

Sign Code Update

Real Estate Signs

Managing Brokers Summit
October 23, 2019

Toby Stauffer, AICP, Senior Planner

Purpose of Sign Code Update

- Comply with *Reed v. Town of Gilbert, AZ*, 2015 Supreme Court ruling
- Remove conflicting and unclear regulations that are challenging to administer and enforce
- Provide for flexibility and creativity for different types of signs in areas of differing character
 - “One Size Fits All”
- Continue to regulate signs because of the impact they can have, positively or negatively, on community character

Legal Framework for Sign Regulation

“Congress shall make no law . . . abridging the freedom of speech” U.S. Const. 1st Amend., Applied to States via 14th Amend.

“No law shall be passed impairing the freedom of speech”

Art. 2, Sec. 10, Colo. Const.

- First Amendment protections apply to every sign
- Government regulation of signs is subject to heightened scrutiny by law
- Case law dictates much of how signs can be regulated
- Sign litigation is common, expensive, and risky

First Amendment Concepts

- Content or message neutrality
- Time, place or manner regulations
- Commercial vs. non-commercial speech
- Off-site vs. on-site signs
- Bans and exceptions
- Permits and prior restraints
- Vagueness and overbreadth

Reed v. Town of Gilbert, AZ

Reed v. Town of Gilbert, Ariz., 587 F.3d 966 (9th Cir. 2009), on remand, 832 F.Supp.2d 1070 (D. Ariz. 2011), affirmed, 707 F.3d 1057 (9th Cir. 2013), reversed and remanded, 135 S.Ct. 2218 (2015).

Reed v. Town of Gilbert, AZ

Factual Background

- Reed is pastor of Good News Presbyterian Church, which rents property at various community facilities in Gilbert
- Good News posts temporary signs around Gilbert to direct people to services rather than identifying its presence on the signs available to the property and controlled by its landlords
- Gilbert code enforcement staff issued notice of violation in 2005, after church's signs were posted outside of display time provided by the temporary religious event sign provisions

Reed v. Town of Gilbert, AZ

Gilbert Sign Code

- Section 4.402 required all signs to be permitted unless excepted by 4.402.D
- Section 4.402.D contained 23 exceptions to permit requirements including:
 - Political signs
 - Ideological signs
 - Temporary directional signs relating to a qualifying event

Reed v. Town of Gilbert, AZ

- Political Signs
 - unlimited number of signs up to 32 s.f.
 - no time limit before election - removal 10 days after
- Ideological Signs
 - Unlimited number/time for signs up to 20 s.f.
- Temporary Directional Signs Relating to a Qualifying Event (non-profit)
 - 6' x 6' sign allowed for 12 hrs before/1 hr after event
 - no more than 4 signs on any property (w/ owner consent)

Political Sign: "A temporary sign which supports candidates for office or urges action on any other matter on the ballot of primary, general or special elections relating to any national, state or local election."

Ideological signs: "Sign communicating a message or ideas for non-commercial purposes" (that is not also another sign type)

Temporary directional signs: Temporary sign "intended to direct pedestrians, motorists and other passersby to a qualifying event." Qualifying event is an event sponsored or hosted by religious, charitable, community service, educational, or other nonprofit organization.

Reed v. Gilbert: Majority Opinion

“On its face” Rule: If you have to read the message displayed to determine how a sign is regulated, then that regulation is content-based.

- A regulation that is “content-based” will be subject to *strict scrutiny*: compelling governmental interest and narrow tailoring
 - Compelling government interest: safety, hazards, property address
- A regulation that is “content-neutral” will be subject to *intermediate scrutiny*: significant/important governmental interest unrelated to suppression of speech, narrow tailoring, and ample alternative channels for communication
 - Significant/important government interest: preservation of character, prevent visual clutter
- The result is a shift in sign regulations to content-neutral instead of content-based

Time, Place, or Manner Regulations

- Maximum size/height
- Maximum number per
 - Lot or Building
 - Structure
- Specific sign locations
 - Corner lots
 - Setbacks or spacing
 - Zone districts
- Regulate materials, lighting, form
 - Internal/external lighting
 - Flashing/Animation
 - Neon
 - Materials/Colors
 - Monument/pole signs
 - Cabinet/channel letter
- Period of Use
 - How long a sign can be posted

Steamboat Springs: Existing Standards

- Real Estate signs are Exempt signs: allowed everywhere without permit
- ***Real estate sign.*** A sign located on property advertising the property for sale, lease, or rent.
 - 7 SF
 - 1 per lot
- ***Real estate sign, temporary.*** A sign generally used to advertise for open houses or similar real estate showings erected for a limited period of time.
 - 2 directional signs
 - 2 SF
 - 1 hr before an open house, removed 1 hr after the open house hours
 - May be located within the city right-of-way
 - 1 sign on property, 2 SF, 1 hr before, 1 hr after

Steamboat Springs: Existing Standards

- *Holiday signs.*

- Noncommercial signs temporarily displayed on civic, patriotic, and/or religious holidays
- No more than 30 days before or after the holiday

Holiday sign: no definition

- *On-site directional signs.*

- 1½ square feet
- 4 signs per property
- one sign per 10 parking spaces

Directional sign. Any on-site sign that directs the necessary movement of pedestrians or vehicular traffic without reference to the name of the business, products sold or services offered. Directional signs also include signs locating public facilities such as telephones and restrooms.

- *Political campaign signs.*

- shall not be located within the city right-of-way
- removed no later than 7 calendar days from the date of election

Political sign. A sign used in connection with a local, state or national political issue, election or referendum.

Proposed Standards: Temporary Signs

- Small Yard Sign
- Large Yard Sign
- Banner



Small Yard Sign

- 2 per lot
- Residential context areas: 2 per lot or 2 per neighborhood
 - In a neighborhood there may be signs on an individual lot or signs on the common area, but not both.
- 4 SF per sign
- 8 SF max per lot
- 3 FT max sign height



Small Yard Sign

Policy Changes

- Sign size: 7 SF to 4 SF
- Amount: 1 to 2
- Height: 9 FT to 3 FT
- Temporary Real Estate Signs: removed
 - Open House Signs
 - Time restrictions removed
 - 2 SF to 4 SF
- Private Signs not allowed in the ROW

Other Communities

- **Durango** (2019)
 - Temporary sign, 12 SF, not allowed in the ROW
- **Silverthorne** (2017)
 - Temporary sign, 12 SF, not allowed in the ROW
- **Routt County** (2019)
 - Site sign, 12 SF, no private signs allowed in the ROW
- **FRISCO** (not updated recently, being reviewed by town attorney)
 - RE signs, allowed on property for sale or rent, signs in ROW for 10 hrs
- **Breckenridge** (2019)
 - Temporary sign, 1 per property, 4 SF, on property that's for sale
 - Up to 3 off-premises signs, allowed in ROW

Take Home Points

- Sign regulations have an important purpose in managing and maintaining community character.
- Content-based sign regulations are subject to high scrutiny.
- Governments usually lose in a lawsuit that infringes on First Amendment rights.
- Governments will choose to regulate conservatively, with a content-neutral code, to ensure there are some regulations and that those regulations can withstand scrutiny.
- A community and its decision makers can choose to regulate signs with the potential for more risk, by using content-based language.
- These standards are proposed, there are opportunities for comment

Thank You

Toby Stauffer, AICP, Senior Planner

tstauffer@steamboatsprings.net

970-871-8280

Rebecca Bessey, AICP, Planning & Community Development Director

rbessey@steamboatsprings.net

970-871-8202