basically all the time. Staff noted that if you allow special event signage, then you have to allow signage for every event. This is another point when the committee should think about how much risk you will tolerate to differentiate between different types of signs.

In response to a question about how to control an overabundance of political signs, staff gave an example of a very simple ordinance that creates a budget of square footage of signage for each residential property and a larger budget for commercial properties. The budget would not be further regulated into categories of signs, but could regulate

lighting, changing message, etc... It would be simple to enforce and totally content neutral, but probably not tailored enough for Cape.

Councilor Jordan said Cape wants as little change as possible. Staff said even without the Reed decision, the current ordinance still needs some work because it is not very user friendly, as it is organized by type of permit.

Council Sullivan is leaning toward very little risk, which should also result in less confusion. Councilor Jordan wants to avoid risk, but wants to continue to allow what businesses can do now. The committee agreed to review the current ordinance to see what types of signs we have now.

Councilor Jordan noted the MMA outline for a sign ordinance and noted our current ordinance has a purpose statement. The sign definitions that are by category need to be revised, such as advertising and political signs. We should group our sign categories and focus on size, place and manner regulations. There was agreement to keep the banner sign because it is a material the sign is constructed with, which is an aesthetic regulation.

Councilor Lennon is concerned with lighting. Anything that is moving, flashing, internally lit should not be allowed. They discussed the changing message sign, and noted the use of sandwich signs. The Open flag definition can be revised to remove the portion that references what the flag says. Councilor Lennon suggested we merge the banner and open flag sign.

The sandwich board sign name should be changed to another name, maybe tripod sign. The shopping center sign may be problematic, but there is more latitude to regulate commercial signs. Councilor Jordan stated current limit of 24 hours for a temporary sign is probably not how many temporary signs are used now.

Councilor Sullivan asked how other towns are approaching this. Staff said most towns are in the same situation as Cape.

Staff expressed a high level view that we live in a democracy, we should support free speech, even the most offensive speech, and should have a sign ordinance that is consistent with the Supreme Court's decision protecting free speech.

Councilor Lennon supports free speech, but wants to preserve the town's aesthetics. Staff said there is a solid legal basis for regulating most of the size, lighting, location message fixed or changing items mentioned earlier.

Councilor Sullivan concluded that a lot of the stuff we are used to doing, that may be fun for kids, we are not going to be able to do anymore, or we are going to have to be

prepared to let everyone do it. Councilor Jordan said we can let everyone do it, but it will only be for a limited time, say 5 days. What can we tolerate, worst case scenario?

Councilor Lennon asked if the rock violates sign size requirements. It probably does. The rock is a community institution, and the committee does not want to address it, but it may get raised. Councilor Jordan said we should craft an ordinance that results in minimal change, that avoids upsetting people, and then difficult questions may not get asked.

The committee decided to ask staff to prepare a rough outline of a new ordinance, differentiate between residential and commercial, basic categories, to get the committee discussion started. It was agreed that once a decent draft has been assembled, it should be reviewed by the town attorney.

Next meeting

The committee would like to get a draft completed before mid-December and agreed to meet twice a month. They agreed to meet from 1:15 p.m. to 2:45 p.m. on October 6th, October 20th, November 3rd and November 17th.

Public Comment

No members of the public were present.

The committee adjourned at 2:42 p.m.