

SIGN OF THE TIMES



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INTERNATIONAL SIGN ASSOCIATION

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INTERNATIONAL SIGN ASSOCIATION



Introduction

- Reed v. Gilbert, Decided by U.S. Supreme Court on June 18, 2015
- All sign codes in the United States are impacted
- Brief Reed v. Gilbert Summary
 - Town of Gilbert sign code provisions deemed in violation of the First Amendment because it treated noncommercial speech differently based on the content of the speech
 - Subject of the case was the regulation of noncommercial signs (e.g., political signs, ideological signs, and directional signs)
 - However, the Supreme Court required content neutrality for all signs without explicitly addressing previous Supreme Court rulings on commercial speech.

History of First Amendment in Sign Regulation

- The Court has upheld some total bans...
 - Of off-site commercial billboards in *Metromedia*
 - Of signs on public property in *Vincent*
- ...while it has struck down others.
 - Of real estate lawn signs in *Linmark*
 - Of personal lawn signs in *Ladue*
- Exemptions are typically problematic.
 - Can lead to evaluations of content.
- The key question – is the ordinance content-based?
 - The answer determines the level of scrutiny the ordinance will face

Levels of Scrutiny

- Strict Scrutiny
- Intermediate Scrutiny
- Rational Basis



Strict Scrutiny

- Most plaintiff-friendly test
- Almost always fatal to an ordinance
- Requires the City to show that the ordinance (1) furthers a “compelling government interest” and is (2) “narrowly tailored” to further the government interest.
- The presence of a less restrictive alternative to accomplish the government’s purpose is typically fatal to an ordinance under strict scrutiny.

Intermediate Scrutiny

- Closest thing to an “in-between” level of scrutiny.
- The City must show that the ordinance is (1) “narrowly tailored” to (2) serve a “significant government interest,” and (3) leaves open “ample alternative channels” for communication of the information.
- The “narrow tailoring” of this test is less strict.
 - The “least restrictive means” test does not apply.
- A “significant” government interest is easier to show than a “compelling” government interest.

Rational Basis Scrutiny

- Most government-friendly test.
- Ordinances almost always upheld.
- The challenger must show that the ordinance is “rationally related” to a “legitimate” government interest.
- Not used in First Amendment challenges.
 - Since the right to free speech is a “fundamental right,” it triggers one of the two heightened forms of scrutiny

Content Neutrality

- Again, this is important because it determines the level of scrutiny an ordinance will face in a First Amendment challenge.
- Content neutrality focuses on the subject matter of the sign.
 - Less obvious than viewpoint neutrality
 - Example – an ordinance banning all signs relating to abortion will violate this
- Viewpoint neutrality, a closely-related concept, focuses on the point of view advocated on the sign.
 - Much more obvious and easier to avoid violations
 - Example – an ordinance banning all anti-abortion signs will violate this
- Both will typically trigger strict scrutiny.

Time, Place and Manner Restrictions

- This is what an ordinance should aim for.
- Whether a sign is permitted, regardless of the actual content of the sign.
- Ordinances which regulate some of the following:
 - Size/Height
 - Locations
 - Maximum numbers
 - Lighting, etc.
- Be cautious – an otherwise acceptable time, place, and manner restriction can be ruined by exemptions based on content.

Commercial and Noncommercial Speech

- Commercial Speech
 - “proposes a commercial transaction” or “promotes intelligent market choices”
 - Is protected by First Amendment, but to a lesser degree
- Noncommercial Speech
 - Speech about politics, religion, philosophy, etc. (essentially any noncommercial ideas)
 - Receives highest degree of First Amendment protection
- Reed v. Gilbert involves noncommercial speech

On-Site and Off-Site Signs

- On-site Signs
 - Identify the use, or advertise products or services offered, at the location where the sign is displayed
- Off-site Signs
 - Identify a use, or advertise products or services offered, somewhere other than the location where the sign is located

Important Cases Preceding Reed v. Gilbert

- Virginia Pharmacy Board v. Virginia Citizens Consumer Council (1976)
 - Struck down a ban on advertising prescription drug prices – commercial speech
- Central Hudson v. Public Services Commission of New York (1980)
 - Struck down a ban on promotional advertising by electric utility companies – commercial speech – ban was more extensive than necessary
- Metromedia, Inc. v. City of San Diego (1981)
 - Struck down a ban on on-site noncommercial signs
- City of Ladue v. Gilleo (1994)
 - Ordinance did not leave sufficient alternative channels for communication – failed intermediate scrutiny

Reed v. Gilbert Background

- Town of Gilbert Sign Regulations:
 - Temporary Directional Signs Relating to a Qualifying Event (non-profit)
 - 6 ft. x 6 ft. sign allowed for 12 hours before and 1 hour after the event
 - No more than 4 signs on any property, with the consent of the property owner
 - Political Signs
 - Unlimited number of signs up to 32 sq. ft.
 - No time limit on placement before the election, and removal 10 days after the election
 - Ideological Signs
 - Unlimited number/time for signs up to 20 sq. ft.



Reed v. Gilbert – Lower Courts

- Church tried to work with City – to no avail (“no leniency”)
- District Court denied Plaintiff’s (Church’s) motion for preliminary injunction
- The 9th Circuit affirmed – held that the ordinance was content neutral
- District Court then granted summary judgment to the City
- The 9th Circuit affirmed again
 - Held that the ordinance was content neutral
 - Because the ordinance was not adopted based on disagreement with the message conveyed on the signs.

Reed v. Gilbert – Supreme Court

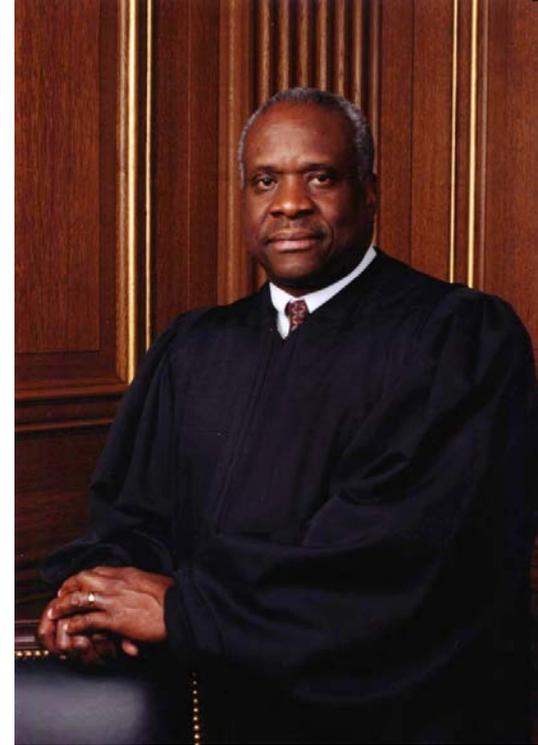
- 9-0 on the judgment
- 6-3 Majority opinion written by Thomas (a relative rarity)
 - The important rule from this case: If you need to read the message on a sign to determine how that sign is regulated, the ordinance is content based.
 - Intent to regulate the content is a sufficient, but not necessary, condition of a content based ordinance.
 - In other words, it does not matter whether the City *intended* to favor or disfavor any certain ideas, topics, etc.
 - This is also fatal, but not required to trigger strict scrutiny.
 - The ordinance was thus subjected to strict scrutiny and struck down because it was not narrowly tailored to a compelling government interest.

Reed v. Gilbert – Supreme Court

- Thomas used the following example to critique Gilbert’s 3 separate regulations for directional signs, political signs, and ideological signs:
 - A directional sign informing readers of the time and place of a book club to discuss John Locke’s Two Treatises of Government is treated differently than:
 - A political sign expressing the view to vote for one of John Locke’s followers in an upcoming election, which is treated differently than:
 - An ideological sign expressing a viewpoint rooted in Locke’s theory of government.
- “Ideological messages are given more favorable treatment than messages concerning a political candidate, which are themselves given more favorable treatment than messages announcing an assembly of like-minded individuals. That is a paradigmatic example of content-based discrimination.”
 - Because it requires an enforcement officer to read the sign.

Reed v. Gilbert – Supreme Court (Thomas)

- 6-3 (Thomas, Scalia, Roberts, Alito, Kennedy, and Sotomayor)
 - All content-based distinctions subject to strict scrutiny
 - Municipalities can still regulate:
 - Size
 - Building materials
 - Lighting
 - Moving parts
 - Portability
 - Postings on public property, provided it is even-handed and content-neutral
 - The following regulations might survive strict scrutiny if they are narrowly tailored to the challenges of protecting safety of pedestrians, drivers, and passengers:
 - Warning signs marking hazards on private property
 - Signs directing traffic
 - Street numbers associated with private houses



Reed v. Gilbert – Supreme Court (Thomas)

- 6-3 (Thomas, Scalia, Roberts, Alito, Kennedy, and Sotomayor)
 - Content-based distinctions, subject to strict scrutiny, include the following
 - Speaker-based signs – e.g., gas station signs, theater signs, farm market signs, etc.
 - Event-based signs – e.g., displayed while the property is for sale or rent, displayed while construction is taking place, etc.

Reed v. Gilbert – Supreme Court (Alito Concurrence)

- Alito, joined by Kennedy and Sotomayor
 - Rules that would not be content-based (includes conflicts with Thomas' list):
 - Sizes of signs
 - Locations in which signs can be placed (e.g., freestanding, building-mounted)
 - Lighted vs. unlighted signs
 - Signs with fixed messages vs. electronic messages that change
 - Placement of signs on private vs. public property
 - Placement of signs on commercial vs. residential property
 - **On-premises vs. off-premises signs**
 - Total number of signs allowed per mile of roadway
 - **Time restrictions on signs advertising a one-time event**
 - Governmental speech (promote safety, directional signs, signs indicating historic and scenic spots)



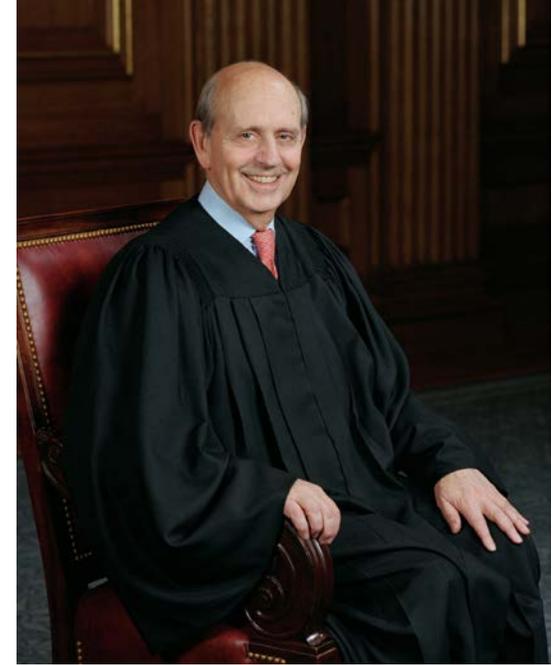
Reed v. Gilbert Supreme Court (Kagan Concurrence)

- Kagan, joined by Ginsburg and Breyer
- Concurred only with the judgment
- From Kagan:
 - “The consequence....is that our communities will find themselves in an unenviable bind: They will have to either repeal the exemptions that allow for helpful signs on streets and sidewalks, or else lift their sign restrictions altogether and resign themselves to the resulting clutter.”
 - Advocates what she would call a “common-sense” approach which would review whether or not the ordinance was designed to favor or disfavor certain topics or viewpoints.
 - Essentially advocating for considering the government’s intent.
 - “This Court may soon find itself a veritable Supreme Board of Sign Review.”



Reed v. Gilbert – Supreme Court (Breyer Concurrence)

- Concurred only with the judgment
- Only part of the decision that cited *Central Hudson*
- From Breyer:
 - Thinks the content neutrality test is better thought of as a rule of thumb than an automatic trigger when it comes to strict scrutiny
 - Worries about regulation of commercial speech receiving strict scrutiny
 - Thinks that there are “many” justifiable examples of content based noncommercial regulations



Reed v. Gilbert – Key Remaining Questions

- Is commercial speech is still subject to intermediate scrutiny?
 - In *Reed*, the Supreme Court did not explicitly overturn prior decisions (Metromedia, Central Hudson, Virginia, etc.)?
- Is commercial speech now subject to strict scrutiny?
 - In *Reed*, the Supreme Court stated that any content-based distinction is subject to strict scrutiny.
- Can rules distinguishing between on-premise and off-premise signs be enforced?
- Can rules imposing time restrictions on signs advertising a one-time event be enforced?

Significant Decisions Post-*Reed*

- Cahaly v. Larosa (4th Circuit Court of Appeals)
 - Anti-robocall statute was found to be content-based
 - The statute applied to calls with a “consumer or political message,” but not other types of calls
 - An obvious example of a content-based restriction
- Norton v. City of Springfield (7th Circuit Court of Appeals)
 - Anti-panhandling ordinance was found to be content-based
 - The ordinance regulated based on the topic discussed
 - The language of the opinion suggests that the court wanted to rule in favor of the City, but *Reed* made such a ruling impossible

Significant Decisions Post-*Reed* (continued)

- Thomas v. Schroer (Tennessee Western District Court)
 - Good law in the 6th Circuit Court of Appeals (including Michigan)
 - Applied *Reed* to billboard regulations
 - An exemption in favor of on-premise signs was found to be content-based because the enforcement officer was required “to consider the content of the sign and determine whether that content is sufficiently related to the activities conducted on the property on which they are located.”
 - If you must read the sign to determine enforcement, the regulation is likely content-based
 - Specifically refuses to accept the Alito concurrence from *Reed*.

Significant Decisions Post-*Reed* (continued)

- U.S. District Court Cases Upholding the Commercial/Non-Commercial Framework Post-*Reed*
 - Contest Promotions, LLC v. City and Cty. of San Francisco, 2015
 - Citizens for Free Speech, LLC v. County of Alameda, 2015
 - California Outdoor Equity Partners v. City of Corona, 2015
 - Chiropractors United for Research & Educ., LLC v. Conway, 2015
 - CTIA-The Wireless Ass'n v. City of Berkeley, 2015

What Communities Must Do Right Now

- Review Sign Regulations that are:
 - **Content-Based** – Based on the content or subject of the message
 - **Speaker-Based** – Based on the person, group, etc. delivering the message
 - **Event-Based** – Based on an event(s) taking place
- Work with Municipal Attorney to:
 - Review Sign Regulations
 - Strive for as much content-neutrality as possible
 - Determine Risk of Making Distinctions Between:
 - Off-Site vs. On-Site Signs
 - Commercial Speech vs. Noncommercial Speech
 - Enforcement (or Non-Enforcement) of Current Regulations
 - Consider severability clauses

MML Capital Conference

10 *Post Reed* Regulatory Principles

VITAL SIGNS, VIBRANT COMMUNITIES.

Kenny Peskin - International Sign Association

March 22, 2016



INTERNATIONAL SIGN ASSOCIATION

Issues

What issues are you dealing with in regards to complying with Reed?

Opening Thought

When updating your sign code *Post Reed...*
rather than consider signs as a land use

First and foremost consider signs as
“constitutionally protected free speech.”

Challenges

“Sign Regulations is one of the more vexing tasks that a local government faces on a routine basis.”*

The challenge when regulating signs is to balance:

- Myriad of legal issues-along with *Reed*
- Traffic safety
- Aesthetics/Policies
- Economic
- Business and Institutional needs
- Neighborhood Groups...

*PAS QuickNotes No. 18

10 *Post Reed* Regulatory Principles

1. Interim-avoid content-based enforcement/permit review
2. Content Neutral
3. A sign ordinance should contain a substitution clause
4. A sign ordinance should contain a severability clause
5. Minimize categories-temporary signs
6. Minimize categories-other signs
7. State purpose/rationale in detail at start of code
8. Clearly define all critical words and phrases
9. Minimize exemptions
10. Simplify the regulatory scheme

1. Prior to Adoption of a New Sign Code

Interim - Avoid content-based enforcement/permit review

2. Ensure as Much Content-Neutrality as Possible

“Ensure that the ordinance is as content-neutral as possible, while accepting that, if the regulations are not 100% content-neutral, there will be some legal risk that otherwise could be avoided.”

2. Ensure as Much Content-Neutrality as Possible

Sign Code Purpose, Spokane, WA

“To ensure that the constitutionally guaranteed right of free speech is protected”

Part of the Sign Code Purpose, Spokane, WA

<http://www.spokanecity.org/services/documents/smc/?Section=17C.240.010>

2. Ensure as Much Content-Neutrality as Possible

Content-neutral Administration of Land Use Reviews.

Notwithstanding any other provision of this chapter or of related standards referenced in this chapter, applications will be reviewed only with respect to sign structure or placement, or with reference to copy only to the extent of color or typeface and excluding any reference to message, category, subject, topic, or viewpoint.

<http://www.spokanecity.org/services/documents/smc/?Section=17C.240.290>

2. Ensure as Much Content-Neutrality as Possible

Content Neutral Temporary Sign Definition

“A sign bearing a message which is displayed before, during and after an event, to which the sign relates, and which is scheduled to take place at a specific time and place.”

– Collier County, FL

3. Substitution Clause

- Required practice after *Metromedia, Inc. v. City of San Diego*
- Commercial speech cannot be favored over non-commercial speech; thus, non-commercial copy must be permitted on any lawful sign.
- Lakeville, MN Section 9-3-4: “Signs containing *noncommercial speech* are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs.”
- This statement, and similar statements, prevents inadvertent preferential treatment of commercial speech over non-commercial speech

4. Severability Clause

- A sign ordinance should contain a Severability Clause
- If a section of the sign code is found unlawful that can be removed without invalidating the entire code
- The Zoning Ordinance should have a general Severability Clause, and the sign section should reference the Severability Clause or duplicate it

5. Minimize Categories – Temporary Signs

Portable Signs. *

1. One portable sign which is six square feet or less in size may be displayed on a site per business (licensee) without any sign permit for a period not to exceed two consecutive days. Such signs are not to be counted in the maximum allowable sign area or number of signs limitations. Portable signs must comply with the following standards:

*Sparks, NV

5. Minimize Categories – Temporary Signs

Temporary signs.

- 1. Permit Required; Duration.** At the discretion of the property owner and with the issuance of a temporary sign permit, each occupant of a building or the owner of a vacant site may display up to two (2) signs on a site for: per public street entrance, not to exceed eight (8) signs and restricted to a period as designated or specified on the Temporary Sign Permit application. Display of temporary signs shall be based on a calendar year between January to December and must be reapplied for annually.

5. Minimize Categories – Temporary Signs

Standards, requirements and limitations:

- a. No more than two temporary signs in any combination shall be allowed for each site at any one time. The temporary sign permit application must be approved / signed by the site owner/manager. If a site has more than one occupant who wishes to put up signs at the same time, the site owner or manager must determine who can display the signs.
- b. Temporary signs may not be placed in a prohibited sign area (Section 20.56.070).
- c. Any temporary sign shall be located on private property and setback at a minimum of one (1) foot for every foot of height from the nearest travel lane. No temporary sign shall be higher than roof or parapet of the building.
- d. The maximum size of a temporary sign shall be eighteen (18) square feet. Any sign over this size will require a sign permit and must

5. Minimize Categories – Temporary Signs

Additional signs during election periods.

- A. Election period.** An election period begins the first day of filing before and ends ten days after any election conducted under federal, state, county, or city laws or ordinances in which residents of Sparks are entitled to vote, including elections or votes regarding selection or recall of any federal, state, county or city officials, any ballot questions, referendum or advisory vote.
- B. Additional signs during election period.** Additional signs containing any message may be displayed on any site during an election period, subject to the following limitations, standards and requirements.

5. Minimize Categories – Temporary Signs

- 1. Number and size.** There is no limitation on the number or size of additional signs. Signs which comply with this subsection do not count against the maximum allowable sign area, per Section 20.56.110, or the maximum number of signs allowed under Sections 20.56.150 or 20.56.170.
- 2. No sign permit required.** A sign permit is not required for any election period sign which otherwise complies with this section. However, building permits may be required under Section 15.08 of the Sparks Municipal Code depending on the size and nature of the sign.

5. Minimize Categories – Temporary Signs

- Other options?

6. Minimize Categories – Other Signs

- Ground/monument
- Minor signs-under a certain sq. ft.
- Generalize

7. State Purpose/Rationale in Detail at Start of Code

- Provide as much rationale as possible
- Conduct research (if possible & budget allows) or cite *reputable* studies

8. Clearly Define All Critical Words and Phrases

Spokane Code

- Nonconforming Signs
 - “Sign maintenance, sign repair, and changing of permanent sign faces is allowed so long as structural alterations are not made and the sign is not increased in size.”
- Definition of “structural alteration”
 - “Modification of a sign, sign structure or awning that affects size, shape, height, or sign location; changes in structural materials;
or replacement of electrical components with other than comparable materials. The replacement of wood parts with metal parts, the replacement of incandescent bulbs with light emitting diodes (LED), or the addition of electronic elements to a non-electrified sign would all be structural alterations. Structural alteration does not include ordinary maintenance or repair, repainting an existing sign surface, including changes of message or image, exchanging painted and pasted or glued materials on painted wall signs, or exchanging display panels of a sign through release and closing of clips or other brackets.”

9. Minimize Exemptions

- Phoenix code has 19 exemptions and numerous sign types exempt from permits
- Among these exemptions are barber poles:

“Signs which do not require a sign permit.

A barber pole, animated or not, which is appurtenant to the barber business and affixed directly to the wall of the exterior of the occupied space.

1. *Barber poles shall be no taller than 36” and no wider than 10”.*
2. *Requests to deviate from these requirements are subject to obtaining a use permit in accordance with the provisions of Section 307.”*

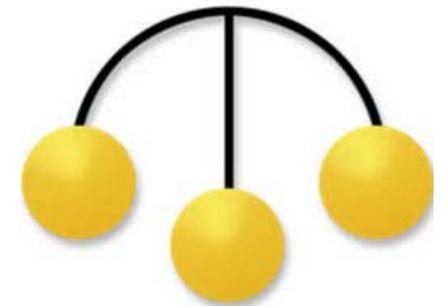
9. Minimize Exemptions

- Why does Phoenix exempt barber poles?
 - Barber poles not considered specific “advertisement”
 - Barber poles are considered a universal trademark
- In other words: “Barber poles are a standardized, well-understood, and distinctive trademark that has characterized & identified this profession across national and linguistic barriers for hundreds of years”



9. Minimize Exemptions

- **Example:**
How is a barber pole different from?
 - Caduceus
 - Mortar & Pestle
 - Comedy & Tragedy
 - 3 Gold Spheres



10. Simplify the Regulatory Scheme

- Look at overall approach simplify...simplify
- Remember that “innocuous justifications” favoring one type of sign are no longer a defense for inequitable treatment

Example of Post-Reed Revisions

- Midsize city (~100,000) with large public university campus
- Common “town-gown” issues: student housing, nightlife, redevelopment of older commercial corridors
- City revising “Integrated Development Code”

Example of Post-Reed Revisions

- *“The City of _____ has hired _____ and _____ to prepare a comprehensive update of its land development codes, including but not limited to the Zoning Ordinance and Subdivision Regulations. Current land use regulations for the downtown area may be replaced or supplemented by form-based controls that emphasize the consistency of the urban form and allow more flexible mixes of uses in that area. All land use regulations will be integrated and illustrated to incorporate best practices, to improve user-friendliness, to guide more consistent decision-making, and to simplify administration. Once the resulting development code has been drafted, a limited revision to the existing zoning map will be completed to align with the new code.”*

(January 2014)

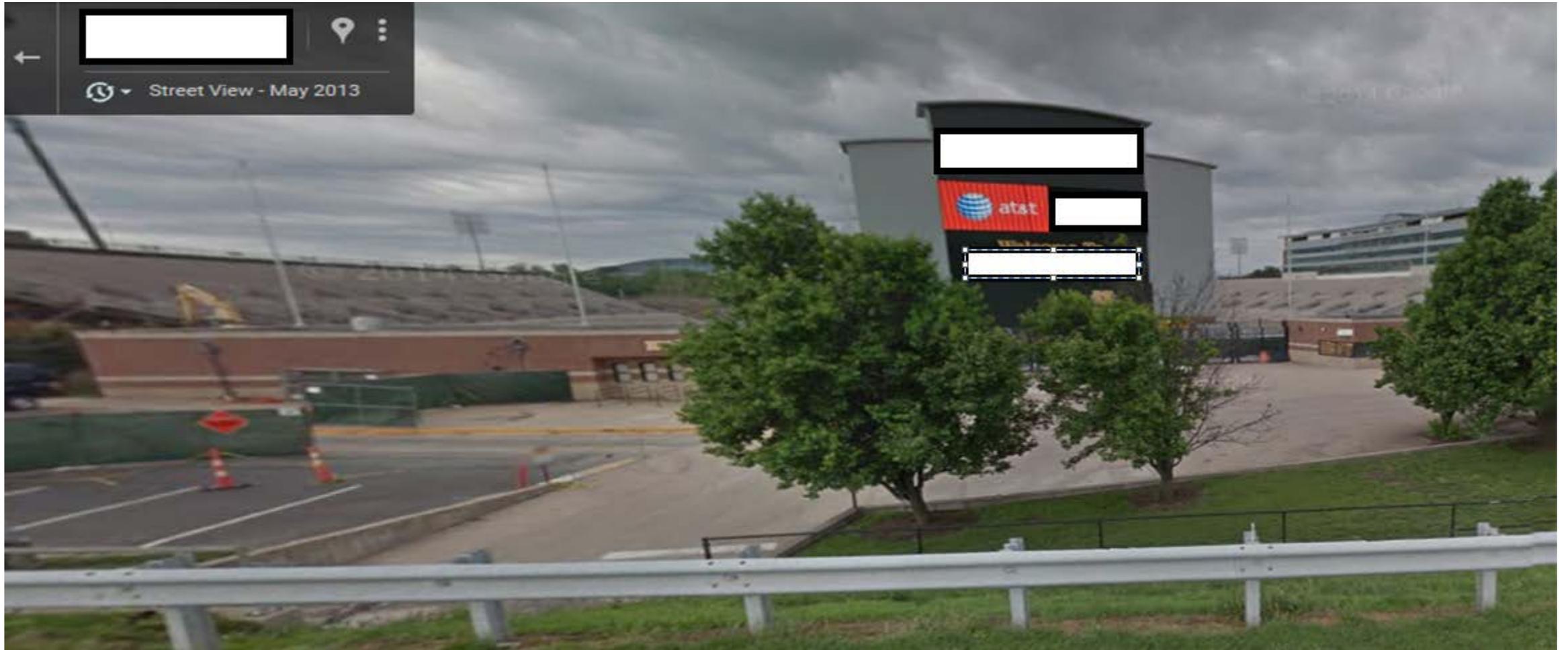
Example of Post-Reed Revisions

- City claimed that sign regulations not being amended, merely moved (in whole) from old zoning ordinance to new; but
 - Footnotes use these terms: "revised", "combined", "relocated", "clarified"
- “While legal action challenging content-based sign regulations are rare and generally unsuccessful, these regulations have been generally reviewed for content-based material.” (Code footnote); but
 - Maintains definitions for "Hotel Signs" "Light Vehicle Service and Repair Signs", "Theater Signs". Additionally, the City allows for a larger sign advertising the sale of (large parcels of) vacant land than if that same lot has a vacant building

Example of Post-Reed Revisions

- The City's purpose (29-4.10(a)(7)) speaks to "fair and consistent enforcement" of the regulations.
- But the (potential) users of digital signage are not treated consistently.
 - Public facilities are allowed to install full-function digital signs
 - Other businesses are allowed time-and-temperature functions
 - Still others are allowed numerical price displays
- City's exemption from permitting requirements for governmental signs states "The following types of signs may be erected without the issuance of a permit or payment of a permit fee, but each such sign shall meet all the standards and requirements for that type of sign"
- How can a university-owned electronic sign display with advertising panels meet the standards and requirements for a "Noncommercial Sign"?

Example of Post-Reed Revisions



Example of Post-Reed Revisions

- City/Consultant's response to inquiry

As you note in your letter, the recent U.S. Supreme Court decision in Reed v. Gilbert has caused many cities throughout the U.S. to revisit their sign regulations and ensure that they are in compliance with the court's decision. We understand that the City of [REDACTED] is in the process of doing such a review. However, since the Reed decision was announced after our contract with the City of [REDACTED] was negotiated in 2014, any changes that might be required are not part of [REDACTED] scope of services with the City. Likewise, substantive changes to expand or restrict the types of signs currently permitted or prohibited by the City's current regulations are likewise not part of our scope of services. Only minor grammatical, formatting, or organizational changes to the existing sign regulations have been proposed in order to have the current sign regulations fit into the formatting and style of the remainder of the Development Code pending the City's review of any substantive changes that it wants to propose to those regulations.

Example of Post-Reed Revisions

- The City's response centered on the consultant's contract
- Acceptable public policy but is that acceptable legally?
- Can the City defend against a future challenge based on Reed argument?

5-Minute Break

Up Next:

Examples of Common Content-Based Regulations
and Ordinance Amendments to Consider

Examples of Common Content-Based Regulations and Ordinance Amendments to Consider

- Political Signs
- Directional Signs
 - Temporary
 - Permanent
- Real Estate Signs
- Temporary Sales Signs
- Gasoline Station Signs
- Barber Shop Signs
- Movie Theater Signs
- Drive Through Restaurant Signs
- Time and Temperature Signs

For 100% Content-Neutrality

- Permit signage by regulating **non-content aspects** such as:
 - Number of signs
 - Area
 - Height
 - Placement
 - Lighting
 - Movement
 - Duration (permanent or temporary)
 - Zoning District location
 - WITHOUT RESPECT TO CONTENT
- Make content-neutral distinctions based on zoning district, lot/building frontage, number of building units/tenants, etc.



“Safest” Option

- **100%** content-neutral
- No changes in number or area of signs based on an **event (e.g., election season)**
- Require **maintenance or removal** of a sign that has deteriorated
- Be mindful of restrictions on **number of signs**, especially on single-family residential sites, to avoid prohibiting:
 - Flags
 - Political Signs
 - Real Estate Signs
 - Garage Sale Signs
 - Other common temporary signs



Example:

Political Signs

- **Example of a Content-Based Regulation:** Political signs advertise candidates or proposals on a ballot and may not be placed more than 30 days prior to the election or 7 days after the election
- **Violation:** The regulation is content-based (advertising candidates and proposals) and event based (only permitted at election time)
- **Content-Neutral Regulatory Option:**
 - Regulate yard signs, without respect to content
 - Apply the same standards throughout the zoning district
 - Maximum number of yard signs
 - Maximum area and height of yard signs
 - Minimum setbacks
 - Removal based on physical condition of the sign

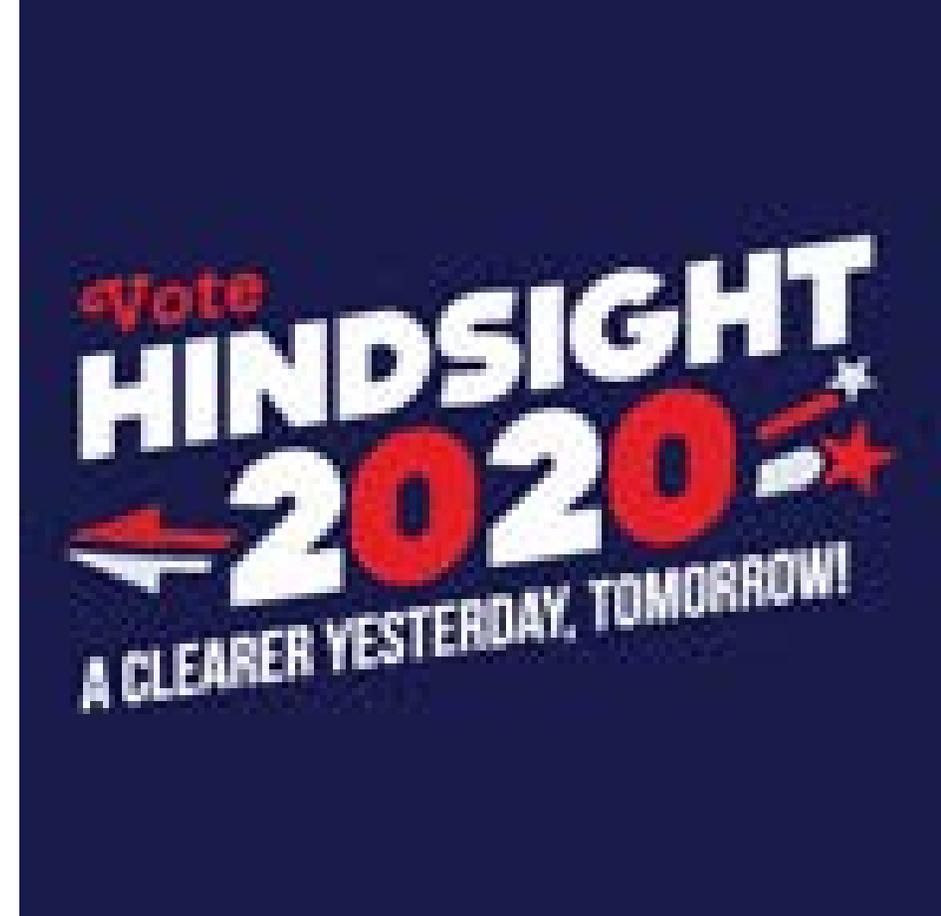


Example:

Political Signs

- **Consider:** Whether to classify a “political sign” as:
 - A “temporary sign” without respect to content
 - OR-
 - A “non-commercial temporary sign”
 - Caution: Distinctions between “commercial signs” and “non-commercial signs” should be supported by a **strong purpose statement and your municipal attorney**

- **Also Consider:** Whether to permit additional “temporary signage” or “non-commercial temporary signage” for a **certain number of days (e.g., 90 days) per year** without referencing an event.
 - Caution: Must be content-neutral and enforceable, and should be supported by a **strong purpose statement and your municipal attorney**



Example:

Temporary Directional Signs

- **Example of a Content-Based Regulation** Signs advertising a temporary off-site event and permitted 24 hours before and 12 hours after an event.
- **Violation:** The regulation is content-based (advertising an event) and event based (only permitted a certain time before and after the event)
- **Content-Neutral Regulatory Option:**
 - Regulate yard signs, without respect to content
 - Apply the same standards throughout the zoning district
 - Maximum number of yard signs
 - Maximum area and height of yard signs
 - Minimum setbacks
 - Removal based on physical condition of the sign



Example:

Temporary Directional Signs

- **Consider:** Whether to classify an “off-site directional sign” as:
 - A “temporary sign” without respect to content (i.e., just like the previous example for political signs)
 - OR-
 - Distinguish between “noncommercial temporary sign” (without respect to any other content, including whether it is on-site or off-site) and “off-site commercial sign” (e.g., an Open House sign)
 - Caution: Commercial speech cannot be favored over noncommercial speech. Also, placing additional restrictions on “off-site commercial signs” should be supported by a **strong purpose statement and your municipal attorney**



Example:

Temporary Directional Signs

- **Also Consider:** Whether to permit additional “temporary signage” or “off-site commercial signage” for a **certain number of days (e.g., 30 days) per year** without referencing an event.
 - Caution: Must be sensitive to content and enforceable (especially if located in the public right-of-way), and should be supported by a **strong purpose statement and your municipal attorney**



Example:

Permanent Directional Signs

- **Example of a Content-Based Regulation:** Signs that direct on-site traffic with text and arrows, without including commercial speech
- **Violation:** The regulation is content-based (requiring text and arrows, and prohibiting commercial speech)
- **Content-Neutral Regulatory Option:** Permit additional freestanding signage based on:
 - **Zoning and Use:** e.g., do not permit on single-family residential lots
 - **Area:** e.g, not more than 6 sq. ft.
 - **Height:** e.g., not more than 4 ft.
 - **Placement:** e.g., within 6 feet of a driveway or sidewalk
 - **Number:** e.g., 1 at each curb cut, 1 per 100 linear feet of driveway, etc.
 - **Content-Neutral:** Don't refer to them as "directional signs." Also, do not prohibit commercial speech. (In fact, allowing commercial speech may reinforce the intended directional message on the sign)



Example:

Real Estate Signs

- **Example of a Content-Based Regulation:** Real estate signs advertise property for sale or lease on the site and may be placed only when the property is listed for sale or lease.
- **Violation:** The regulation is content-based (requiring advertising the property for sale or lease), event-based (only displayed while the property is listed for sale or lease), and speaker-based (only permitted on property for sale or lease).
- **Content-Neutral Regulatory Option:**
 - Regulate yard signs, without respect to content
 - Apply the same standards throughout the zoning district
 - Maximum number of yard signs
 - Maximum area and height of yard signs
 - Minimum setbacks
 - Removal based on physical condition of the sign



Example:

Real Estate Signs

- **Consider:** Whether to classify a “real estate sign” as:
 - A “temporary sign” without respect to content (i.e., just like the previous example for political signs and temporary directional signs)
-OR-
 - Distinguish between “on-site commercial sign” (without respect to any other content) and “off-site commercial sign” (e.g., an Open House sign)
 - Caution: Distinctions between “commercial signs” and “non-commercial signs” and distinctions between “on-site signs” and “off-site signs” are content-based and, if adopted, should be supported by a **strong purpose statement and your municipal attorney.**



Example:

Temporary Sales Signs

- **Example of a Content-Based Regulation:** Agricultural signs advertising sites where produce is grown and sold and may be placed only when produce is for sale.
- **Violation:** The regulation is content-based (advertising sites), event-based (only displayed when produce is for sale), and speaker-based (only permitted for agricultural sales).
- **Content-Neutral Regulatory Option:**
 - Require a temporary land use permit under which additional temporary signage may be placed during the duration of the permit
 - Regulate yard signs, without respect to content
 - Apply the same standards throughout the zoning district
 - Maximum number of yard signs
 - Maximum area and height of yard signs
 - Minimum setbacks
 - Removal based on physical condition of the sign



Example:

Temporary Sales Signs

- **Consider:** Whether to classify a “agricultural sign” as:
 - A “temporary sign” without respect to content (i.e., just like the previous example for political signs, temporary directional signs, and directional signs)
 - OR-
 - Distinguish between “on-site commercial sign” (without respect to any other content) and “off-site commercial sign” (e.g., a sign at the corner property to indicate the location of the temporary use)
 - Caution: Distinctions between “commercial signs” and “non-commercial signs” and distinctions between “on-site signs” and “off-site signs” are content-based and, if adopted, should be supported by **a strong purpose statement and your municipal attorney.**

Additional Considerations for Temporary Signs

- **Temporary Sign Types to Define and Regulate:**
 - Air-Activated Signs and Balloon Signs
 - Banner Signs
 - Blade Signs
 - Flags
 - Light Pole or Support Pole Signs
 - Moving Sign
 - People Sign
 - Portable Message Sign
 - Projected-Image Sign
 - Sandwich Board Sign
 - Sidewalk Signs
 - Vehicle Message Signs
 - Window Signs
 - Yard Signs
- ***Best Practices in Regulating Temporary Signs*, Signage Foundation, Inc.**



Example:

Land Use: Gasoline Sales Signs

- **Example of a Content-Based Regulation:** Signs advertising the price of fuel, with message changes only when the price of fuel changes.
- **Violation:** The regulation is content-based (price of fuel), speaker-based (applicable only to gas stations), and event based (change only permitted when the price changes)
- **Content-Neutral Amendment Option:**
 - Apply the same standards throughout the zoning district, without respect to the content
 - Size of the changeable message area
 - Location
 - Frequency of message changes
 - Transition timing and animation
 - Illumination
 - Note: State of Michigan Act 283 of 1964 (Weights and Measures Act) includes advertising requirements for gas stations. Municipalities do not enforce this act, but should simply ensure adequate location and area for a message.



Example:

Land Use: Barber Signs

- **Example of a Content-Based Regulation:** Barber shops may have a rotating pole located outside of the barber shop.
- **Violation:** The regulation is content-based (a rotating pole) and speaker-based (applicable only to barbers)
- **Option 1: Content-Neutral Regulations for Rotating Signs:**
 - Allow all uses in the zoning district to have a rotating sign
 - Maximum number of rotating signs
 - Maximum height
 - Maximum dimensions of rotating area
 - Maximum speed (e.g., 30 rotations per minute)
 - Illumination
- **Option 2: Prohibit Moving Signs:**
 - Caution: Allow for alternate means of signage (e.g., window signs and sidewalk signs).



Example:

Land Use: Movie Theater Signs

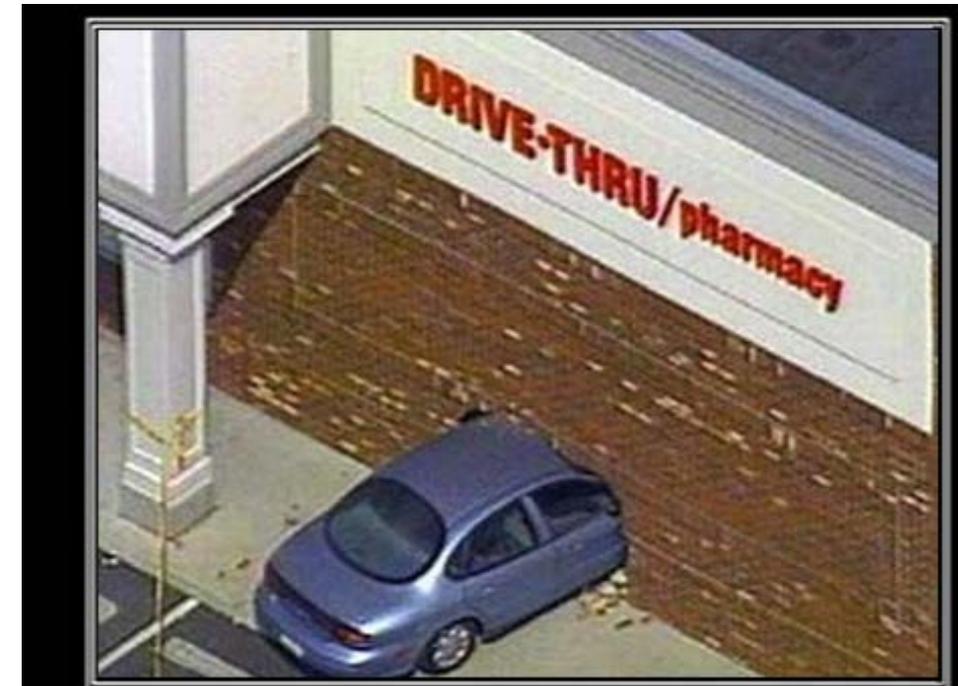
- **Example of a Content-Based Regulation:** Movie theaters may have a marquee sign advertising the dates and times of current movies playing.
- **Violation:** The regulation is content-based (dates and times of movies), speaker-based (applicable only to movie theaters), and event based (only current movies playing at the theater)
- **Content-Neutral Amendment Option:**
 - Consider classifying marquees as wall signs or awning signs in the zoning district, without respect to the content
 - Maximum area and height
 - Location
 - Frequency of message changes
 - Transition timing and animation
 - Illumination



Example:

Land Use: Drive Through Restaurants

- **Example of a Content-Based Regulation:** Drive through restaurants may have a menu sign advertising the food for sale and current prices.
- **Violation:** The regulation is content-based (menu), speaker-based (applicable only to drive through restaurants), and event based (current items and prices)
- **Content-Neutral Amendment Option:**
 - **Permitted uses in the zoning district:** For the purpose of traffic safety, consider allowing additional freestanding signage for all permitted drive through uses (restaurants, banks, dry cleaners, pharmacies, car washes, etc.)
 - **Maximum height and area**
 - **Location:** Interior of the site, and minimum visibility from right-of-way and adjacent properties.
 - **Sound control**
 - **Transition timing and animation**
 - **Illumination**



DRIVE THRU
isn't meant to be understood literally

Example:

Time and Temperature Signs

- **Example of a Content-Based Regulation:** Signs displaying only the time and temperature of the area.
- **Violation:** The regulation is content-based (time and temperature)
- **Content-Neutral Regulatory Option:**
 - Don't reference time and temperature signs, and apply the same standards throughout the zoning district, without respect to the content
 - Regulation size of the changeable message area
 - Location
 - Frequency of message changes (at least once per minute in this case)
 - Transition timing and animation
 - Illumination



Your Sign Ordinance: General Outline and Topics to Address

1. Purpose

- **Traffic and Pedestrian Safety (Note: This is a substantial regulatory interest that should be stated)**
- **Community Aesthetics**
- **Protection of Free Speech**
- **Prevention of Blight and Clutter**
- **Protection of Scenic Areas, Viewsheds, and Dark Night Sky**

2. Definitions

- **Define Signs by Physical Characteristics or Location – NOT by their content**

3. Severability Clause

- **New clause or reference existing Severability Clause in ordinance.**



Your Sign Ordinance: General Outline and Topics to Address

4. Substitution Clause

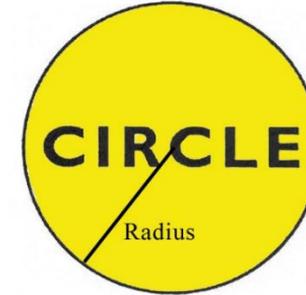
- Allow noncommercial speech on any lawful sign.

5. How to Measure Sign Area and Height

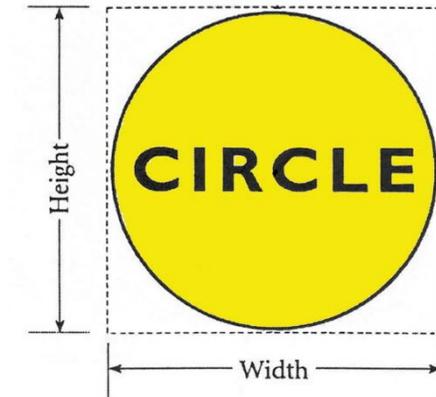
- As a Single Symmetrical Shape? (rectangle, square, oval, circle, etc.)
- As a Combination of Shapes?
- Back-to-Back Signs – How far apart can they be and still be considered one sign?
- Signs with 2 or More Faces
- 3-Dimensional Signs
- Provide Graphics Where Possible

Pop Quiz: In your Sign Ordinance, how should you measure a circle?

A. $Area = \pi r^2$



B. $Area = width \times height$



C. *Either “A” or “B” provided the rule is consistent and easy to interpret. (This is the correct answer)*

However, method “B” results in 21.5% of the area being vacant, so consider maximum allowable areas.

Your Sign Ordinance: General Outline and Topics to Address

6. Prohibited Signs (and examples)

- Signs deemed unsafe by the sign official
- Signs resembling traffic control signs
- Signs attached to utility poles, trees, etc.
- **Bench and street furniture signs**
- Unauthorized signs in the public right-of-way
- Signs in the required clear vision zone of a street or driveway
- **Graffiti**
- Others?



Your Sign Ordinance: General Outline and Topics to Address

7. Exempt Signs Permitted Everywhere Without a Permit

- Decorations
- Signs required by the government and authorized private traffic control signs
- Address signs – although this is content-based, the purpose of the exemption is traffic safety and site identification for emergency personnel
- Vehicle signs when the subject vehicle is parked in an approved parking space or lawfully operating
- People signs if operating lawfully in a public right-of-way
- Certain types temporary signs (based on the sign type – NOT on the content of the sign)



Your Sign Ordinance: General Outline and Topics to Address

8. Zoning District Standards (Sign Type, Maximum Number, Maximum Height, and Minimum Setback)

- **Residential Districts (Single-Family Residences, Duplexes, Triplexes, and Quadplexes)**
 - Consider prohibiting ground/monument signs
 - Permit an appropriate number of yard signs and flags so that the ordinance is overly restrictive.
- **Residential Districts (Residential Developments and Non-Residential Uses)**
 - Try to apply standards equally for all of these uses in the zoning district
- **Commercial Districts**
 - Consider the character of each district (i.e., downtown vs. freeway interchange)
- **Office Districts**
- **Industrial Districts**
- **Semi-Public/Public Districts**
- **Overlay Districts**

- Each district should have standards for sign types (wall signs, freestanding signs, yard signs, banner signs, flags, sandwich board signs, window signs, etc.)



Your Sign Ordinance: General Outline and Topics to Address

9. Billboards

- Proximity to a limited access highway
- Permitted Zoning District(s)
- Proximity to other billboards
- Proximity to other on-site signs
- Maximum area and height
- Minimum setbacks from other billboards
- Maximum number of billboards in the municipality
- Provisions for lighting and frequency of message changes



Your Sign Ordinance: General Outline and Topics to Address

10. Permits, Applications, Compliance, and Enforcement

- Clearly state which types of signs require permits
- Designate an enforcement official and always consider enforceability of regulations

11. Sign Installer Requirements

12. Construction and Maintenance Standards

- Materials
- Method of attachment or installation



Your Sign Ordinance: General Outline and Topics to Address

13. Illumination and Changeable Copy Standards

- Minimum message change frequency? (e.g., 1 change per 15 seconds)
- External and/or internal illumination permitted?
- Maximum light intensity
- For electronic changeable message center signs, allow animation effects (e.g., spinning, fading, scrolling, etc.) or require static change?

14. Nonconforming Signs

- A general ordinance (i.e., police power ordinance – NOT a Zoning Ordinance) may require amortization

15. Appeals and Variances

- Usually the Zoning Board of Appeals



Source: International Sign Association

Last Thoughts

- Keep Educating Yourself

- Remember: *Reed* was decided on 9 months ago and multiple rulings have been made by lower courts
- Presentations, Publications (see handout), Municipal Attorney, etc.
- Know what the unknowns are.
- Lower courts will interpret *Reed* based on their understanding of the Supreme Court's intent.

- Amend Your Ordinance

- Review for content-based regulations
- Strive for content-neutrality
- Don't enforce sign regulations that are now unconstitutional
- Consider the legal risk of having the following content-based distinctions:
 - Commercial Speech and Noncommercial Speech
 - On-Premise Speech and Off-Premise Speech

Any Questions?

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