



City of Lone Tree Planning Commission Agenda Tuesday, September 13, 2016

Meeting Location: City Council Meeting Room, Lone Tree Civic Center, 8527 Lone Tree Parkway

Meeting Procedure: The Lone Tree Planning Commission and staff will meet in a public Study Session at 5:30 p.m. in the lower level of the Civic Center. The Regular Meeting will be convened at 6:30 p.m. in the City Council meeting room. Contact Jennifer Drybread, jennifer.drybread@cityoflonetree.com if special arrangements are needed to attend (at least 24 hours in advance). Comments from the public are welcome during the Public Comment portion of the meeting (brief comments on items not appearing on the regular meeting agenda). Those persons requesting to comment on an agenda item will be called upon by the Chair. If you have any questions please contact Jennifer Drybread, Senior Planner, at jennifer.drybread@cityoflonetree.com, or 303-708-1818.

5:30 p.m. Study Session Agenda

1. Administrative Matters

6:30 p.m. Regular Meeting Agenda

1. Opening of Meeting / Roll Call
2. Conflict of Interest Inquiry
3. Public Comment (For Items NOT appearing on the agenda)
4. Minutes of the August 23, 2016 Planning Commission meeting
5. Proposed amendments to the City of Lone Tree Municipal Code, Chapter 16, Zoning, Article XXIX, Sign Standards, Project RG16-53.
6. Adjournment

MINUTES OF THE
Lone Tree Planning Commission Meeting
August 23, 2016

Lone Tree Civic Center

1. Attendance.

In attendance were:

- Dave Kirchner, Chair
- Andrew Dodgen, Vice Chair
- Rhonda Carlson, Planning Commissioner
- Daryl Heskin, Planning Commissioner
- Richard Rodriguez, Planning Commissioner
- Kevin Spencer, Planning Commissioner

Commissioner Herb Steele was absent due to a potential conflict of interest.

In attendance from staff were:

- Kelly First, Community Development Director
- Hans Friedel, Planner III

2. Opening of Meeting / Roll Call.

Chair Kirchner called the meeting to order at 6:30 p.m.

3. Conflict of Interest Inquiry.

There were none.

4. Public Comment (For Items NOT appearing on the agenda).

There were none.

5. Minutes of the July 26, 2016 Planning Commission meeting.

Commissioner Dodgen moved to approve the minutes of the July 26, 2016 Planning Commission meeting, Commissioner Rodriguez seconded, and the minutes were approved 6 – 0.

6. RidgeGate Section 15, Filing 18, Lot 4-A (Sierra Grill Restaurant). Minor Amendment to the Site Improvement Plan affecting building architecture and building materials. Project SP16-54R, amending SP15-72R.

Hans Friedel presented an overview of the application including the nature of the request, approval process, and proposed changes to the approved Site Improvement Plan (SIP). He stated that staff finds the application in conformance with the SIP requirements of the Lone Tree Zoning Code, the Subdivision Code, the Comprehensive Plan, and the RidgeGate PDD. Staff recommended that the Planning Commission approve the application.

William Brinkerhoff, the restaurant owner, said the changes were a result of re-thinking the original design to achieve a sophisticated look that would appeal to a wider range of customers. The patio walls were opened up and reduced in height as they found that people dislike dining against a wall where they feel closed off from their surroundings. He said the changes were not about saving money; but were about achieving a better design.

Kevin Stephenson of Boss Architecture described the proposed changes in detail. He said there was an overall goal to make the project more approachable and richer in detail. Materials are expressed in a more natural, honest way through the exposed roof, metal details, textures of corrugated metal, etc. In his opinion, the design was superior to the previous plan.

Mr. Stephenson compared photo simulations of views of the property from the Montecito neighborhood, noting that the differences are negligible. The patio wall is lower with the proposed plan, and new trees will be planted along the walkway. He reviewed all changes in detail, concluding that the proposed design provided more interest and was more “raw” in character.

Commissioner Heskin asked if they expected the Corten steel to stain the materials around it as it was designed to rust. Mr. Stephenson responded that it will stain certain surfaces but not the buttress piece; a recessed pocket in the stone wall would capture and drain water leakage.

Commissioner Heskin asked how the exposed Corten roof above the outdoor patio drains and will there be impacts on patrons. Mr. Stephenson responded that water will freefall off the edges of the building and they did not want to clutter the design with gutters. Commissioner Heskin said the water will drain onto the walkway where people enter the building and will be a problem for patrons as well as a management issue for the restaurant. He suggested that the drainage issue be resolved through gutters or sloping of the roof.

Mr. Stephenson acknowledged the issue and said they will look at solutions. Mr. Brinkerhoff added that they do not want the drainage to impact the customer experience and are committed to finding a solution.

Commissioner Heskin said he appreciates their desire to open up the patio and break up the breeze with the windows – adding that these were nice features. Commissioner Rodriguez said most changes are improvements to the original design. He received clarification about whether the new design blocked off what appeared to be a pedestrian passageway from the parking lot directly into the patio. Mr. Stephenson said that this was always intended to be closed in some way to control access.

Commissioner Carlson said she liked the project before and still liked it with the proposed changes. She said the changes seem to warm up the design. She asked for clarification on the entry concrete paving materials. Mr. Stephenson added that previously the patio surface was going to be crusher fines, but will now be acid-stained concrete due to maintenance issues of people tracking the crusher fines into the restaurant and also erosion in rain.

Mr. Stephenson added that they are considering heating the outdoor concrete patio to facilitate snow removal in the colder months. He explained they'd like to take advantage of outdoor dining year round, since we have nice days in between snowy days.

Commissioner Dodgen said the changes were great improvements. He asked if there would be greater lighting impacts toward Montecito. The applicant said there will be very little difference. Lighting will be mood-driven, with low-level lights. A row of pines along the western edge will also filter view. The applicant described the lighting as twinkling, ambient lighting. The applicant also confirmed that crosswalk signs are still planned between the site and parking to the east. Commissioner Spencer said the changes greatly improved the aesthetics of the building and that it fits better with the environment. He asked if they anticipated any noise impacts on the nearby residential area. Mr. Brinkerhoff responded that they don't anticipate any noise impacts. They do not plan to have bands or noise-generating entertainment.

Commissioner Spencer said he supported providing a balance between providing landscaping on the west side as a buffer, while also allowing guests to have view. The applicant agreed and said they want to filter the view to/from the homes.

Chair Kirchner said he really liked the original plan but absolutely supported the changes. He said it will be a great addition to the community. He also questioned the impact of rain and snow melt on pedestrians in walkway; reiterating Commissioner Heskin's concern about the lack of a gutter along the low roof element where it crosses the pedestrian passage to the restaurant. He appreciated that they will be solving that issue.

Chari Kirchner's inquired about a materials change on the roll-up, serviced door. Mr. Stephenson responded that it was changed from wood to Corten.

Chair Kirchner invited public comment.

Martha Sippel, 10524 Dacre Place, Lone Tree, CO, said she loves the design. Commissioner Spencer moved to approve SP16-54R, amending the approved site improvement plan SP15-72R for RidgeGate Section 15, Filing 18, Lot 4-A, Sierra Grill. Commissioner Dodgen seconded. The motion passed 6 to 0.

7. Adjournment.

There being no further business, Chair Kirchner asked for a motion to adjourn. The meeting was adjourned at 7:10 p.m.

These minutes have been reviewed and confirmed by

_____ (name), on _____ (date)



CITY OF LONE TREE

STAFF REPORT

TO: Planning Commission

FROM: Hans Friedel, Planner III
Julius Zsako, Zoning Enforcement Coordinator
Kelly First, Community Development Director

FOR: September 13, 2016 Planning Commission Meeting
October 4, 2016 Council Meeting

DATE: August 15, 2016

SUBJECT: Proposed Amendments to the City of Lone Tree Sign Standards

A. REQUEST

Approval to amend the Lone Tree Municipal Code, Chapter 16, Zoning, Article XXIX - Sign Standards to consolidate and simplify categories, update standards, and update definitions to achieve content neutrality in line with the precedent regarding 1st and 14th Amendment protections for signs established by the U.S. Supreme Court Case *Reed v. Gilbert* (2015).

B. STAFF RECOMMENDATION

Staff recommends approval of Ordinance 16-XX, amending the Lone Zoning Code, Chapter 16, Zoning, Article XXIX - Sign Standards, Project RG16-53.

C. BACKGROUND

Reed v. Town of Gilbert, 576 U.S. (2015) is a United States Supreme Court case that fundamentally changes the way local governments regulate signs. Previously, cities could enforce some regulations based upon the sign's content –provided such standards were not intended to censor or restrict speech. In *Reed v. Gilbert*, the U.S. Supreme Court ruled that if a sign has to be read in order to determine if a certain

regulation applied, then that regulation is content-based and presumed to be unconstitutional.

The case involved a sign ordinance from the Town of Gilbert, Arizona. The town's ordinance exempted several categories of signs from permitting requirements, including political signs, ideological signs, and temporary directional signs. The town did not prohibit any of these signs but it did enforce different regulations for each separate category. A local church in Gilbert did not have a permanent location and held services in various community facilities. To inform people of their services and locations, the church deployed temporary signs advertising religious services throughout the town for a period of approximately 24 hours before each service. The town cited the church for violations of their sign ordinance since the time period the church's signs were posted exceeded that allowed under their sign ordinance for temporary directional signs. The church sued Gilbert claiming violations of the free speech and free exercise clauses of the First Amendment to the U.S. Constitution. The Supreme Court justices unanimously concluded that the town's sign ordinance was unconstitutional; however, they differed in their opinions as to why they arrived at that ruling.

This case was a watershed moment for municipal sign regulations in that it reaffirmed the protections afforded by the First Amendment (freedom of speech clause), as applied to the states and municipalities through the Fourteenth Amendment (equal protection clause), therefore invalidating and rendering unenforceable regulations of signs based on the content or subject of the message, the person and/or group delivering the message, and/or event(s) taking place. Writing for a majority of the Court (the decision was unanimous), Justice Clarence Thomas found that the town's sign ordinance imposed content-based restrictions that did not survive the *strict scrutiny* test because the ordinance was not *narrowly tailored* to further a compelling government interest.

The First Amendment, as applied to the states and municipalities through the Fourteenth Amendment, restricts the government from "abridging the freedom of speech." Because outdoor signs display speech, they carry First Amendment protection. Although courts have long recognized legitimate governmental interests in traffic safety and community aesthetics, laws cannot suppress speech in ways that are too limiting or that do not provide for alternative means of communication. Furthermore, the First Amendment prohibits "viewpoint discrimination," which is characterized by government regulations, laws, rules, or decisions that favor or disfavor one or more opinions on a particular controversy. An example of viewpoint based regulation is a sign regulation that allows governmental flags to be larger than nongovernmental flags. The First Amendment requires that regulations of noncommercial speech be content neutral – this is referred to as the content neutrality doctrine. It requires governmental regulations, including sign regulations, to avoid distinguishing between different categories or subject matters of speech.

D. OVERVIEW OF ISSUES IN LONE TREE'S CURRENT SIGN STANDARDS

Following *Reed v. Gilbert*, Lone Tree staff examined the City sign standards for content-neutrality with the goal of being compliant with the First and Fourteenth Amendments and continues to align with the City's aesthetic values. In addition to research conducted by planning staff, in consultation with the City attorney, the City retained the legal services of Brian Connolly, an attorney with Otten Johnson Robinson Neff + Ragonetti PC, specializing in sign law.

There are certain elements of the current standards - predominantly related to temporary signs that are problematic from the standpoint of content-neutrality. The following is a summary of issues identified.

First, the following temporary sign categories and their associated regulations are content-based on their face:

- Temporary off-premises open house real estate sign
- Directional sign for garage sales
- Election season sign

Second, the Lone Tree Zoning code in Section 16-29-30 currently describes signs that are allowed without a sign permit. Included are the following content-based classifications and descriptions:

- Flags of any nation, government, commercial or noncommercial institution
- Works of art which are integral to the design of a building; applied as an artistic accent; and which in no way identify a business, business activity or product
- Religious symbols and seasonal decorations within the appropriate holiday season

Third, some types of temporary signs are allowed in the public rights-of-way (ROW) and others are not. Under the current code, the following signs are allowed in the ROW:

- Signs erected for an association promotion
- Temporary off-premises open house real estate sign
- Directional sign for garage sales
- Signs associated with a special event

Fourth, there are various examples and provisions from within the code that refer to sign content. For example, in addition to the aforementioned examples regarding flags, art, and seasonal decorations; the definitions refer to nonresidential incidental signs as "signs intended to instruct users as to matters of direction, necessity, hours of operation, credit card information or public safety."

One way to conceptualize content-neutrality as it relates to sign regulations is through the substitution clause. Lone Tree’s code states in Section 16-29-20 - Application of Article (b), that “Any sign that can be displayed under the provisions of this Article may contain a noncommercial message.” Therefore, if the message on a temporary off-premises open house real estate sign were to be substituted with the message, “Nixon for President,” our regulations would treat it as an “election season sign.” No longer could the sign be placed in public ROW; it would have to be located on private property and set back five feet from the property line.

Another example of a content-neutrality issue relates to inconsistent time frames within which certain types of temporary signs may be erected. Currently, there is no time limit for temporary signs (residential and nonresidential) *unless* they are election season signs, in which cases no election season sign shall be posted more than 90 days prior to the election to which the sign is related, and must be removed within 2 weeks of the final election. These are examples of purely content-based standards and are unconstitutional under the precedent established by *Reed v. Gilbert*.

E. Summary of proposed changes

Lone Tree Municipal Code, Chapter 16, Zoning, Article XXIX - Sign Standards, can be largely rendered content neutral by consolidating and simplifying temporary sign categories, eliminating signs in the public ROW, and removing content-referencing language from within standards and definitions. These proposed changes are in line with the intent that high quality design is important to Lone Tree, as is preserving and enhancing an attractive physical appearance of the community and promoting a healthy and vibrant economy. Furthermore, these proposed changes do not affect (with the exception of incidental signs) the permanent wall sign or freestanding sign categories. Therefore, the impact on architecture and the built environment is negligible.

Simplifying and consolidating temporary sign categories

Eliminating the various content-based sign categories and consolidating them into fewer, content neutral, sign categories will protect 1st and 14th Amendment rights afforded sign content. It will also simplify understanding and administration of the sign standards. As the number of temporary sign categories is reduced, the total area of permitted temporary signs is correspondingly reduced. For example, currently, there is no limit to the number of election season signs that can be displayed in residential and nonresidential districts – just duration limits, a setback standard, and limits on individual sign height and area. Furthermore, there is no limit on the number of signs displayed on a single-family detached or attached lot; just limits on individual sign height and area. The proposed changes would reduce the potential for unlimited temporary signs under these categories while promoting quality community aesthetics by diminishing sign clutter, and providing “context-appropriate signage” that relates to the location and character of the area (City of Lone Tree Design Guidelines, p. 55).

Eliminating signs in the public ROW

Eliminating all signs in the public ROW except signs erected by the City, a licensee of the City, a special district serving the City or the State in accordance with the Manual on Uniform Traffic Control Devices, as amended, achieves content neutrality; while also furthering the policy espoused in the City of Lone Tree Comprehensive Plan to “Incorporate aesthetically pleasing site planning treatments along primary transportation and trail corridors through the use of innovative site planning, open spaces, sign control, lighting, and landscaping” (p. 35).

The proposed changes will have the greatest impact on certain categories of temporary signs. Under the current code, real estate open house signs and garage sale can be placed in the ROW (not medians). Under the proposed changes, they will have to be placed on private property. The City currently provides each resident with up to four standard garage sale signs. Operationally, garage sales and real estate open houses will be treated as temporary uses, and the signs can be placed on private property with the property owner’s permission (not in the ROW). An informational handout with guidelines on temporary sign placement will be created by Zoning Enforcement that functions as a self-serve permit. In all cases, these temporary signs will be prohibited on the sidewalk. Furthermore, in most cases, the area between the sidewalk and the street is ROW and will be off-limits to temporary signs.

Removing content-referencing language from within standards and definitions

Removing content-specific language wherever possible is critical in achieving content-neutrality and protecting the 1st and 14th Amendment rights afforded signs. The proposed update removes content-specific words and clauses from the code. For example, replacing the word “business” with “establishment” is one such recommendation. In many cases, provisions singling out or exempting specific signs based upon content were struck from the standards. One of the overarching objectives was to change as little as possible and achieve content neutrality.

Performance-based standards for incidental signs

Finally, staff is recommending changes to the incidental sign category – modifying the definition to remove content-based language, and adding a performance-based standard relative to the size of signs. Incidental signs are small signs of a permanent nature that have a purpose secondary to the use on the property and are not intended to attract attention beyond the perimeter of the site. They are typically associated with addresses, directional signs, hours of business operation, building numbers, etc.

Under the current code, incidental signs in residential areas do not require a permit, are not limited in number, and have a maximum allowable size of three square feet. In nonresidential areas, they also do not require a permit and there is no limit on

number; however, maximum size is allowed to four square feet per sign face if freestanding, and two square feet if building mounted. Based on experience, staff believes that the current standards are too restrictive for very large developments (greater than 100,000 square feet) including shopping centers, corporate or medical campuses, mixed use buildings, and apartment communities. Therefore, the proposed changes include increasing the allowable incidental sign area in both residential and nonresidential areas from a maximum of four square feet (three square feet in residential) if the gross floor area of building(s) on a site is under 100,000 square feet, and a maximum of 10 square if feet if the gross floor area of building(s) is over 100,000 square feet in residential areas. Making incidental standards the same for residential and nonresidential districts will bring assist in mixed-use situations.

The red-lined, proposed changes to Lone Tree Municipal Code, Chapter 16, Zoning, Article XXIX - Sign Standards are included as Attachment A.

Adding Multifamily Apartments to Signs in Nonresidential Areas

Currently, when multifamily apartment seek sign permits, the nonresidential sign table is applied. For example, there is no category for freestanding signs in residential areas outside of signs located at entries to subdivisions. However, several apartments in Lone Tree do have freestanding signs at their entranceways. The signage needs of large multifamily apartments are more in line with commercial developments and should be regulated similarly. Adding multifamily apartments to the nonresidential table will codify what is already occurring administratively in practice.

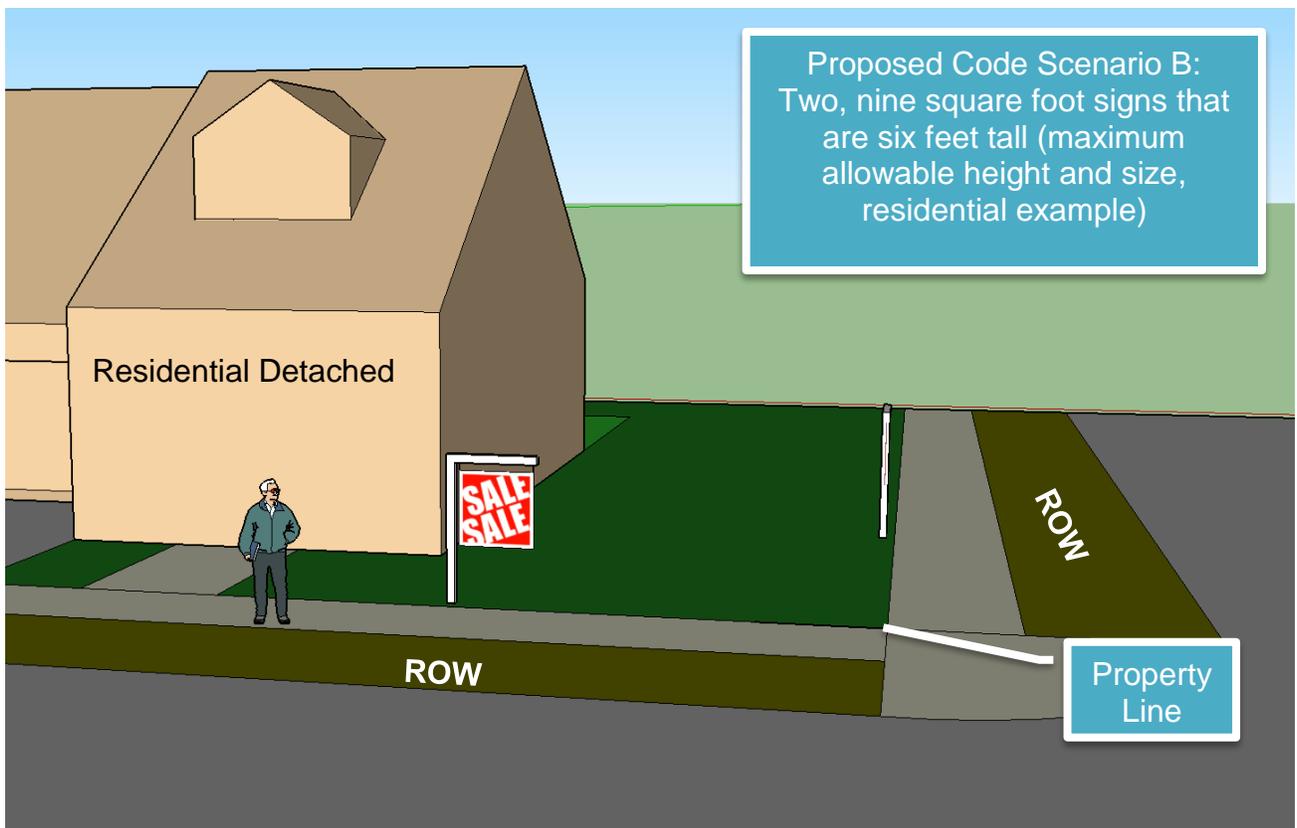
F. EXAMPLES OF THE EFFECT OF PROPOSED CHANGES

The proposed regulations will have the effect of reducing the potential for temporary sign clutter as seen from public streets and will limit the amount of square footage of sign face per lot. The following graphics demonstrate how these proposed changes to sign standards could impact Lone Tree using a residential detached example (Images 1A, B and 2).

G. REFERRALS

The proposed, red-lined changes to the standards were sent on referral to Lone Tree's agency referral list consisting of partner agencies, utility providers, neighboring jurisdictions, and subscribers for their review and comment. Most responses were no comment. The responses are attached.

Image 2A, B: Maximum Allowable Temporary Sign Area Under Proposed Update



H. ATTACHMENTS

- A. Proposed, red-lined changes to Sign Standards
- B. Select articles on *Reed v. Gilbert*
- C. Referral Responses

End

Attachment A

ARTICLE XXIX Sign Standards

Sec. 16-29-10. Purpose and intent.

The purpose of this Article is to provide regulations that protect the health, safety and welfare of the public and support the economic well-being of the community by creating a favorable physical image. These regulations are intended to further the goals and policies in the City Comprehensive Plan and Design Guidelines. More specifically, the intent of this Article is to:

- (1) Preserve and enhance an attractive physical appearance of the community and promote a healthy and vibrant economy.
- (2) Encourage signs that are well-designed, that attract, rather than demand, the public's attention, and that do not create a nuisance, distraction or impediment to travelers or adjacent landowners by their brightness, size or height.
- (3) Provide businesses, individuals, institutions and organizations within the City a reasonable opportunity to use signs as an effective means of identification and communication, while appropriately regulating the time, place and manner under which signs may be displayed.
- (4) Foster the safety of motorists and pedestrians by assuring that all signs are in safe and appropriate locations.
- (5) Provide content-neutral review and approval procedures that ensure compliance with, and consistent enforcement of, the requirements of this Article.

(Ord. 10-08 Art. 4)

Sec. 16-29-20. Application of Article.

- (a) The regulations contained in this Article shall apply to all outdoor signs in the City, unless otherwise provided for in this Article.
- (b) Any sign that can be displayed under the provisions of this Article may contain a noncommercial message.
- (c) Regulations contained in this Article shall apply to signs in all zoning districts. On parcels where mixed-uses (both residential and nonresidential) exist, residential uses shall comply with residential sign regulations and nonresidential uses shall comply with nonresidential sign regulations provided in this Article.
- (d) Signs within a Planned Development (PD) District shall be governed by this Article, except when the PD, or a Sub-Area Plan of the PD, has been adopted by the City Council, which incorporates additional or alternative standards for signage. In those cases, the sign provisions of the PD or Sub-Area Plan shall govern and supersede provisions of this Article. If a particular element is not addressed in one (1) of the above, the provisions of this Article shall apply.

- (e) Alternative sign standards may be approved by the Planning Commission as part of a wayfinding signage plan developed by the City, or as part of a Site Improvement Plan for commercial centers or districts in excess of one hundred (100) acres, or for freestanding buildings in excess of one hundred thousand (100,000) square feet. In these cases, the Planning Commission may approve signs that vary from standards herein upon demonstration of compliance with the intent of this Article and the Design Guidelines.
- (f) Signs in the C4-Commercial Zone District, as amended, are regulated by additional restrictions of that zone district.
- (g) The regulations shall not apply to temporary signs erected by state or local government agencies or their contractors, or public utility companies to communicate information to the public, facilitate the construction, maintenance or operation of transportation facilities or to warn of dangerous or hazardous conditions, including signs indicating the presence of underground utilities.

(Ord. 10-08 Art. 4)

Sec. 16-29-30. Signs allowed without a sign permit.

The following signs are allowed without a permit:

- (1) Any sign displaying a public notice or warning required by a valid and applicable federal, state or local law, ordinance or regulation.
- (2) ~~Flags of any nation, government, commercial or noncommercial institution. All flags shall comply with standards of Subsection 16-29-60 (p).~~ Up to three (3) flags per premises. More than three (3) flags shall require approval through a Site Improvement Plan process. ~~All flags shall comply with standards of Subsection 16-29-60 (p).~~
- (3) Window signs that do not exceed a total of fifty percent (50%) of the total window area per building side or per tenant occupied building frontage in a multi-tenant building. Window signs temporarily covering windows of unoccupied buildings or tenant spaces for sale or lease may exceed the maximum area requirement. "Day-Glo" fluorescent, luminous or reflective color window signs are prohibited. A banner applied to the exterior surface of a window is not considered a window sign and shall require a banner permit (see Section 16-29-130).
- ~~(4) Religious symbols and seasonal decorations within the appropriate holiday season.~~
- ~~(5) (4) Architectural features, building decorations and works of art site elements which that are integral to the design of a building and/or site, applied as an artistic accent, and which in no way identify a business, business activity or product are not considered signage and~~ are exempt from these sign regulations. Such features ~~of a building may shall~~ be subject to approval of a Site Improvement Plan.
- ~~(6) (5) Signs on motor vehicles for sale or lease, including trucks, buses and trailers, that do not exceed two (2) total square feet. Federally mandated window stickers shall not be included in the calculation of square footage. "Day-Glo" fluorescent, luminous or reflective color signs mounted or painted on vehicles are prohibited.~~

- ~~(7)~~ (6) Signs erected by state or local government agencies or their contractors, or public utility companies to facilitate the construction, maintenance or operation of transportation facilities or to warn of dangerous or hazardous conditions, including signs indicating the presence of underground utilities.
- ~~(8)~~ (7) Incidental signs in residential areas where noted in Figure 16.1 herein, and in nonresidential and multifamily areas where noted in Figure 16.2 herein.
- ~~(9)~~ (8) Temporary signs in residential areas as noted in Figure 16.1.
- ~~(10)~~ (9) Temporary signs in nonresidential areas as noted in Figure 16.2.
- ~~(11)~~ (10) Portable signs, including sidewalk and A-frame signs, that do not exceed one (1) per public entry door to ~~a business~~ an establishment, not to exceed twelve (12) square feet per side per sign, and located within twenty (20) feet of the entry of the business establishment for which the sign is advertising. The sign shall not be placed in a parking lot, right-of-way or in a median; shall not block exits or pose a hazard to vehicular or pedestrian traffic; shall not penetrate the ground; and shall be placed to assure continuous ADA access. Businesses Establishments with drive-through windows may have one portable (1) sign placed on the interior side of the drive-through, not to exceed twelve (12) square feet per side. Signs may be displayed during business hours only and must be stored indoors upon close of business.
- ~~(12)~~ ~~Signs erected for an association promotion, limited to portable signage that is no greater than six (6) square feet in sign areas; however, no lawn signs are allowed. Signage is allowed in the right-of-way (not in medians), and shall not pose a hazard to vehicular or pedestrian traffic. Banners are allowed attached to buildings. All signage must be removed within twenty-four (24) hours after the event.~~
- ~~(13)~~ (11) Signs used for purposes of direction, instruction or safety at construction sites.

(Ord. 10-08 Art. 4)

Sec. 16-29-40. Prohibited signs.

The following signs are prohibited unless otherwise approved as part of a temporary use permit, banner permit or as otherwise provided in this Article. Signs not specifically addressed below or in this Article, or which are reasonably similar to the following, are considered prohibited as determined by the Director.

- (1) Portable signs, including but not limited to temporary promotional signs, balloons, inflatable devices, advertising flags, pennants or spinners, inflatable signs, lawn signs and banners.
- (2) Commercial flags and balloons that are mounted or attached on vehicles for sale or lease and "Day-Glo" fluorescent, luminous or reflective color signs mounted or painted on vehicles for sale or lease.
- (3) Vehicle-mounted signage located for the purpose of advertisement, business identity or directional guidance on private or public property on or near street frontages or access drives. Such vehicles are required to locate to the rear of the building, loading area or other less visible interior space so as not to be used as signage when parked.

- (4) Beacons, flashing signs, search lights and any lights that project towards the sky; and signs with any type of animation or intermittent lighting effects including messages that flash, blink, scroll or move.
- (5) Any sign emitting sound for the purpose of attracting attention.
- (6) Signs in the public right-of-way or on public property, except signs erected by the City, a licensee of the City, a special district serving the City or the State in accordance with the Manual on Uniform Traffic Control Devices, as amended, ~~and except signs permitted as an association promotion or through a temporary use permit as provided herein.~~ Signs in the public right-of-way or on public property that are not approved or otherwise exempted may be removed by the Director or designee and discarded. Those who install such signs may be subject to a penalty in accordance with this Chapter.
- (7) Roof-mounted signs, or signs which project above the highest point of the roofline or fascia of the building.
- ~~(8) Signs associated with a proposed development or proposed zoning prior to City approval of such development or zoning, except for any sign displaying a public notice or warning required by a valid and applicable federal, state or local law, ordinance or regulation.~~
- ~~(9)~~ (8) Signs on landscaping, lawns, pavement or furniture, such as benches, bike racks, light poles and similar site or streetscape elements, unless otherwise approved by the City.
- ~~(10)~~ (9) Electronic message signs.
- ~~(11)~~ (10) Changeable copy signs (wall-mounted).
- ~~(12)~~(11) Off-premises signs, including billboards, are prohibited except as otherwise provided in this Article. Off-premises signs may be permitted as follows: where two (2) or more businesses within commercial centers (with adjacent uses and common access) or shopping centers consolidate signage that provides enhanced wayfinding and identification in compliance with the applicable regulations of this Article and the Design Guidelines; or where construction has temporarily closed or altered the access into or out of a property.

(Ord. 10-08 Art. 4)

Sec 16-29-50. Sign permit.

- (a) Unless specifically exempted in Section 16-29-30, a permit shall be required from the Community Development Department for erection of all signs, and for any change to an existing approved sign resulting in a modified appearance or increase in total area. Exemptions from the necessity of securing a permit, however, shall not be construed to relieve the sign's owner from responsibility for its erection and maintenance in a safe manner and in a manner in accordance with all the other provisions of this Article.
- (b) All requests for signage shall be accompanied by a completed sign permit application, colored illustration, scaled drawings of building or tenant-occupied frontages, sign

dimensions and sign specifications. Applications for permanent wall signs shall include an image or images with sign(s) superimposed on the building face and showing all existing wall signage, if any. Applications for permanent freestanding signs shall include a site plan showing the location, setback, height and sign area of all proposed and existing signage if any, and existing and proposed landscaping and easements, as applicable. Applications for freestanding signs in excess of six (6) feet in height shall be accompanied by an engineered drawing or stamped certificate by a certified engineer attesting to the structural stability of the sign, as requested by the City. All completed applications shall be decided within thirty (30) days of submission.

(c) Appeals.

(1) Any person aggrieved by any decision of an administrative officer of the City pursuant to the provisions of this Section may appeal that decision to the Director. Such appeal shall be filed in writing within ten (10) days of receipt of the decision. The Director may meet informally with the appellant and shall render a decision in writing within twenty (20) days of receipt of the appeal.

(2) Any person aggrieved by the decision of the Director may appeal the decision to the Planning Commission. Such appeal shall be filed in writing within ten (10) days of receipt of the decision. The Planning Commission shall schedule a hearing and render a decision in writing within twenty (20) days of receipt of the appeal. The written decision shall be given to the appellant and the Director.

(3) Any person aggrieved by a final decision of the Planning Commission may appeal the decision by appropriate legal action to a court of record having jurisdiction. Such appeal shall be filed no more than thirty (30) days from the date of the final decision.

(d) A sign permit fee shall be established by the City Council and shall be available through the Community Development Department. Additional building permit, electrical permit and/or use tax fees may apply.

(e) Sign permits are effective for a period of one (1) year from the date of permit approval, during which time the sign installation must be completed, or a request for new permit must be submitted. Requests to extend the approval period shall be submitted in writing and may be granted by the Director for up to an additional six (6) months.

(f) Unless otherwise stated in this Article, all determinations, findings and interpretations shall be made by the Community Development Department.

(Ord.on 10-08 Art. 4)

Sec. 16-29-60. General provisions.

(a) Signs shall be designed to be compatible with a building or project in terms of relative scale, overall size, materials and colors, and shall substantially conform to the Design Guidelines pursuant to Section 16-29-70.

(b) The maximum square footage of all signs and the maximum height of freestanding signs contained herein may be reduced in order to be in proper proportion and scale to the building or project. Guidelines for determining the height of a freestanding sign may

include, but are not limited to, the proportional relationship of the sign to: height of adjoining buildings, topography, elevation of grade, area landscaping, traffic speeds of adjoining roads and distance from roads.

- (c) Freestanding signs shall employ forms and materials that duplicate or complement the design of the building or project. The design should support or frame the body of the sign with a proportionate base and a definitive cap that provides a finished appearance. Pylon signs or signs with exposed pole supports are not allowed.
- (d) Wall signs shall be comprised of individual channel letters. Internally illuminated cabinet signs are permitted for wall or freestanding signs, provided that the cabinet incorporates routed, push-through or molded letters, graphics, panels or similar qualities that provide substantial dimension and interest to the face of the sign. Up to one-third (?) of a sign may be a smooth-faced cabinet.
- (e) Wall signs shall be mounted onto the wall in such a way that mitigates the visual impacts of electrical raceways, components and conduits. This may include concealing such elements from public view, finishing them to match the background wall color, or integrating them into the overall design of the sign.
- (f) Cabinet signs shall have a predominantly darker colored background with a lighter contrasting color for the letters and symbols. Registered trademarks and logos are exempt from this provision. The background or field should have a non-gloss, non-reflective finish.
- (g) Changeable copy signs are permitted as part of freestanding signs. Translucent white or light-colored panels are allowed. Additionally, all letters and characters must be securely placed and form complete messages (i.e., no dangling or missing letters) to ensure quality appearance and legibility.
- (h) Signs and sign structures shall be maintained at all times in a state of good repair and free from malfunction, deterioration, insect infestation, rot, rust, loosening or fading.
- (i) Any element of a building, site or landscaping damaged or altered by the removal of a sign must be repaired or replaced. If a wall sign is replacing an existing wall sign, any exposed holes or damage to the building must be repaired and repainted to match the wall surface.
- (j) Signs shall be constructed such that they are able to withstand the maximum wind pressure for the area in which they are located.
- (k) Temporary signs shall not be illuminated.
- (l) The Director or designee shall have the authority to order the repair, alteration or removal of a sign or structure which constitutes a violation of the provisions of this Article or approved permit. In the event that such a sign has not been removed, altered or repaired within a specified time frame after written notification, the Director or designee shall have the authority to remove such sign or structure at the expense of the owner of the premises on which the sign is located.
- (m) No sign shall be located, designed or lighted so as to impair the visibility of traffic movement, or to distract, or contain an element that distracts, the attention of drivers in a

manner likely to lead to unsafe driving conditions, as determined by the Director or designee.

- (n) Signs within the sight distance area, as defined in the City's adopted Roadway Design and Construction Standards, at the intersections of roads and driveways are subject to review and approval by the Engineering Division.
- (o) For the purpose of enforcing signs not in conformance with this Article, the following parties shall be regarded as having joint and severable responsibility with regard to illegal placement of such signs:
 - (1) The record owner of the property on which the sign is located.
 - (2) The entity or person identified in the sign.
 - (3) The person placing or affixing the sign.
- (p) All flags shall conform to the following regulations:
 - (1) No flag shall exceed five (5) feet by eight (8) feet. ~~-, including government or noncommercial flags.~~
 - (2) The maximum height for freestanding flagpoles shall be thirty (30) feet.
- (q) Banners erected on light poles on public or private property may be allowed upon approval of a sign permit. Banners on public property are permitted only upon execution of a license agreement approved by the City, as well as approval of a sign permit. Banners on public or private property shall conform to the following:
 - (1) Banners shall be associated with multi-tenant shopping centers, residential or mixed-use developments, transit-oriented developments, cultural or recreational entities, and similar applications. The type of banner may change periodically under the scope and terms of the agreement and/or permit.
 - (2) Banners should be sized and mounted to provide adequate visibility and spacing so as not to interfere with pedestrian or vehicular movement.
 - (3) Banners shall be made of quality, durable materials that are resistant to fading or damage by the wind and maintained in good condition.
 - (4) Mounting systems shall complement the design and color of the pole.

(Ord. 10-08 Art. 4)

Sec. 16-29-70. Design guidelines.

The Director shall establish design guidelines to effectuate the intent and purpose of this Article, to assist in its implementation, and to facilitate sign permit applications. A copy of the design guidelines is available from the Community Development Department.

(Ord. 10-08 Art. 4)

Sec. 16-29-80. On-site signs - residential.

Signs on parcels in residentially developed areas shall comply with the standards set forth in Figure 16.1, this Article, and shall substantially conform to the guidelines pursuant to Section 16-29-70.

**Figure 16.1
Signs in Residential Areas**

Type of Sign	Max. Sign Area	Max. Height	Max. Number	Sign Permit Required	Additional Requirements
Incidental sign (permanent)	3 sq. ft. <u>Max 4 sq. ft. if gross floor area of building(s) on site is <100,000 sq. ft., and Max 10 sq. ft. if gross floor area of building(s) on site is > 100,000 sq. ft.</u>	—		No	
Sign located at entry to subdivision	48 sq. ft. single-sided; 24 sq. ft. per sign face if double-sided (freestanding) 32 sq. ft. (wall)	8 ft.	2 per entrance to community	Yes	
Signs for uses approved by special use permit in residential areas	32 sq. ft. if single-sided (16 sq. ft. per face if double-sided)	8 ft.		Yes	Shall be approved with new or amended SIP or special use permit.
Temporary sign (single-family detached or attached)	6 sq. ft. if single sided; 16 sq. ft. per face if double sided. <u>9 sq. ft. of cumulative area per side per street frontage</u>	6 ft		No	May be lawn sign. <u>Signs shall be maintained, clean and in good repair.</u>

Type of Sign	Max. Sign Area	Max. Height	Max. Number	Sign Permit Required	Additional Requirements
Temporary sign (single-family detached or attached)	6 sq. ft. if single sided; 16 sq. ft. per face if double sided. <u>9 sq. ft. of cumulative area per side per street frontage</u>	6 ft		No	May be lawn sign. <u>Signs shall be maintained, clean and in good repair.</u>
Temporary sign (multifamily)	32 sq. ft. if single-sided; 16 sq. ft. per face if double-sided	6 ft.	1 per street frontage	No	
Temporary sign (located on undeveloped property or property under development)	<5 ac. = 32 sq. ft. if single-sided; 16 sq. ft. per face if double-sided >5 ac. = 48 sq. ft. if single-sided; 24 sq. ft. per face if double-sided	6 ft. 12 ft.	1 per street frontage 2 per street frontage	No	Non real estate signs may be posted up to 2 months prior to reasonable anticipated start of construction. Such signs for multi-family projects shall be removed upon project completion. For single family projects, signs shall be removed after the last lot is sold, or the last unit is built.
Temporary off-premises open house real estate sign.	Single or double sided signs not to exceed 2 ½ ft. tall by 2 ft. wide excluding frame.		4 per open house event	No	Display during daylight hours only. No bright or iridescent colors of attachments to signs. May be placed in right of way (not in medians provided they do not interfere or impede traffic of any kind. Not intended for apartment complexes.

Type of Sign	Max. Sign Area	Max. Height	Max. Number	Sign Permit Required	Additional Requirements
Directional sign for garage sales	2 ½ ft. tall by 2 ft. wide		4 per residence	No	May be placed on sidewalks provided they do not interfere or impede traffic or pedestrian movement. Signs are not permitted in medians. No sign should penetrate the ground. Devices to secure signs must be returned to proper location upon removal of sign.
Election season sign	6 sq. ft. if single sided (3 sq. ft. per side)		There is no limit to the number of signs per candidate or ballot issue.	No.	No sign shall be posted more than 90 days prior to the election to which the sign is related, and must be removed within 2 weeks of the final election. Must be placed on private land and setback 5 feet from property line. No signs are permitted on public land or rights-of-way. Lawn signs meeting these requirements are permitted.
<u>Temporary special event sign</u>	<u>32 sq. ft. if single-sided; 16 sq. ft. per</u>	<u>6 ft.</u>	<u>1 per street frontage</u>	<u>No</u>	

Sec. 16-29-90. On-site signs – nonresidential and multifamily apartments

Signs on parcels in nonresidential and multifamily apartment areas shall comply with standards set forth in Figure 16.2, this Article, and substantially conform to the guidelines pursuant to Section 16-29-70.

**Figure 16.2
Signs in Nonresidential and Multifamily Apartment Areas**

Type of Sign	Max. Sign Area	Max. Height	Max. Number	Sign Permit Required	Additional Requirements
Freestanding sign	Maximum sign area per sign face: 0.5 sq. ft. per 3 linear ft. of street frontage on which the sign is placed to a maximum total of 100 sq. ft. per face	15 ft.	1 per tenant frontage, per parcel	Yes	Signs shall not be placed in the right-of-way or in any easements that prohibit structures unless otherwise allowed by easement beneficiary.
Wall sign	50 sq. ft. plus 1 sq. ft. per lineal foot of building frontage, or tenant lease line, in excess of 50 ft. to a total of 100 sq. ft. per building face. For floor areas greater than 100,000 sq. ft., a maximum of 200 sq. ft. per building face	—	Office buildings or buildings with similar use where multiple tenants exist or may be planned, and where public entrance is predominantly interior are limited to 1 wall sign per building side. Additional signs may be approved where retail or other uses have separate exterior public entry.	Yes	No sign shall exceed 75% of the linear footage of the wall on which the sign is placed (within the tenant lease line or multi-tenant buildings), unless otherwise approved. See also Section 16-29-60

Type of Sign	Max. Sign Area	Max. Height	Max. Number	Sign Permit Required	Additional Requirements
Projecting sign (primary)	Shall be counted toward maximum allowable wall sign area	—	<u>1 per tenant frontage</u>	Yes	Projecting signs shall not extend more than 36" from the building to which they are attached and shall have a clearance of 8 feet from grade level to the bottom of the sign.
Projecting sign (secondary)	6 sq. ft. (3 sq. ft. per side)	—	1 per tenant frontage	Yes	Are permitted in addition to wall sign area allowance. The bottom of the sign shall be a minimum 8 feet above the sidewalk. Shall not extend more than 36" from the building to which attached.
Awning	Up to 20% of the area of the shed (slope) portion of awning and 50% of valance	—		Yes	Are permitted in addition to allowance for wall sign.
Canopy sign	25% of the fascia per side	—	Not to exceed 2 per canopy	Yes	Are permitted in addition to allowance for wall sign. Color bands and light bands are prohibited. Signs shall not extend beyond gable or fascia of canopy.

Type of Sign	Max. Sign Area	Max. Height	Max. Number	Sign Permit Required	Additional Requirements
Incidental sign (permanent)	4 sq. ft./sign face (freestanding); 2 sq. ft. if building mounted. Max 4 sq. ft. if gross floor area of building(s) on site is <100,000 sq.ft., and Max 10 sq. ft. if gross floor area of building(s) on site is > 100,000 sq. ft.	4 ft.		No	If incidental sign is a projecting sign, the bottom of the sign shall be a minimum 8 feet above the sidewalk and shall not extend more than 36" from the building to which attached.
Temporary sign (multifamily)	32 sq. ft. if single-sided; 16 sq. ft. per face if double-sided	6 ft.	1 per street frontage	No	
Temporary sign (located on developed property)	32 sq. ft. single-sided; 16 sq. ft. per face if double-sided	6 ft.	1 per street frontage	No	Intended for signs located on land for sale or lease.
Temporary sign (located on undeveloped property or property under development)	<5 ac. = 32 sq. ft. if single-sided; 16 sq. ft. per face if double-sided >5 ac. = 64 sq. ft. if single-sided; 32 sq. ft. per face if double-sided	6 ft. 12 ft.	1 per street frontage 2 per street frontage	No	Non-real-estate signs may be posted no sooner than 2 months prior to reasonably anticipated start of construction and shall be removed upon project completion.

Type of Sign	Max. Sign Area	Max. Height	Max. Number	Sign Permit Required	Additional Requirements
Election season sign	64 sq. ft. if single sided (32 sq. ft. per side); 15 ft. height	15 ft.	There is no limit to the number of signs per candidate or ballot issue	No	No sign shall be posted more than 90 days prior to the election to which the sign is related, and must be removed within 2 weeks of the final election. Must be placed on private land and setback 5 feet from property line. No signs are permitted on public land or rights-of-way. Lawn signs meeting these requirements are permitted.
<u>Temporary special event sign</u>				<u>Yes</u>	<u>Display time is limited to duration of event. May not be placed in rights-of-way, public property, or on sidewalks.</u>

Sec. 16-29-100. Permanent sign measurement.

The area of a sign shall be measured as follows:

- (1) For a wall sign which includes a backing or background that is part of the overall sign display, the sign area measurement shall include the entire portion within such background and shall be determined by the sum of areas in each square, rectangle, triangle, portion of a circle or any combination thereof which creates the smallest single continuous perimeter enclosing the extreme limits of the sign display.

- (2) For a wall sign comprised of separate elements that are organized to form a single sign, the sign area measurement shall be determined by the sum of areas in each square, rectangle, triangle, portion of a circle or any combination thereof which creates the smallest perimeter enclosing the extreme limits of each separate element in the sign display, not including the space between each element.
- (3) For a freestanding sign, the sign area measurement shall be determined by the sum of areas in each square, rectangle, triangle, portion of a circle or any combination thereof which creates the smallest single continuous perimeter enclosing the extreme limits of the sign display. The sign area shall not include the frame or structural support unless such structural support is so designed to constitute a part of the sign display.
- (4) Architectural features and structural decorations which are integral to the design of the building or freestanding structure, and are not integral to the design of the sign display, are not included in determining sign area measurement.
- (5) The maximum height of a freestanding sign is fifteen (15) feet. Sign height is measured from the base to the highest point of the sign including decorative elements and architectural features, as measured from the average finished grade.
- (6) The maximum square footage of all signs and the maximum height of freestanding signs contained herein may be reduced in order to be in proper proportion and scale to the building or project. Guidelines for determining the height of a freestanding sign may include, but are not limited to, the proportional relationship of the sign to: height of adjoining buildings, topography, elevation of grade, area landscaping, traffic speeds of adjoining roads, and distance from road.

(Ord. 10-08 Art. 4)

Sec. 16-29-110. Sign illumination.

The purpose of this Section is to establish standards for illuminated signs that are consistent with the City's economic and aesthetic goals while ensuring that lighting does not create glare or significant off-site impacts. In areas where an illuminated sign may impact a single-family residential area, the Director may impose requirements related to reducing illumination levels or imposing time restrictions on hours of lighting.

- (1) All illumination associated with a proposed sign shall be disclosed as part of the sign permit or temporary use permit application, and is subject to review and approval as part of said permit.
- (2) Illuminated signs shall have light levels appropriate for the ambient light conditions of the context in which it is located, so as to provide consistency and compatibility with light levels in the area.
- (3) The light source, whether internal or external to the sign, shall be shielded from view, with the exception of approved exposed LED tubing, neon, luminous tube signs or similar lighting which may be approved in nonresidential areas where it is not readily visible from residential areas.

- (4) Externally illuminated monument signs may be illuminated from a ground light source and shall utilize shielded and focused light fixtures that do not cause glare and that minimize illumination beyond the sign copy.
- (5) Freestanding permanent signs may be illuminated from solar-powered energy, provided that the location and design of the solar panels and all related exposed equipment are integrated into the design of the sign structure so as to minimize their visibility.
- (6) Illuminated cabinet signs or portions thereof that are not signed or not in use shall have illumination turned off, or otherwise screened or reduced in intensity to minimize impacts.
- (7) Illuminated signs displayed onto any surface by a projection method are subject to a sign permit or temporary use permit and shall not project onto a public sidewalk or right-of-way.
- (8) Lighting for signs shall not create a hazardous glare for pedestrians or vehicles either in a public street or on private premises.
- (9) Signs shall not include animation, flashing, moving or intermittent illumination.
- (10) Illumination levels are subject to a thirty-day review period following the installation of the sign, during which time the City may inspect the sign to ensure that illumination levels are consistent and compatible with ambient light conditions in the area; do not create glare; are positioned at the appropriate angle to light the copy area; and do not have exposed light sources. The Director may require that light be shielded, reduced in intensity or removed, to ensure compliance with the requirements of this Article and the Design Guidelines. Additionally, at any time, the Director may order the modification or removal of any illumination determined to be noncompliant with this Article or the Design Guidelines.

(Ord. 10-08 Art. 4)

Sec. 16-29-120. Nonconforming signs.

- (a) Any permanent nonconforming sign lawfully existing at the time of adoption of the ordinance codified in this Article may be continued in operation and maintained after the effective date of the ordinance codified herein.
- (b) A nonconforming sign or sign structure shall be brought into conformity with this Article if it is altered, reconstructed, replaced or relocated. A change in copy is not considered an alteration or a replacement for purposes of this Section.
- (c) Termination of nonconforming signs shall occur:
 - (1) By abandonment, meaning any sign, together with its supporting structure, which remains on the property ten (10) days or more after the use with which it was approved has been vacated.
 - (2) By destruction, damage or obsolescence, which will terminate the right to maintain any nonconforming sign, including whenever the sign is damaged or destroyed in

excess of fifty percent (50%) of the current replacement cost of the sign from any cause whatsoever, or becomes obsolete or substandard under any applicable City ordinances.

- (3) Any sign maintained in violation of the provisions of this Article shall constitute a nuisance to be abated in a manner provided in Chapter 7, Article 1 of this Code, as amended.

(Ord. 10-08 Art. 4)

Sec. 16-29-130. Temporary banners.

- (a) Each business or entity with its own exterior public entrance to the building may display one (1) banner per tenant frontage, not to exceed two (2) banners, on no more than four (4) occasions per calendar year using any combination of days not to exceed a cumulative total of sixty (60) days per calendar year.
- (b) The maximum banner size shall not exceed fifty (50) square feet where the tenant building frontage is less than one hundred fifty (150) linear feet. Banners up to two hundred (200) square feet are permitted for tenant building frontages in excess of one hundred fifty (150) linear feet. The applicant may be required to provide documentation to confirm building frontage.
- (c) Banners must be securely attached to the building or to a fence or wall attached to the building within the boundaries of the tenant's lease line. Banners should be pulled straight and taut wherever possible and properly maintained at all times. Banners must not block access to windows or doors and must be placed so as not to create hazardous or unsafe conditions.
- (d) A banner is allowed in place of a permanent sign as long as a sign permit for the permanent sign has been submitted and a permit is obtained for the banner. The size of the banner may be as large as the size approved for the permanent sign. The banner may be displayed for up to ninety (90) days. The banner does not count towards the regular banner time allotment.
- (e) Banners displayed on buildings that will open in the foreseeable future may be allowed as an alternative to a temporary ground sign once a building permit has been issued. One (1) banner per street frontage not to exceed two (2) banners is allowed. Banners shall not exceed fifty (50) square feet in area. However, banners up to two hundred (200) square feet are permitted for tenant building frontages in excess of one hundred fifty (150) linear feet. The applicant may be required to provide documentation to confirm building frontage. Banners must be removed when the business is open to the public. No permit is required for these banners.
- (f) When circumstances arise that make it impossible to meet the above banner requirements, the Director has the authority to approve variations.
- (g) A banner permit application is available from the Community Development Department.
- (h) Failure to obtain a banner permit or failure to abide by the stipulations of an approved permit constitutes a zoning violation.

(Ord. 10-08 Art. 4)

Sec. 16-29-140. Temporary use signage.

- (a) Signs associated with a temporary use shall be subject to the terms of the temporary use permit, as provided by Article XXII of this Chapter.
- (b) Failure to obtain a temporary use permit or failure to abide by the stipulations of an approved permit constitutes a zoning violation.

(Ord. 10-08 Art. 4)

Sec. 16-29-150. Severability.

- (a) It is hereby declared to be the expressed intent that the provisions of this Article shall be severable in accordance with the provisions set forth below.
- (b) If any provision of this Article is declared to be invalid by a decision of any court of competent jurisdiction, it is hereby declared to be the intent that:
 - (1) The effect of such decision shall be limited to the clause, sentence, paragraph or part of this Article that is expressly stated in the decision to be invalid; and
 - (2) Such decision shall not affect, impair or nullify this Article as a whole or any other part thereof, and the rest of this Article shall continue in full force and effect.
- (c) If the application of any provision of this Article to any sign, use, lot, building, other structure or tract of land is declared to be invalid by a decision of any court of competent jurisdiction, it is hereby declared to be the intent that:
 - (1) The effect of such decision shall be limited to that sign, use, lot, building, other structure or tract of land immediately involved in the controversy, action or proceeding in which the judgment or decree of invalidity was rendered; and
 - (2) Such decision shall not affect, impair or nullify this Article as a whole or the application of any provision thereof, to any other sign, use, lot, building, other structure or tract of land.

(Ord. 10-08 Art. 4)

Sec. 16-29-160. Definitions.

~~Association promotion occurs when an event is conducted on an infrequent or irregular basis by a group that does not have a permanent place of business. The event must take place in Lone Tree and be open to the public.~~

Awning means an architectural projection or shelter projecting from and supported by the exterior wall of a building and composed of a covering of rigid or nonrigid materials and/or fabric on a supporting framework that may be either permanent or retractable.

Banner sign means a copy or graphics displayed on a flexible form made of fabric, plastic, nylon or other nonrigid material.

Billboard. See *off-premises sign*. Any other outdoor advertising prohibited by the provisions of Section 43-1-401, et seq., C.R.S. shall also be considered *billboards*.

Cabinet sign means a sign structure consisting of the frame and face(s), not including the internal components, embellishments or support structure.

Canopy means a multi-sided overhead structure or architectural projection supported by attachments to a building (attached) or supported by columns but not enclosed by walls (freestanding).

Changeable copy sign means a sign where letters, characters or graphics change manually through placement of letters or symbols on a panel mounted in or on a track system.

Copy means those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, excluding numerals identifying a street address only.

Day-Glo means a trade name for certain inks or lacquers that become fluorescent when activated by the ultraviolet rays of sunlight or special illumination.

Double-sided sign means a sign with two (2) parallel faces.

~~Election season means ninety (90) days prior to and fourteen (14) days after any City regular or special election, any county or special district election, or any state or federal primary or general election.~~

Electronic message sign means a sign where letters, characters or graphics are activated and displayed electronically allowing variable message or display and programming capability.

Exterior illuminated sign means a sign that is illuminated by a light source that is directed towards and shines on the face of a sign; also called *direct illumination*.

~~Flag means any fabric or similar material which is attached by one edge to a pole or rope.~~

Freestanding sign means a sign principally supported by a structure affixed to the ground or supported by one (1) or more columns, poles or braces placed in or upon the ground and not supported by a building.

~~Garage sale means a sale of used household or personal articles (such as furniture, tools or clothing) held on a resident's own premises.~~

Incidental signs, nonresidential means a sign of a permanent nature that has a purpose secondary to the use on the property and not intended to attract attention beyond the perimeter of the site. ~~, including but not limited to signs intended to instruct users as to matters of direction, necessity, hours of operation, credit card information or public safety, provided the signs do not exceed four (4) square feet in area if freestanding and (2) square feet if building mounted.~~

~~*Incidental signs, residential* means a sign of a permanent nature not exceeding three (3) square feet. Incidental signs are associated with identifying the location or name of a residence, including but not limited to the street number, name of building or occupant, building or unit number or similar purpose.~~

Lawn sign means a temporary sign that is erected by means of inserting one (1) or more stakes into the ground.

Nonconforming sign means a sign, which on the effective date of the ordinance codified in this Article, was lawfully maintained and had been lawfully erected in accordance with the provisions of any prior applicable sign regulation but which does not conform to the limitations established by this Article, as amended.

Off-premises sign means a sign directing attention to a specific establishment, service, product, activity, or event that that is not business, product, service, entertainment event or activity or other commercial activity that is not sold, produced, manufactured, furnished or conducted at the property upon which the sign is located.

Portable sign means a sign that is designed to be moved easily ~~and not permanently affixed to the ground, to a structure or to a building, is not permanently affixed to the ground, does not penetrate the ground, and is not permanently affixed to a structure or a building.~~

Projecting sign (primary) means a building-mounted sign with the faces of the sign projecting from and perpendicular to the building fascia, ~~and which serves as a main identification sign for the use.~~

~~*Projecting sign (secondary)* means a building-mounted sign with the faces of the sign projecting from and perpendicular to the building fascia, and which serves as a purpose secondary to the main identification sign and is predominantly intended to be viewed by pedestrians.~~

Push-through means a letter or logo that is cut out of a backing material as thick as or thicker than the sign face material, and then mounted on the inside of the sign face so that the backing material's thickness extends flush with or through and beyond the front plane of the sign face.

Pylon sign means a freestanding sign with a visible support structure, which may or may not be enclosed by a pole cover.

Raceway means an electrical enclosure that may also serve as a mounting device for a wall sign.

Sidewalk sign means a freestanding portable sign including an easel or A-framed sign that is typically hinged at the top or attached in a similar manner.

Sign means any device visible from a public place that displays either commercial or noncommercial messages by means of graphic presentation of alphabetic or pictorial symbols or representations.

Sign display means the combination of characters, lettering, illustrations, ornamentation or other figures, together with any other material, design or color intended to differentiate such elements from the background to which they are placed.

Temporary sign means a sign intended to display either commercial or noncommercial messages of a transitory or temporary nature. Portable signs, including banners, are considered temporary signs.

Temporary Special Event Sign means signage that may exceed allowable permanent signage for an entity, provided that the signage is associated with an approved Temporary

Use Permit. Display time is limited to the duration of the special event. The language on these signs need not be tied to the event.

Wall sign means a sign that is in any manner affixed to any exterior wall of a building or structure, excluding banners.

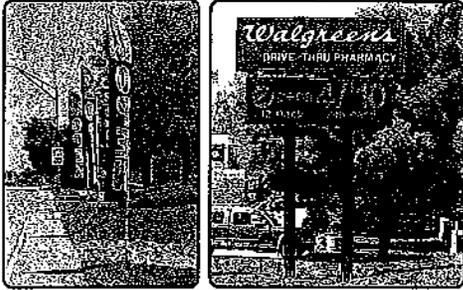
Window sign means a sign that is applied or attached to the interior or exterior surface of a window or window frame.

Attachment B: Select Articles on *Reed v. Gilbert*

NEW RULES FOR YOUR SIGN CODE

By Gerald Dahl, Murray Dahl Kuechenmeister & Renaud LLP attorney, and Martin Landers, AICP, Plan Tools LLC principal

SIGN CODES ARE TRICKY. THEY HOST A variety of sign types with no common nomenclature — is that a ground sign, freestanding sign, monument sign, or all of the above? Sign codes require frequent updates as sign technology keeps evolving at all levels, from the temporary wave banners popping up in landscape buffers to recent innovations in electronic message centers.



Wave Banners

Electronic Message Center on a Freestanding Sign

Variances often are requested for greater sign height and more sign area. Actively enforcing the sign code also can strain relationships with the business community, especially when temporary signs are involved. With so many potential points of conflict, it is no surprise when the legal basis for sign codes is tested.

New Rules of the Game: Reed v. Town of Gilbert

The ground rules for sign codes are changing once again as a result of *Reed v. Town of Gilbert, AZ*, a rare unanimous Supreme Court decision. In June of this year, the Court considered a challenge to certain portions of the Gilbert, Arizona, sign code, and in so doing, announced a sweeping new standard for the requirement that such regulations be "content neutral." Despite an effort by Justice Samuel Alito in a concurring opinion to interpret the majority opinion somewhat less broadly, the effect of the decision, written by Justice Clarence Thomas, will likely be that key features of most local sign codes will now be considered "facially content-based" and thus subject to strict constitutional scrutiny — a high bar that few are likely to clear.

The Gilbert sign code contained a series of exemptions, including three that became the basis for appeal and the Supreme Court decision: "ideological signs," defined as "communicating a message or idea," "political signs" "designed to influence the outcome of an election," and "temporary directional signs," directing the public to a church or other "qualifying event." Each category of sign carried with it a different set of requirements on size and duration.

The plaintiff, Clyde Reed, was the pastor of a church without a permanent location. The church posted signs advertising the location and time for the next day's services. The Town cited the church for failing to include an event date and for exceeding the time limits for display of this type of (temporary directional) sign. The Town prevailed through the Ninth Circuit Court of Appeals, but the Supreme Court reversed, holding the Town's requirements content-based on their face, and because of this, unconstitutional under the First Amendment — prohibiting the enactment of laws "abridging the freedom of speech."

Enforcement of the Gilbert regulations depended upon the content of the sign, and the court held such regulations may be justified only if the town could prove they were narrowly tailored to serve a "compelling state interest." In practice, this is a very high standard, and the court held the regulations did not measure up.

A content-based regulation, as applied to a sign code, means that if you have to read the sign to determine how it is regulated, it is content-based. Many sign codes, including the Gilbert sign code, do exactly that by referring to the sign's content (political, ideological, special event), then applying differing restrictions based on those categories. After reviewing prior case law, Justice Thomas held the code could only survive if it passed the two-part "strict scrutiny" test: (1) the regulations must be narrowly tailored (2) to achieve a compelling governmental interest. Here, the code addressed visual clutter and pedestrian and traffic safety as the governmental interests, but were not narrowly tailored — for example, the court reasonably asked why political signs were permitted to be larger and temporary directional signs smaller, as not really serving the governmental interest in reducing clutter.

Justice Elena Kagan, in a spirited concurring opinion (agreeing with the result but not the broad scope of Justice Thomas' opinion) warned that the effect of the decision would be to unnecessarily invalidate countless ordinances across the country. She argued that the court easily could have voided the Gilbert regulations on more narrow grounds, saying that the Gilbert ordinance did not pass "the laugh test," let alone strict scrutiny.

Nevertheless, the majority opinion in *Reed v. Town of Gilbert* is now controlling law on the subject of content-based local sign regulations, and, until modified or conditioned by later decisions, it must be followed.

Keys to creating a Reed-compliant sign code

Tip No. 1: Focus on type, not message

Perhaps the most important lesson of the *Reed* decision is to cast a critical eye on how sign types are named and regulated. Here is a short list of sign type names that are "in" or "out" (not

because of their physical structure per se, but instead whether or not the enforcing official must read their content to know how they are regulated):

Out

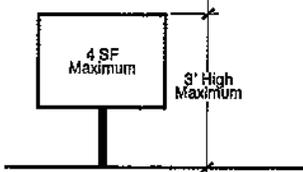
- construction signs
- political and ideological signs
- real estate signs
- special event banners

In

- site signs
- yard signs
- yard signs and swing signs
- banners

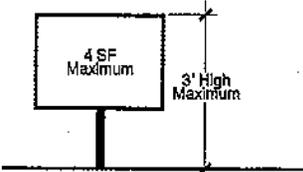
The structure of a sign code can go a long way toward expressing clarity in content-neutral sign types and regulations. Employ charts to categorize permissible sign types by residential or non-residential zoning district, and incorporate graphic illustrations to depict sign types and their standards.

This



Yard Sign

Not this



Political Sign

Tip No. 2: Craft a compelling purpose statement

Courts are required to give deference to the legislative intent of the elected officials in enacting local regulations. Accordingly, it is important to take the opportunity to better articulate the compelling governmental interests underlying the local sign code. Taking some cues from the *Reed* decision, enhance the purpose section of the code by going beyond a simple statement of "promoting public health and safety." Instead, emphasize:

- promoting safety of persons and property by regulating signs so as not to confuse or distract motorists or impair drivers' ability to see pedestrians, obstacles, other vehicles, or traffic directional signs
- promoting efficient communication of messages
- promoting the public welfare by reducing visual clutter

- assisting in wayfinding
- providing fair and consistent enforcement.

Tip No. 3: Scrub definitions to reduce/eliminate content-based references

After creating a series of content-neutral sign types in the regulation, as suggested above, make sure that those types are described in content-neutral terms. The lens is always, "Do I have to read the sign to determine what the restrictions are?" If so, the definition fails the content-neutrality test. Here is an example of a content-based definition that has been scrubbed:

Sign, external use, means a sign located outside of a principal commercial use on accessory commercial structures ~~that provides information to customers in motor vehicles about the products or services available on that premises.~~

Tip No. 4: Structure exemptions to avoid content-based distinctions

Every sign code can and should legitimately contain a list of signs exempt from some or all of its requirements. The Town of Gilbert exempted sign types (political, ideological, temporary directional) by describing what the signs actually said or contained — a classic content-based distinction and thus easy for the Supreme Court to invalidate. In describing the list of exemptions in a *Reed*-compliant sign code, stay with the sign type:

- signs erected by the municipality
- flags
- signs being carried by people
- window signs
- wave banners

Notice these exemptions do not require the sign to be read to be placed in the exempt category. If the jurisdiction has taken the first tip (rely on sign type) seriously, it will be easy to create exemptions based on these types and stay well clear of the need to rely on content.

Finally, Justice Thomas identifies two content-based sign types that might survive even the strict *Reed* test: warning signs on private property, signs directing traffic, and private house street number signs.

Despite the apparent inflexibility of Justice Thomas' majority opinion, Justice Alito, in a short concurring opinion, took a crack at "some rules that would not be content based":

- Rules regulating the size of signs and the locations in which signs may be placed. These rules may distinguish between free-standing signs and those attached to buildings.
- Rules distinguishing between lighted and unlighted signs.
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
- Rules that distinguish between the placement of signs on private and public property.

- Rules distinguishing between the placement of signs on commercial and residential property.
- Rules distinguishing between on-premises and off-premises signs.
- Rules restricting the total number of signs allowed per mile of roadway.
- Rules imposing time restrictions on signs advertising a one-time event. Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed.
- In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.

It is important to note that in this list Justice Alito goes beyond the limits of Justice Thomas' majority opinion in identifying as permissible signs advertising a one-time event (the actual case in *Gilbert*) and signs pointing out historic sites and scenic spots. Neither of these two sign types can be inferred from Justice Thomas' majority opinion.

Difficult issues not neatly addressed in *Reed*

Two particular types of signs are not addressed in the *Reed* decision, but are of great importance to any local jurisdiction: off-premise signs, including billboards, and murals or works of art. Most troublesome are off-premise signs. The only way to determine if a sign relates to the premise on which it is located is to read it, and many localities ban or highly restrict such signs. We believe that there are only two ways to address this: continue to regulate off-premise signs, but emphasize the importance of the community's interest in reducing visual clutter, or treat such signs as simply a sign on the land where it is located.

Murals and works of art are a lesser problem. One way to approach this is to define them and state they are exempt. From a litigation perspective, it is much less likely that this approach, which may or may not be content-based, will in practice cause real problems.

Looking ahead

Over time, lower courts will attempt to clarify the majority and concurring opinions of Justice Thomas and Justice Alito. There is no perfect solution, and some communities may decide to err on the side of Justice Alito and live with certain content-based code provisions. Codes are living documents, so the prudent approach may be to resolve to update your sign code consistent with basic *Reed v. Town of Gilbert* content-neutrality guidance and remain nimble for future decrees.

Visit www.cml.org/reed-article for the full article.

ADVOCACY FOR LOCAL GOVERNMENTS AT THE SUPREME COURT

By Lisa Soronen, State & Local Legal Center executive director

SINCE 1983, THE STATE & LOCAL LEGAL CENTER (SLLC) has filed *amicus curiae* briefs to the United States Supreme Court on behalf of the "Big Seven" national organizations representing the interests of state and local government (the National Governors Association, National Conference of State Legislatures, Council of State Governments, National League of Cities, U.S. Conference of Mayors, National Association of Counties, and International City/County Management Association). The International Municipal Lawyers Association and the Government Finance Officers Association also belong to the SLLC.

State leagues participate in the SLLC through the National League of Cities. Many state leagues also contribute financially on an annual basis to support the SLLC. CML is a proud dues-paying member — "With so many cases coming before the U.S. Supreme Court involving the interests of municipalities, the SLLC is crucial with its excellent *amicus* work," stated Sam Mamet, CML executive director. In 2014, the Arkansas Municipal League (AML) defended a high-speed police chase case before the Supreme Court, and the SLLC filed an *amicus* brief supporting the AML.

The SLLC files an *amicus* brief in a Supreme Court case in which three of the seven members of the SLLC want a brief written and two organizations do not veto participation. Each SLLC member decides whether to sign onto an SLLC brief after reviewing its contents.

To date, the SLLC has filed more than 300 Supreme Court briefs. The SLLC generally files briefs in cases involving federalism and preemption and in other cases where the interests of state and local government are at stake. It is not unusual for the court to cite or quote an SLLC brief in an opinion or discuss a SLLC brief at oral argument.

The SLLC offers moot courts to attorneys arguing state and local government cases before the Supreme Court. Each year, the SLLC offers Supreme Court review, preview, and midterm webinars and articles focusing on cases from the term affecting state and local government. Lisa Soronen, executive director of the SLLC, serves as a resource to the Big Seven on the Supreme Court and writes about Supreme Court cases affecting cities and towns on the NLC blog, the *Weekly*, and the *Federal Advocacy Update*.

To learn more about the SLLC and to read the briefs the SLLC has recently filed, visit www.statelocalc.org. Follow the SLLC on Twitter for up-to-date information on Supreme Court grants and decisions affecting state government at www.twitter.com/sllcscotus.

2015

Land Use Law Update: Reed v. Town of Gilbert Redux

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Land Use Law Update: *Reed v. Town of Gilbert* Redux

By Sarah J. Adams-Schoen

The Winter 2015 Land Use Law Update asked whether the Supreme Court's decision in *Reed v. Town of Gilbert*¹ would require municipalities throughout the country to rewrite their sign codes.² The short answer is "yes."

At a minimum, following the Supreme Court's decision that the Town of Gilbert's temporary directional sign regulations violated petitioners Good News Community Church's and Pastor Clyde Reed's First Amendment rights, municipalities will want to act quickly to amend their sign codes if they regulate different categories of signs differently. A code that places fewer restrictions on political or ideological signs than on directional signs likely will not withstand judicial review. Whether codes that differentiate between commercial and noncommercial signs will withstand review is an open question, but application of the Court's content neutrality analysis would appear to require strict scrutiny of even commercial-noncommercial distinctions—and if the governmental justifications for the distinction are aesthetics and traffic safety, which they so often are, this distinction also likely will not withstand judicial review.

Introduction

To briefly summarize, the facts are as follows. The Town of Gilbert had a sign code that restricted the size, number, duration, and location of many types of signs, including temporary directional signs. The code generally required anyone who wished to post a sign to obtain a permit, with numerous exceptions for specific types of signs including "ideological signs," "political signs," and "temporary directional signs relating to a qualifying event." The code defined ideological signs as signs "communicating a message or ideas for noncommercial purposes" that do not fall into one of several more specific categories; political signs as signs that "support[] candidates for office or urge[] action on any other matter" on a national, state, or local ballot; and, temporary directional signs as "not permanently attached to the ground, a wall or a building, and not designed or intended for permanent display," and "intended to direct pedestrians, motorists, and other passersby" to "any assembly, gathering, activity, or meeting sponsored, arranged or promoted by a religious, charitable, community service, educational, or other similar non-profit organization."³



Like so many sign codes, the Town of Gilbert's code established a hierarchy of restrictions, with the fewest restrictions on ideological signs and the most restrictions on temporary directional signs. The only restriction on ideological signs was that they "be no greater than 20 square feet in area and 6 feet in height." Political signs could be up to 16 square feet (on residential property) or 32 square feet (on nonresidential property) in size; may be up to six feet in height; may remain in place for several days after the election, and were not generally limited in number. Temporary directional signs could be "no greater than 6 feet in height and 6 square feet in area"; no more than four such signs "may be displayed on a single property at any time"; and such signs could be displayed only "12 hours before, during, and 1 hour after" the event. They could not be displayed in "the public right-of-way" or on "fences, boulders, planters, other signs, vehicles, utility facilities, or any structure."⁴

The Church placed signs in the surrounding area announcing the time and location of services. Treating these signs as temporary directional signs, the Town issued code enforcement notices to the Church. The Church then sued the Town, claiming that the sign code violates the Free Speech Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment on its face and as applied to the Church. The district court denied the Church's motion for a preliminary injunction and the Ninth Circuit affirmed this ruling⁵; the district court then granted summary judgment for the Town,⁶ which the Ninth Circuit also affirmed.⁷

The Court of Appeals concluded that the Town of Gilbert's sign ordinance was content neutral because the town did not adopt the code because it disagreed with the message conveyed and its interests in regulating the signs were unrelated to their content.⁸ In its first opinion in the *Reed* matter, the Ninth Circuit affirmed the petitioners' motion for a preliminary injunction, despite recognizing that an enforcement officer would have to read the sign to determine what provisions of the sign code applied. The court explained that this "kind of cursory examination" for the purposes of determining function "was not akin to an officer synthesizing the expressive content of the sign."⁹ On a later appeal of the district court's summary judgment for the petitioners, the court reasoned that the distinctions in the Town's code between temporary directional signs, ideological signs and political signs "are based on objective factors relevant to Gilbert's creation of the specific exemption from the permit requirement and do not otherwise consider the substance of the sign."¹⁰

The plaintiffs appealed to the Supreme Court and the Court granted certiorari¹¹—presumably to resolve a circuit split regarding whether temporary sign regulations that differentiate between sign types based on the function of the sign are content-based and therefore subject to strict scrutiny review.¹² The National League of Cities, United States Conference of Mayors, National Association of Counties, International City/County Management Association, International Municipal Lawyers Association, American Planning Association, and Scenic America¹³ filed a brief in support of the Town, warning “that adoption of the strict scrutiny test has the potential to invalidate nearly all sign codes in the country, and would thereby imperil the important traffic safety and aesthetic purposes underlying local government sign regulation.”¹⁴ The United States, numerous religious and civil liberties organizations, and nine states filed amicus briefs in support of the petitioners.¹⁵

On June 18, 2015, nine justices agreed with the petitioners that the Town’s sign code was content-based on its face, that strict scrutiny therefore applied, and that the code did not pass constitutional muster.¹⁶ But, the justices took such varying routes to this conclusion that attorneys may find it difficult to determine which categorical sign regulations are content based, and therefore likely unconstitutional under a strict scrutiny analysis.

The Thomas Majority: “A Very Wooden Distinction”

Six justices joined Justice Thomas’s majority opinion, which took a literal (some say “wooden”¹⁷) approach to the question of content neutrality. Essentially, the Thomas majority opinion stands for the principle that, if distinctions in a sign code require reading the sign to determine if the distinction applies, the code is content based, any content neutral justifications for the distinctions are irrelevant to the determination of content neutrality and strict scrutiny applies. Moreover, a code justified by aesthetics and traffic safety will not survive strict scrutiny if it places more lenient restrictions on political or ideological signs than it places on temporary directional signs—because no difference exists between these categories of signs in terms of their impact on aesthetics and traffic safety.

In so holding, the Court rejected several theories the Ninth Circuit—as well as various amici including the United States—had relied upon to support the conclusion that the code was content neutral. First, the Court explained that the Ninth Circuit’s and amici’s reliance on *Ward*¹⁸ was misplaced because the question of whether a regulation has a neutral justification is irrelevant when the regulation is content based on its face.¹⁹ The Court characterized the question of whether a regulation “draws distinctions based on the message

a speaker conveys”²⁰ as “the crucial first step in the content-neutrality analysis.”²¹ Only if the answer at the first step is “no” does the analysis move to the second step, which asks whether a facially content-neutral law is still content based as a result of its content-based justification or adoption by the government “because of disagreement with the message.”²² Thus, the Court resoundingly rejected the notion that “an innocuous justification” can transform a facially content-based sign code into one that is content neutral.²³

Second, the Court rejected the Ninth Circuit’s reasoning that the content neutrality analysis “should be applied flexibly with the goal of protecting viewpoints and ideas from government censorship or favoritism.”²⁴ This reasoning, the Court explained, erroneously equates with speech regulation generally a particularly egregious subset of speech regulation—that is, regulation of speech based on “the specific motivating ideology or the opinion or perspective of the speaker.”²⁵ In doing so, the Court admonished the Ninth Circuit’s failure to recognize the well-established application of the First Amendment to speech regulation that targets a specific subject matter—such as political speech generally—as opposed to a specific perspective.²⁶

Rejecting classification of codes that distinguish based on function alone as content neutral, the Court explained that “[s]ome facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose,” but “[b]oth are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.”²⁷ Citing *Ward*, the Court explained that there are two categories of laws that are content based—those that are content based on their face including those that regulate speech by its function or purpose, and those that cannot be “‘justified without reference to the content of the regulated speech’ or that were adopted by the government ‘because of disagreement with the message [the speech] conveys.’”²⁸ Content-based regulations of speech are subject to strict scrutiny, and, where the regulation is content-based on its face, the government’s justifications or purposes for enacting the regulation are irrelevant to the determination of whether it is subject to strict scrutiny.

Finally, the Court rejected on factual and legal grounds the Ninth Circuit’s characterization of the sign code’s distinctions as “turning on the content-neutral elements of who is speaking through the sign and whether and when an event is occurring.”²⁹ As a factual matter, the Court observed that the Town of Gilbert’s distinctions were not speaker based, but rather categorized by message type—political, ideological or directional—and the applicable category depended on the content of the message, not the identity of the speaker. As a legal matter, the Court observed in dicta that “the

fact that a distinction is speaker based does not... automatically render the distinction content neutral." Rather, "[c]haracterizing a distinction as speaker based is only the beginning—not the end—of the inquiry." Indeed, "speech restrictions based on the identity of the speaker are all too often simply a means to control content."³⁰

The Court emphasized three guiding principles that compelled the result. First, a content-based restriction on speech is subject to strict scrutiny regardless of the government's motive and thus "an innocuous justification cannot transform a facially content-based law into one that is content neutral."³¹ Second, "the First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic" and thus the mere fact that a law is viewpoint neutral does not insulate it from strict scrutiny.³² Third, whether a law is speaker-based or event-based makes no difference for purposes of determining whether it is content-based.³³

The Alito Concurrence: An Attempt to Stave Off the Sign Code Apocalypse

Justice Alito, joined by Justices Sotomayor and Kennedy, joined the majority opinion and wrote separately to "add a few words of further explanation."³⁴ In an apparent attempt to assuage fears that the Court's decision is a harbinger of the sign code apocalypse, the Alito concurrence explains that certain distinctions between signs are content neutral and provides a non-exhaustive list of sign regulations that would not trigger strict scrutiny, including: (1) regulations that distinguish between free-standing versus attached signs, (2) regulations of electronic signs with content that changes, and (3) regulations of the placement of signs on public versus private property or on- versus off-premises signs.

But, puzzlingly, the list of content-neutral examples also includes signs advertising a one-time event. As the Kagan concurrence discussed below points out, this example is in conflict with the majority opinion—an opinion that the Alito concurrence joined with respect to the result and reasoning. Under the majority's reasoning, regulations that target one-time event signs are content based. Indeed, how would one know that a particular sign was covered by the regulation without reading the sign—and this simple, literal test is the majority test for content-based.

Given that the Alito concurrence is inconsistent with the majority reasoning and does not bind the lower courts, its examples of content neutral regulations may provide cold comfort to municipal officials, attorneys and planners. At the very least, given the tensions between the majority opinion and Alito concurrence,

it would seem that, to the extent municipalities intend to rely on the concurrence's list of examples of content-neutral sign categories, they should do so cautiously.

The Kagan Concurrence: Bad Facts Make Bad Law

Justices Ginsburg, Breyer, and Kagan rejected the notion that a content-based regulation must necessarily trigger strict scrutiny, and concurred only in the judgment. The Kagan concurrence agrees that the Town of Gilbert regulation was invalid, but warns that the majority approach will lead to either a watering down of strict scrutiny review or courts invalidating many democratically enacted laws. Echoing the warnings of amici the American Planning Association, the Kagan concurrence recognizes that as a result of the Court's decision many municipalities will have to repeal many sign regulations.

In contrast to the literal approach adopted by the majority and endorsed by the Alito concurrence, the Kagan concurrence takes a functional approach, observing that the purpose underlying First Amendment protection simply is not implicated by many categorical sign codes. Rather, the Kagan concurrence argues that regulation of signs by function, even when ascertaining a sign's function requires reading the sign, does not threaten the uninhibited marketplace of ideas. Under the majority's simple, literal test, warns Kagan, the Court will "find itself a veritable Supreme Board of Sign Review."³⁵ The Kagan concurrence also criticizes that majority for ignoring the last fifty years of sign code jurisprudence, and, indeed, the only sign code case cited by the majority opinion is *City of Ladue v. Gilleo*.³⁶

But, bad facts can certainly make bad law, and according to the Kagan concurrence the Town of Gilbert sign ordinance "does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test."³⁷ Like many municipal codes, the Town's sign code banned outdoor signs without a permit and created exceptions for specific sign types. However, the range of those exceptions was, as conceded by the Town's counsel at oral argument, "silly."³⁸ Town of Gilbert's code created 23 exemptions to the outdoor sign ban for specific types of signs and placed varying restrictions on the signage depending on which exemption it fell into. For example, the law exempted "temporal directional signs relating to a qualifying event," but placed more severe restrictions on these signs than "ideological signs" or "political signs." Temporary directional signs were required to be "no larger than six square feet. They may be placed on private property or on a public right-of-way, but no more than four signs may be placed on a single property at any time. And, they may be displayed no more than 12 hours before the 'qualifying event' and no more than 1 hour afterward."

The Breyer Concurrence: A Regulatory Apocalypse All Round

In addition to joining the Kagan concurrence, Justice Breyer wrote a concurrence in which he warned not only of the invalidating effect of the Court's approach on municipal sign ordinances, but also on a host of other regulations that require reading to determine the applicability or enforcement of the regulation. According to Justice Breyer, the Court's all-or-nothing approach to content neutrality casts a net that will encompass a wide range of regulations including regulations of airplane warnings, drug warnings, securities regulations, energy conservation labeling, and—citing a New York example—signs at petting zoos.³⁹

Conclusion

The key holding in *Reed* in terms of impact on municipal authority to regulate signs is the holding that categorical sign ordinances are content-based. It follows from *Reed* that sign ordinances that regulate signs based on their function—such as directional signs, event signs, and advertisements—like those on the books of many New York municipalities, are content-based and therefore subject to strict scrutiny. The case leaves open the question of whether speaker-based regulations—i.e., ordinances that distinguish between who is giving the message (e.g., signs for gas stations)—are subject to strict scrutiny. The case also leaves open how sign ordinance cases not cited in *Reed* will be applied in the future. Did the Court implicitly abrogate them, or, will lower courts attempt to synthesize *Reed* and the pre-*Reed* sign ordinance jurisprudence? Will much of *Reed* be treated as dicta such that the line of sign cases not cited remains good law with *Reed* being narrowly applied to codes that impose a laundry list of different requirements to different types of signs, as Town of Gilbert's code did.

The sweeping invalidation of legitimate municipal exercises of the police power that would follow from broad application of *Reed* suggests that lower courts are more likely to apply *Reed* narrowly, relegating to dicta those portions of the opinion that cannot be synthesized with prior sign ordinance cases that took a more functionalist approach. For example, two weeks after *Reed* was decided the Central District of California ruled in *California Outdoor Equity Partners v. City of Corona* that "*Reed* does not concern commercial speech, let alone bans on off-site billboards," observing that "[t]he fact that *Reed* has no bearing on this case is abundantly clear from the fact that *Reed* does not even cite *Central Hudson*, let alone apply it."⁴⁰ Similarly, in *Citizens for Free Speech v. County of Alameda*, the Northern District of California distinguished *Reed*, holding that a sign ordinance that applied to commercial speech only was content-neutral despite the fact that the determination of whether a sign is commercial

requires reading the sign. Citing the court's duty to interpret zoning ordinances as constitutionally valid if fairly possible, the court held that "*Reed* has no applicability to the issues before the Court" because *Reed* was specifically concerned with a sign code's application of different restrictions—including temporal and geographic restrictions—to permitted signs based on their content" and the plaintiffs in *Citizens for Free Speech* had "not identified any distinct temporal or geographic restrictions on different categories of permitted signs [the code at issue] based on those signs' content."⁴¹ In a later decision, the same court also concluded that "[b]ecause *Reed* does not abrogate prior case law holding that laws which distinguish between on-site and off-site commercial speech survive intermediate scrutiny, the Court holds that its prior analysis continues to control the fate of plaintiff's First Amendment claim."⁴²

That said, many municipalities make functional distinctions between sign types that can only be applied by reference to the content of the signs, and, according to the two-step test laid out in the majority opinion, such sign ordinances are subject to strict scrutiny. Indeed, the sign ordinances in two other cases the Court vacated and remanded following *Reed* will probably appear familiar to many municipal attorneys and planners.⁴³ These cases involved a zoning ordinance that governs the placement and size of signs with various restrictions depending on whether a sign is categorized as a "temporary sign," "freestanding sign," or an "other than freestanding sign,"⁴⁴ and a sign ordinance that, in essence, allows more political lawn signs than non-political lawn signs in residential districts.⁴⁵ In each of these cases, the lower court had concluded that the regulation, although content-based on its face, was justified by subordinating valid governmental interests, and was therefore subject to intermediate scrutiny.⁴⁶ But, under the first step of the *Reed* analysis, a content-neutral justification is irrelevant and each of these ordinances is subject to strict scrutiny.

Moreover, regardless of whether New York courts ultimately apply *Reed* narrowly or broadly, uncertainty regarding the scope of *Reed* is likely to result in more claims that sign ordinances—as well as other government regulations that distinguish based on categories that can be discerned only by reading or listening—are subject to strict scrutiny. Indeed, the Seventh Circuit recently extended the holding of *Reed* to an ordinance that prohibited panhandling⁴⁷ and the Fourth Circuit recently applied *Reed* to an anti-robocall statute that carved out exemptions for debt collectors among others, concluding that the statute failed under *Reed*'s first step "because it makes content distinctions on its face," and, as a result, strict scrutiny applied whether or not the government's justification for the statute was content-neutral.⁴⁸

Attachment C: Referral Responses

From: [PCMS Corporate Office](#)
To: [Hans Friedel](#)
Subject: FW: Lone Tree referral request for proposed updates to Sign Standards. Please respond by August 15, 2016:
Lone Tree Development Referrals
Date: Monday, August 15, 2016 8:25:59 AM

Dear Hans:

Please see comments below from the Terra Ridge at Lone Tree Homeowners Association Board of Directors regarding this referral request.

Thank you
Jessica Moser
PCMS

- *The City would be advised that under the proposed revisions of section 16-29-30 (4) to exempt a sign from a permit because it would be shown & approved under a site plan, that the governing body should utilize the sign code criteria, not site plan criteria for determining compatibility of size, scale and location. Due to the recent City of Gilbert, Az - Supreme court ruling, avoid making any determination to approve or deny based on sign content.*

From: information@cityoflonetree.com [<mailto:information@cityoflonetree.com>]

Sent: Monday, August 01, 2016 9:55 AM

To: corpoffice@pcms.net

Subject: Lone Tree referral request for proposed updates to Sign Standards. Please respond by August 15, 2016: Lone Tree Development Referrals

There is a City of Lone Tree referral request for your review. Referral comments are due back by August 15, 2016.

This is a referral request for proposed updates to the [Lone Tree Municipal Code, Chapter 16, Zoning, Article XXIX - Sign Standards, Project RG16-53](#). The proposed changes are red-lined and consist of consolidating and simplifying categories, updating standards, and updating definitions.

Please forward any comments to hans.friedel@cityoflonetree.com by August 15, 2016.

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From: [Olson - DNR, Justin](#)
To: [Hans Friedel](#)
Cc: [Eliza Hunholz - DNR](#); [Suzie Cooper - DNR](#); [Matt Martinez - DNR](#)
Subject: Lone Tree Land Use: Municipal Code, Chapter 16 - Zoning, Article XXIX - Sign Standards (Project RG16-53)
Date: Monday, August 01, 2016 1:12:24 PM

Mr. Friedel-

Thank you for the opportunity to comment on the referral request for the proposed updates to the Lone Tree Municipal Code Sign Standards under Project RG16-53. Our goal in responding to land use proposals such as this is to provide complete, consistent, and timely information to all entities who request comment on matters within our statutory authority.

Upon review of the proposed referral request, Colorado Parks and Wildlife (CPW) has no objections to the updates moving forward as planned for approval.

Please do not hesitate to contact us about ways to continue developing and managing your properties in order to maximize wildlife value while minimizing potential conflicts. If you have any further questions, please contact me at [\(303\) 291-7131](tel:3032917131).

Justin Olson
District Wildlife Manager
Littleton District - Area 5



P 303.291.7131 | F 303.291.7114
6060 Broadway, Denver, CO 80216
justin.olson@state.co.us | www.cpw.state.co.us

From: [Jeremy Hirsch](#)
To: [Hans Friedel](#)
Subject: RE: Lone Tree referral request for proposed updates to Sign Standards. Please respond by August 15, 2016: Lone Tree Development Referrals
Date: Monday, August 15, 2016 11:01:07 AM

Hans,

Our office has “no comments” regarding this project.

Thank you,

Jeremy Hirsch
GIS Specialist II | Douglas County Assessor
301 Wilcox Street | Castle Rock, CO 80104
303-660-7450 ext. 4228 | 303-479-9751 Fax

From: Marian Woodward
Sent: Tuesday, August 02, 2016 7:49 AM
To: Jeremy Hirsch; Brooke Decker
Subject: FW: Lone Tree referral request for proposed updates to Sign Standards. Please respond by August 15, 2016: Lone Tree Development Referrals

Marian A. Woodward
Assessment Administrator
Douglas County Assessor
303.663.6201

From: information@cityoflonetree.com [mailto:information@cityoflonetree.com]
Sent: Monday, August 01, 2016 9:55 AM
To: Marian Woodward
Subject: Lone Tree referral request for proposed updates to Sign Standards. Please respond by August 15, 2016: Lone Tree Development Referrals

There is a City of Lone Tree referral request for your review. Referral comments are due back by August 15, 2016.

This is a referral request for proposed updates to the [Lone Tree Municipal Code, Chapter 16, Zoning, Article XXIX - Sign Standards, Project RG16-53](#). The proposed changes are red-lined and consist of consolidating and simplifying categories, updating standards, and updating definitions.

Please forward any comments to hans.friedel@cityoflonetree.com by August 15, 2016.

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<http://cityoflonetree.com/newsletter/one.aspx?>

From: [Jeremy Hirsch](#)
To: [Hans Friedel](#)
Subject: RE: Lone Tree referral request for proposed updates to Sign Standards. Please respond by August 15, 2016: Lone Tree Development Referrals
Date: Monday, August 15, 2016 11:01:07 AM

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Thank you,

Jeremy Hirsch
GIS Specialist II | Douglas County Assessor
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Marian A. Woodward
Assessment Administrator
Douglas County Assessor
303.663.6201

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Please forward any comments to hans.friedel@cityoflonetree.com by August 15, 2016.

To unsubscribe to this newsletter, please go to:

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From: [Linda Langewisch](#)
To: [Hans Friedel](#)
Subject: RE: Lone Tree referral request for proposed updates to Sign Standards. Please respond by August 15, 2016:
Lone Tree Development Referrals
Date: Thursday, August 25, 2016 3:33:03 PM

Good Afternoon:

The RidgeGate West Village HOA has no comments for:

[Lone Tree Municipal Code, Chapter 16, Zoning, Article XXIX - Sign Standards, Project RG16-53.](#)

Thank you,

Linda Langewisch, CAM, CMCA

Community Manager

MSI, LLC

6892 So. Yosemite Court Suite 2.101

Centennial, Co 80112

720.974.4273

Fax 303.751.7396

LLangewisch@msiho.com

From: Linda Langewisch
Sent: Monday, August 01, 2016 10:12 AM
To: Dan Clawson- BH (dbclawson1946@gmail.com) <dbclawson1946@gmail.com>; 'Dean Bowman' <dmb7800@yahoo.com>; Eric Hartman <renaissancerwvca@gmail.com>; Jim Olmstead- AL (jimolmstead@hotmail.com) <jimolmsted@hotmail.com>; Jon Gilbertson <jon.gilbertson@gmail.com>; Marilee Wing <parksidesac@centurylink.net>; Steve Crawley <flyerman51@centurylink.net>
Subject: FW: Lone Tree referral request for proposed updates to Sign Standards. Please respond by August 15, 2016: Lone Tree Development Referrals

Good Morning:

Please review the attached referral re: signage in the community. Please have your comments back to me no later than Friday, August 5.

Thank you,

Linda Langewisch, CAM, CMCA

Community Manager

MSI, LLC

6892 So. Yosemite Court Suite 2.101

Centennial, Co 80112

720.974.4273

Fax 303.751.7396

LLangewisch@msiho.com

From: information@cityoflonetree.com [<mailto:information@cityoflonetree.com>]

Sent: Monday, August 01, 2016 9:55 AM

To: Linda Langewisch <llangewisch@msiho.com>

Subject: Lone Tree referral request for proposed updates to Sign Standards. Please respond by August 15, 2016: Lone Tree Development Referrals

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This is a referral request for proposed updates to the [Lone Tree Municipal Code, Chapter 16, Zoning, Article XXIX - Sign Standards, Project RG16-53](#). The proposed changes are red-lined and consist of consolidating and simplifying categories, updating standards, and updating definitions.

Please forward any comments to hans.friedel@cityoflonetree.com by August 15, 2016.

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From: [Jeff Sceili](#)
To: [Hans Friedel](#)
Subject: Lone Tree Municipal Code, Chapter 16, Zoning, Article XXIX - Sign Standards, Project RG16-53
Date: Tuesday, August 02, 2016 1:52:50 PM

Hans,

I do not have any comments for the sign standards document. Do you need a formal letter from me?

Thanks,

Jeff Sceili
Plan Reviewer

jeff.sceili@southmetro.org

Cell: 303-548-0233

Office: 720-989-2244

LSB: 720-989-2230



Life Safety Bureau
South Metro Fire Rescue
9195 East Mineral Avenue
Centennial, CO 80112
www.southmetro.org



Commission on
Fire Accreditation
International



URBAN DRAINAGE AND FLOOD CONTROL DISTRICT

Paul A. Hindman, Executive Director
2480 W. 26th Avenue, Suite 156B
Denver, CO 80211-5304

Telephone 303-455-6277
Fax 303-455-7880
www.udfcd.org

August 26, 2016

UDFCD Maintenance Eligibility Program Referral Review Comments

To: **Hans Friedel**
Project: **Proposed City Sign Standards**
Stream: **N/A**
UDFCD MEP Phase: **Design**
UD MEP ID: **103144/10000657**

Dear Hans,

This letter is in response to the request for our comments concerning the referenced project. We appreciate the opportunity to review this proposal. We have no objection to the proposed Sign Standards referred by the City.

Please feel free to contact me with any questions or concerns.

Sincerely,
Urban Drainage and Flood Control District

John M. Pflaum, P.E.
Floodplain Management Program