

STAFF REPORT

DATE: June 28, 2021

TO: Frederickson Land Use Advisory Commission

FROM: Dan Cardwell, Supervisor, Long Range Planning

BY: Jessica M. Nappi, Senior Planner, Long Range Planning

SUBJECT: **Frederickson Community Plan Area Signs Regulatory Update: Amendments to Pierce County Code Section 18B.20.080-1**

NOTICE: Notice of the Frederickson Land Use Advisory Committee public hearing was published in the News Tribune on June 14, 2021.

SEPA: Environmental review will be conducted pursuant to the State Environmental Policy Act and Pierce County Code Title 18D.

ATTACHMENTS:

- Attachment 1** Option 1: Proposed Amendments to Chapter 18B.20, “Countywide Sign Design Regulations”
- Attachment 2** Option 2: Proposed Amendments to Chapter 18B.20, “Countywide Sign Design Regulations”

GENERAL DESCRIPTION

In the past year, Pierce County has been reviewing policies and regulations for consistency with the 2015 U.S. Supreme Court’s *Reed v. Town of Gilbert* ruling. The Court held that a sign code that treats various categories of noncommercial signs (e.g., temporary, political, and ideological) differently based on the information they convey violates the guarantee of freedom of speech within the First Amendment.

The Frederickson Land Use Advisory Commission (LUAC) is being asked to review and consider two amendment options to amend Pierce County Code [Table 18B.20.080-1](#), “Electronic Message Signs,” to no longer reference the specific content of electronic message signs allowed in the Frederickson Plan area’s commercial urban zones for non-civic uses. Either of these options would bring the Frederickson Community Plan area’s noncommercial sign regulation into consistency with the Court’s decision. As the Community Plan does not provide direct policy guidance on electronic messaging signs, the Department of Planning and Public Works is seeking a recommendation from the LUAC on which option it would prefer. This effort is part of a larger countywide development regulatory package to update the Pierce County Code’s noncommercial signs for consistency with this court decision (see background section for more information).

AMENDMENT OPTIONS

Electronic message signs are defined in Pierce County Code [Title 18B.70](#) as:

“...an electronic changeable copy sign or portion thereof that displays information with alphanumeric characters, including keyboard generated punctuation and symbols, and static images, graphics, logos, or symbols and which may consist of a pattern of lights using different combinations of light-emitting diodes (LEDs), fiber optics, and light bulbs, or other technology capable of displaying static images, graphics, logos, and symbols.”

Electronic message signs can only display static messages, and cannot include video, scrolling streaming, flashing, trailing content, animations, or similar displays.

[Table 18B.20.080-1](#) shows which community plan areas allow for electronic message signs in commercial urban zones – the Frederickson Community Plan area only permits time and temperature electronic message sign displays.

Regulating an electronic message sign based on its content, provided that content is of a noncommercial nature, may not comply with the findings of *Reed v. Town of Gilbert*. As such, the Frederickson Community Plan area has two options to resolve this conflict:

- **Option 1** (Attachment 1): Amend Table 18B.20.080-1 to remove reference to footnote #4 in the Frederickson Community Plan Area under the Commercial Urban Zones as well as remove footnote #4 to no longer allow for electronic message signs displaying “time and temperature” for non-civic uses in Frederickson Plan area’s commercial urban zones; thereby resulting in no non-civic (e.g., commercial) electronic message signs in the Plan area’s commercial urban zones.
- **Option 2** (Attachment 2): Amend Table 18B.20.080-1 to remove reference to “time and temperature displays” from footnote #4 and replace with “public information signs”; thereby expanding beyond time and temperature displays to include public information on electronic message signs in the Plan area’s commercial urban zones.
 - “Public information sign” means a sign or portion of a larger sign which conveys only information of interest to the general public such as activities, events, time, date, temperature, atmospheric condition, or news.

U.S. SUPREME COURT REED V. TOWN OF GILBERT BACKGROUND

Like many jurisdictions across the nation, Pierce County is updating its sign code in response to the 2015 U.S. Supreme Court case, *Reed v. Town of Gilbert*. The Court held that a sign code that treats various categories of noncommercial signs differently based on the information they convey violates the guarantee of freedom of speech within the First Amendment. The Town of Gilbert’s sign code defined the categories of temporary, political, and ideological signs on the basis of their messages and then subjected each category to different restrictions such as on size, number of signs, and the permissible duration of display. They were deemed content-based regulations of speech, thereby making it unconstitutional.

The *Reed v. Town of Gilbert* case held that regulations that apply to non-commercial signs must apply uniformly to all non-commercial signs, without deviation. For example, prior to *Reed*, most

jurisdictions had sign codes that had separate regulations for the size, location and amount of time a sign could be posted that differed depending on whether the sign was a temporary political sign, sign advertising a special event, or a sign advertising garage sales. With *Reed v. Town of Gilbert*, the Court said jurisdictions could no longer distinguish between noncommercial sign types (e.g., all political signs must be subject to the same regulations as special event signs). This extends to permitting requirements; the jurisdiction cannot require special events obtain a permit while exempting political signs from a permit requirement. only reference the number of signs, size, location, and type of sign structure, and category of sign (temporary or permanent).

The Supreme Court decision changes the method the County needs to use to govern noncommercial signs. Noncommercial sign regulations cannot be content-based – any regulations that requires a person to read or discern the content of the sign is no longer valid. The more content neutral the sign code is, the less risk the County has of being challenged. If the messages expressed promote public safety or aesthetic values, they should pass the test assuming they are narrowly drawn to achieve those compelling County interests. The County can restrict the time, place, and manner of the non-commercial sign message, if the regulations are narrowly tailored to further a significant/important County interest and leave open ample alternative channels of communication.

APPLICABLE COMPREHENSIVE PLAN / COMMUNITY PLAN POLICIES

Comprehensive Plan/Design and Character Element/Urban, Rural, and Resource/Signs (page 5-8)

GOAL D-16 Establish a system of sign controls that is uniform, balanced, and minimizes the number and size of signs while ensuring an opportunity for effective advertising.

D-16.1 Adequately control the size, type, design, and location of signs.

Frederickson Community Plan/Community Character and Design Element/Design and Character Policies/Sign Design (page D-55)

GOAL FR D-11 Establish and implement uniform and balanced requirements for new signs and an amortization schedule for the removal of signs made nonconforming with the adoption of regulations implementing this plan.

GOAL FR D-12 Ensure that all signs undergo design review to ensure that the design and placement of signs is consistent with the Frederickson Design Standards and Guidelines.

FR D-12.2 Prohibit the use of flashing or rotating signs, video signs, roof signs, railing signs, inflatable signs, and signs attached to private light standards.

Only those portions of Chapter 18B.20 that are proposed to be amended or necessary for context are shown. Remainder of text, maps, tables and/or figures is unchanged.

**Chapter 18B.20
COUNTYWIDE SIGN DESIGN REGULATIONS**

18B.20.080 Electronic Message Signs.

Electronic message signs are allowed as follows:

- A. Electronic message signs are allowed for the following civic uses in urban areas as shown in Table 18B.20.080-1, Electronic Message Signs:
 - 1. Schools (elementary, middle, high, college, university);
 - 2. Regional park facilities;
 - 3. Police and fire stations; and
 - 4. Religious facilities.
- B. Electronic message signs are allowed for the following civic uses in rural areas as shown in Table 18B.20.080-1, Electronic Message Signs:
 - 1. Schools (elementary, middle, high, college, university); and
 - 2. Police and fire stations.
- C. Electronic message signs shall be allowed in urban commercial zone classifications as shown in Table 18B.20.080-1, Electronic Message Signs.
- D. Temporary electronic message signs used for traffic control purposes within the County or State rights-of-way, as approved by the County Engineer or Washington State Department of Transportation, are permitted County-wide.
- E. All electronic message signs are subject to PCC 18B.20.080 C.

Table 18B.20.080-1. Electronic Message Signs (1)

	Commercial Urban Zones	Civic Uses (2) in Urban Areas	Civic Uses (2) in Rural Areas	Minimum Display Time: Major Arterials	Minimum Display Time: All Other Roadways	Message Display Requirements
Frederickson Community Plan Area	(4)	P		No less than 8 seconds	No less than 20 seconds	Text and numerals including punctuation, static images, graphics, logos and symbols only

(1) For the purposes of this Section, fuel price signs are not considered electronic message signs. See PCC 18B.20.085.
 (2) Permitted civic uses are limited to schools, regional parks, religious facilities, and Police/Fire Stations in the urban area and schools and police/fire stations in the rural area.
 (3) Permitted in conjunction with a master sign plan for the Town Center complex.
~~(4) Permitted only for time and temperature displays.~~
 P Permitted.
 Note: All electronic message signs are subject to PCC 18B.20.080 F., Regulations – Electronic Message Signs.

F. Regulations – Electronic Message Signs.

1. An electronic message sign, as a wall or freestanding sign, shall not exceed the size, setback or height limits of the zone classification.
2. When an electronic message sign is located in a residential zone classification, the sign shall not operate between the hours of 10:00 p.m. and 6:00 a.m.
3. An electronic message sign shall be located on the same site as the use for which it is associated.
4. Information on the electronic message sign shall only include alphanumeric characters, punctuation, static images, graphics, logos, and symbols.
5. Electronic message signs shall display static messages only. No video, scrolling, streaming, flashing, or trailing content, animations, or similar displays are permitted.
6. The change from one message to another message shall be no more frequent than once every 8 seconds when along a major arterial and 20 seconds when along all other roadways.
7. The change of message shall be completed in two seconds or less. Messages, including backgrounds, text, numbers, static images, graphics, logos, and symbols, may change by dissolve, fade, or by instantaneous change from one static display to another, but shall remain as a static display after completing the change and, once changed, shall remain static until the next change.
8. Electronic message signs shall not exceed a brightness level of 0.3 foot candles above ambient light as measured using a foot candle meter at a preset distance depending on sign size. Measurement distance shall be determined using the following calculation: the square root of the product of the sign area times 100. Example using a 12 square foot sign: $\sqrt{(12 \times 100)} = 34.6$ feet measuring distance.
9. Electronic message signs shall be equipped with a mechanism that automatically adjusts the brightness in response to ambient conditions and equipped with a means to immediately turn off the display if it malfunctions or if for some reason it is not complying with the regulations in this Section.
10. All electronic message signs shall be designed to prevent light trespass into the sky.
(Ord. 2019-101 § 1, 2019; Ord. 2017-89s § 3 (part), 2018; Ord. 2016-42s § 1 (part), 2016; Ord. 2014-42 § 3 (part), 2014; Ord. 2013-85 § 1 (part), 2013; Ord. 2013-30s2 § 6 (part), 2013)

AMENDMENT OPTION 2

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