



## Legislation Text

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### *Department of Community Development*

Reference: Repeal of Political Sign Code

**To:** Mayor Richard N. McLean and Members of City Council

**Through:** Holly Prather, AICP, Community Development Director  
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**Date Prepared:** August 9, 2017

### **PURPOSE**

The City is requesting that the City Council repeal sections of the *Land Use and Development Code* that deal with political signs. This repeal is part of a three phase approach to addressing potential legal conflicts and/or necessary updates regarding the City's Sign Code. The first, and current phase, is to repeal the sections of the Code that deal with political signs. The next phase will be working on a Code amendment that will deal with all signs in the City of Brighton relating to recent court cases, and the third phase will be a complete overhaul of the entire sign code to deal with issues such as location, size, quantity, etc.

### **BACKGROUND**

Brighton's *Land Use and Development Code* contains provisions on political signs that define them, set restrictions on their length of posting, size, and total aggregate area on one lot. The United States Supreme Court, in the case of *Reed v. Town of Gilbert*, found that the sign code of the Town of Gilbert, Arizona was unconstitutional due to content-based regulation. By this decision, a variety of signs, including political signs, are problematic as the applicable restrictions and requirements typically rely upon the subject matter or message of the sign itself thus limiting First Amendment-protected speech. The decision basically states that cities cannot regulate different forms of content differently from other like signs. Our current Code relating to political signs would not survive strict scrutiny. This level of scrutiny is the most rigorous standard of judicial review. The Courts would apply strict scrutiny in the context that a person could claim that a fundamental constitutional right is being infringed. What this means is that if the City's current provisions on political signs were challenged in court, the City would lose.

### **CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM**

Section 17-8-20 (a) of the *Land Use and Development Code* states that the City Council shall have the jurisdiction to review and make the final decision, subject to appeal to the appropriate District Court, on amendments to the *Land Use and Development Code*.

The Planning Commission had this item before them on August 8<sup>th</sup> and their recommendation was for approval.

### **PUBLIC NOTICE AND INQUIRY**

Notice of the City Council public hearing was published in the *Brighton Standard Blade* in the July 19<sup>th</sup> Edition, as required by Section 17-8-30 (f) (2). No comments from the public have been received by staff as of the date of this report.

### **SUMMARY OF FINDINGS**

The proposed code amendment is comprised of five actions listed below taken straight from the draft ordinance for City Council. These actions are what City staff recommends as necessary to protect the City from legal challenges related to the case of Reed v. Town of Gilbert.

1. The definition of “political sign” in ARTICLE 17-20 Section 17-20-100(b). - **Signs/Definitions**. of the Brighton Land Use and Development Code is hereby repealed.

**Political sign:** A sign which is allowed for a limited time that does not commercially advertise and which references a local, state or national election, ballot issue, referendum or initiative.

2. ARTICLE 17-20 Section 17-20-100 Signs. Subsection (f)(6) of the Brighton Land Use and Development Code is hereby repealed and the remaining subsections renumbered accordingly:

(f) **Signs Permitted in All Zone Districts Without a Permit.** The following signs may be erected and maintained in all zone districts without a permit:

(6) Political signs shall be allowed for a period of ninety (90) days prior to and ten (10) days following a national, state, county or local governmental election. No single sign shall exceed thirty-two (32) square feet of area on any one (1) face, and the aggregate area of all political signs on one (1) lot area shall not exceed fifty (50) square feet. Political signs not removed after ten (10) days following such election shall be in violation of these regulations. No political signs shall be erected or placed on public streets, parks, alleys or other public areas.

3. ARTICLE 17-20 Section 17-20-100 Signs. Subsection (c) (7) of the Brighton Land Use and Development Code is repealed and reenacted to read as follows:

(c) **General Regulations for Signs**

(7) No sign shall be erected **OR PLACED** in a public right-of-way, **PARKS, ALLEYS OR OTHER PUBLIC AREAS** unless otherwise permitted herein. No sign shall visually obstruct a sight or vision triangle. No sign shall be placed, installed, located or maintained in an unsafe manner or so as to obstruct a public or private right-of-way or create a nuisance or an unsafe or dangerous condition. **THE CITY OF BRIGHTON IS NOT RESPONSIBLE FOR ANY DAMAGE OR INJURY CAUSED BY ANY SIGN PLACED IN VIOLATION OF THIS SECTION.**

4. **Validity.** If any part or parts of this ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof, irrespective of the fact that any one part or parts be declared invalid.

5. **Repeal.** Existing or parts of ordinances covering the same matters as embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this ordinance. The repeal established herein shall not be construed to revive any ordinance or any part thereof that had been previously repealed by any ordinance repealed by this **ordinance**.

#### **FINANCIAL IMPACT**

Repealing or altering the above mentioned provisions can protect the City from legal challenges related to First-Amendment-protected speech which would be an unnecessary expense. A final revised code is necessary for these items, but it will save the City money and time to group in the amending of these sections with the proposed next step of rewriting of the entire sign code related to the case of Reed v. Town of Gilbert.

#### **STAFF RECOMMENDATION**

As election season is coming up in Brighton, Staff recommends the repeal of all portions of the sign code that relate to political signs. This is being recommended at this time in the best interest of the residents by way of not subjecting the City to any unnecessary legal complaints. Staff has a plan in place to work on a new sign code that will address recent court cases and new standards, but, at this time, staff believes it is in the City's best interest to remove the sections noted above.

**OPTIONS FOR COUNCIL CONSIDERATION**

- Approve the Ordinance on first reading as drafted;
- Approve the Ordinance on first reading with changes;
- Continue the item to a date certain; or
- Deny the Ordinance as drafted.

**ATTACHMENTS**

- Ordinance (Draft)