Reed v. Town of Gilbert (June 2015)

The information in this PowerPoint was taken from a legislative update presentation given in 2015 and has not been updated.

Reed v. Town of Gilbert (June 2015)

- Sign ordinance prohibited outdoor signs without a permit, with exemptions for 23 categories of signs, including:
  - Ideological signs ("communicating message or ideas") – up to 20 sf, no placement or time restrictions
  - Political signs ("designed to influence the outcome of an election") – up to 32 sf, placed 60 days before and 15 days after election
  - Temporary directional signs ("directing the public to a qualifying event," generally a meeting of a nonprofit group, including churches) – 4 signs up to 6 sf, placed 12 hours before the event and one hour after
- Early each Saturday, the Good News Community Church would post temporary directional signs throughout the town with church name and the time and location of services. Signs were removed by midday each Sunday.

Reed v. Town of Gilbert (June 2015)

CITY OF HELENA
Est. 1881

Reed, cont.

- The Town cited the Church for exceeding display time limits and failing to include an event date on the signs. Church filed suit against the Town for violation of free speech.
- District Court and 9th Circuit found for Town. "Cursory examination" of sign to determine which provisions of ordinance apply is not the same as "synthesizing the expressive content of the sign" in order to regulate it. "Content-neutral" means based either on the viewpoint or subject-matter of the speech. If you can justify the regulation without reference to the content, then content-neutral. ***SPLIT AMONG CIRCUITS ON THIS TEST:***
  - 1, 2, 8, 11 – if you have to read the text, its content-based
  - 4, 6, 9 – motive is test for content-based
  - 3 – context-sensitive test

Reed, cont.

- US Supreme Court (Thomas) reverses 9th Circuit, applying the more rigid test – application of different requirements for the different categories of signs is necessarily content-based and therefore subject to strict scrutiny.

"Strict scrutiny, like a Civil War stomach wound, is generally fatal."

  - Is regulation NECESSARY to further a COMPELLING government interest? and
  - Is regulation NARROWLY TAILORED to meet that interest?
  - Government's motive, lack of animus, or content-neutral justification **doesn't matter**.

Reed, cont.

- If content-neutral on its face, then can look to motive, animus, or lack of justification. **Intermediate scrutiny**:
  - Is regulation NARROWLY TAILORED to further a SIGNIFICANT government interest?
  - Does the regulation LEAVE OPEN AMPLE ALTERNATIVE CHANNELS for speech?

Reed, cont.

- If the Church had decided to support a political candidate, it could have put up larger signs, in more locations, and kept them up longer than signs inviting people to attend its services.

- “If a sign informs its reader of the time and place a book club will discuss John Locke’s Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke’s followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke’s theory of government.”

Reed, cont.

- Justice Alito concurring opinion provides lists of rules that would not be considered content-based:
  - regulating the size of signs
  - regulating the locations in which signs may be placed (may distinguish between freestanding and attached signs);
  - distinguishing between lighted and unlighted signs;
  - distinguishing between signs with fixed messages and electronic changeable copy signs;
  - distinguishing between the placement of signs on private and public property, or between commercial and residential property;

Reed, cont.

- Alito concurrence, continued:
  - distinguishing between on-premises and off-premises signs;
  - restricting the total number of signs allowed per mile of road;
  - imposing time restrictions on signs advertising a one-time event;**
  - Government putting up its own directional, historic, or scenic signs

Reed, cont.

- Justice Kagan's concurring opinion: Of course "imposing time restrictions on signs advertising a one-time event" is content-based –that's exactly what the majority opinion says in *Reed*.

- NOTE: this approach to content-neutrality does not yet apply to:
  - commercial speech
  - speech in limited or non-public forums
  - obscenity,
  - defamation, libel, and slander.

Where to go from here …???

- Review your sign ordinance for all content-references (prohibitions, exemptions, permit requirements, and differences) in a non-commercial context. How do you treat:
  - Political signs?
  - Ideological signs?
  - Direction signs?
  - Special event signs?
  - Temporary signs?
  - Address signs?
  - Others???

Where to go from here …???

- Base regulations on site activity/zoning distinctions, not content of the sign. Ex: Allow for minimum amount of non-commercial signage based on zones (by size, location, lighted, electronic, total amounts, type). Then:
  - Allow an extra sign on-site when property is for sale or rent (for sale or rent)?
  - Allow for an additional sign, located within certain amount of distance from street, intersections, and driveways (directional signs)?
  - Allow one small additional sign placed on front of building, on either side of the mailbox, or on a post (address signs)?
  - Provide process for limited-time sign permit, with date sticker issued by government (special/temporary event signs, speech is government's speech)?

Where to go from here …???

- Commercial content? Metromedia says can be treated differently, Reed's attorney said the same at oral argument. At least for now???

  - Look to ordinances in cities located in the 1st (New England), 2nd (New York), 8 (Dakotas), or 11th circuit courts (Florida, Georgia) for guidance

- Informal committee to review sample ordinances and brainstorm solutions?

CHAPTER 25-10. - SIGN REGULATIONS.

ARTICLE 1. - GENERAL PROVISIONS.

§ 25-10-1 - PURPOSE AND APPLICABILITY.

(A) This chapter establishes a comprehensive system for the regulation of signs within the City of Austin and its extraterritorial jurisdiction, to serve the following purposes:

(1) To protect the health, safety, and general welfare of the City and its residents and to implement the policies of the City's Comprehensive Plan.

(2) To allow adequate opportunity for free speech in the form of messages or images displayed on signs, while balancing that interest against public safety and aesthetic concerns impacted by signs.

(3) To ensure that the design, location, construction, illumination, installation, repair, and maintenance of signs:

(a) Does not interfere with traffic safety or otherwise endanger public safety;

(b) Enhances and protects the aesthetic value of the City by reducing visual clutter that is potentially harmful to property values, economic development, and quality of life; and

(c) Is consistent with the character of districts in which the signs are located, including areas specially designated for historic, scenic or architectural value.

(4) To protect the safety and efficiency of the City's transportation system by reducing confusion and distractions to pedestrians and motorists, while enhancing motorists' ability to see pedestrians, obstacles, other vehicles, and traffic signs.

(5) Recognizing the unique impact of off-premise advertising on public safety, visual aesthetics, and quality of life, to restrict new off-premise signs and minimize the impact of existing off-premise signs.

(6) To prevent the inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial speech over any other non-commercial speech based on its content.

(B) The requirements of this chapter apply to signs within the planning jurisdiction.

Source: Section 13-2-850, 13-2-851(a), and 13-2-851(d); Ord. 990225-70; Ord. 031030-11; Ord. 031211-11; Ord. No. 20170817-072 , Pt. 1, 8-28-17.

§ 25-10-2 - NONCOMMERCIAL MESSAGE SUBSTITUTION.

(A) Signs containing noncommercial speech are permitted anywhere that signs regulated by this chapter are permitted, subject to the same regulations applicable to the type of sign used to display the noncommercial message. No provision of this chapter prohibits an ideological, political, or other noncommercial message on a sign otherwise allowed and lawfully displayed under this chapter.

(B) The owner of any sign allowed and lawfully displayed under this chapter may substitute non-commercial speech in lieu of any other commercial or non-commercial speech, with no permit or other approval required from the City solely for the substitution of copy.

(C) This section does not authorize the substitution of an off-premise commercial message in place of a noncommercial or on-premise commercial message.

Source: Ord. No. 20170817-072 , Pt. 1, 8-28-17

§ 25-10-3 - COMPLIANCE REQUIRED.

(A) A person may not install, move, structurally alter, structurally repair, maintain, or use a sign except in accordance with the provisions of this chapter and other applicable Code provisions.

(B) The primary beneficiary of a sign installed, moved, structurally altered, structurally repaired, maintained, or used in violation of this Code is presumed to have authorized the installation, movement, structural alteration, structural repair, maintenance, or use of the sign in violation of this Code.

(C) A person who violates Subsection (A) or (B) commits an offense.

Source: Section 13-2-851; Ord. 990225-70; Ord. 031211-11; Ord. No. 20170817-072 , Pt. 1, 8-28-17.

§ 25-10-4 - DEFINITIONS.

In this chapter:

(1) CORE TRANSIT CORRIDOR means a roadway designated under "Core Transit Corridors" in Article 5 of Chapter 25-2, Subchapter E (*Design Standards and Mixed Use*).

(2) FLAG means a piece of fabric attached to a flag pole or other support on one side, where the length at right angles to the support is at least as long as the length of the attached side.

(3) FUTURE CORE TRANSIT CORRIDOR means a roadway designated under "Core Transit Corridors, Future" in Article 5 of Chapter 25-2, Subchapter E (*Design Standards and Mixed Use*).

(4) FREESTANDING SIGN means a sign not attached to a building, but permanently supported by a structure extending from the ground and permanently attached to the ground.

(5)

MAINTENANCE means the cleaning, painting, repairing, or replacing of defective parts of a sign in a manner that does not alter the basic copy, design, or structure of the sign, but does not include changing the design of the sign's support construction, changing the type of component materials, or increasing the illumination.

(6) MOBILE BILLBOARD means a sign installed or displayed on a motorized vehicle operating in the public right-of-way for the purpose of advertising a business or entity that is unrelated to the owner of the vehicle's primary business. The term does not include a sign that is displayed or installed on:

(a) a non-motorized vehicle, including but not limited to pedi-cabs;

(b) a bus that is used primarily for the purpose of transporting multiple passengers;

(c) a taxicab or transportation network provider operator, if the sign complies with the requirements of City Code Section 13-2-488 (*Advertising on Taxicabs Permitted*); or

(d) a vehicle operated in the normal course of the vehicle owner's business, if the sign contains advertising or identifying information directly related to the business and is not used to display advertising that is unrelated to the business.

(7) MULTI-TENANT CENTER SIGN means a sign associated with two or more uses with common facilities.

(8) NONCONFORMING SIGN means a sign that was lawfully installed at its current location but does not comply with the requirements of this chapter.

(9) OFF-PREMISE SIGN means a sign that displays any message directing attention to a business, product, service, profession, commodity, activity, event, person, institution, or other commercial message which is generally conducted, sold, manufactured, produced, offered, or occurs elsewhere than on the premises where the sign is located. For purposes of this definition, any portion of a lawfully permitted special event where public streets have been closed to traffic in accordance with Title 14 (*Use of Streets and Public Property*) shall be considered a single premises.

(10) ON-PREMISE SIGN means a sign that is not an off-premise sign.

(11) PROJECTING SIGN means a wall sign that extends over street right-of-way for a distance of more than 18 perpendicular inches from the building facade.

(12) PROJECTED SPECIAL EVENT SIGN means an image or series of images displayed on a building façade and conveyed to the building façade via beams of light in connection with a special event.

(13) PUBLIC RIGHT-OF-WAY means land dedicated or reserved for street right-of-way, utilities, or other public facilities.

(14)

RIGHT-OF-WAY INSTALLATION means a legally permitted bicycle kiosk, bus stop, or transit facility that is located in the public right-of-way.

(15) ROOF SIGN means a sign installed over or on the roof of a building.

(16) SEARCHLIGHT SIGN means a sign consisting of a bright light source that projects a beam.

(17) SIDEWALK SIGN means a sign located on a sidewalk, either within street right-of-way or on private property within a unified development.

(18) SIGN means a display surface, structure, light device, banner, plaque, poster, billboard, pennant, figure, painting, drawing, flag, or other thing, whether mounted on land, air, or water, that is designed, intended, or used to display or draw attention to a communicative visual or graphic image, whether or not the image includes lettering, and that is visible from any portion of the public right-of-way open to vehicular or pedestrian traffic. A sign includes both on- and off-premise signs, including billboards, and any moving part, lighting, sound equipment, framework, background material, structural support, or other part thereof. Notwithstanding the generality of the foregoing definition, the following are not signs for purposes of this chapter:

(a) An image displayed on the interior wall of a building;

(b) Decorative or architectural features of buildings or onsite landscape features which do not include lettering, trademarks, or moving parts and which do not perform a communicative function;

(c) Foundation stones and cornerstones which are permanent in nature and incapable or not intended for modification once installed;

(d) Grave markers, grave stones, headstones, mausoleums, shrines, and other markers of the deceased;

(e) Identifying marks on tangible products that customarily remain attached to the product even after sale;

(f) Merchandise on public display and presently available for purchase on-site;

(g) News racks and newsstands;

(h) Items or devices of personal apparel, decoration, or appearance, including tattoos, makeup, wigs, costumes, masks, or similar accessories, other than commercial mascots or hand-held placards or appliances worn for the principal purpose of holding a placard; or

(i) Vending machines, product dispensing devices, and automated product intake devices which do not display off-premise commercial messages, including depositories for recycled materials, slots for returning lent books, media, or other material, laundry boxes, and similar depositories.

(19) SPECIAL EVENT means an event that:

(a) has 100 or more attendees per day at a city facility, other than the Austin Convention Center, Long Center, City Hall, or Palmer Events Center;

(b) impacts a city street, sidewalk, alley, walkway, or other city public right-of-way other than as permitted under Chapter 14-6 (*Temporary Street Closure*); or

(c) is temporary, involves 100 or more attendees per day, and

(i) is inconsistent with the permanent use to which the property may legally be used, or the occupancy levels permitted on the property; and

(ii) includes one of the following:

- Set up of temporary structures including, but not limited to tents, stages, or fences;
- Sound equipment, as defined in Section 9-2-1 (Definitions); or
- Consumption of food or alcohol.

(20) STREET BANNER means a fabric sign hung over a street maintained by the City.

(21) STREET RIGHT-OF-WAY means the entirety of a public street right-of-way, including the roadway and pedestrianway.

(22) WALL SIGN means a sign attached to the exterior of a building or a freestanding structure with a roof but not walls.

Source: Sections 13-2-850, 13-2-854(a), 13-2-869(b), 13-2-873(a), 13-2-874(a), and 13-2-875(a); Ord. 990225-57; Ord. 990225-70; Ord. 031030-11; Ord. 031211-11; Ord. 20080605-076; Ord. 20090827-032; Ord. 20100610-064; Ord. 20140213-088, Pt. 2, 2-24-14 ; Ord. No. 20140828-146, Pt. 1, 9-8-14 ; Ord. No. 20170817-072 , Pts. 1, 2, 8-28-17.

§ 25-10-5 - SIGN AREA CALCULATIONS.

(A) For a wall sign, the sign area is the lesser of:

(1) the area of the smallest rectangle within which the face of the sign can be enclosed; or

(2) the smallest area of not more than three contiguous rectangles enclosing different sections of the sign.

(B) For a single sign having two faces with only one face visible from any point, the sign area is measured using only one face.

(C) For a three-dimensional sign, the sign area is the smallest rectangle within which the largest silhouette of the sign can be enclosed.

(D) Sign area includes a sign apron or similar feature and an area displaying a sign company name or symbol. Sign area does not include a supporting structure, pole cover, or landscape feature unless used to convey a message.

(E) A door surface sign is not included in calculating maximum allowable sign area.

(F) For a sign on a corner site whose allowable sign area is based on linear feet of street frontage, the maximum sign area is calculated using only the single largest street frontage.

Source: Sections 13-2-885 and 13-2-867; Ord. 990225-70; Ord. 031211-11; Ord. 040205-29; Ord. No. 20170817-072 , Pt. 1, 8-28-17.

§ 25-10-6 - CLEARANCE AND HEIGHT CALCULATIONS.

(A) Sign clearance is calculated by measuring the smallest vertical distance between the grade of the adjacent street pavement or curb and the lowest point of the sign. Sign framework and embellishment are included in the measurement, and sign supports are excluded.

(B) Sign height is calculated by measuring the vertical distance above grade, street pavement, or building facade to the highest point of the sign.

Source: Section 13-2-850; Ord. 990225-70; Ord. 031211-11; Ord. No. 20170817-072 , Pt. 1, 8-28-17.

§ 25-10-7 - SCENIC ROADWAYS DESCRIBED.

The following are scenic roadways:

(1) Arterial 8 (Adelaide Drive/Forsythia Drive);

(2) Barton Springs Road;

(3) Loop 1 (MoPac);

(4) Loop 360 (Capital of Texas Highway), south of US 183;

(5) RM 620, from SH 71 to Anderson Mill Road (FM 2769);

(6) RM 2222, west of MoPac only;

(7) RM 2244;

(8) Lake Austin Boulevard;

(9) West Cesar Chavez Street;

(10) Riverside Drive;

(11) Spicewood Springs Road, from Mesa Drive to Loop 360;

(12) William Cannon Drive, from Brodie Lane to Southwest Parkway;

(13) Escarpment Boulevard, from William Cannon Drive to Arterial 11 (SH 45);

(14) Arterial 5 (McKinney Falls Parkway) from US 183 to William Cannon Drive;

(15) FM 973 from SH 71 to US 183;

(16) SH 71 east of IH-35;

(17) US 183 south of SH 71;

(18) Cameron Road, north of US 183;

(19) Parmer Lane, except for the area between Loop 1 (MoPac) and IH-35;

(20) Stassney Lane, east of IH-35;

(21) Slaughter Lane;

(22) Old Spicewood Springs Road, from Loop 360 to Old Lampasas Trail; and

(23) SH 130.

Source: Section 13-2-1; Ord. 990225-70; Ord. 000511-110; Ord. 031211-11; Ord. 20060112-058; Ord. No. 20170817-072 , Pt. 1, 8-28-17.

ARTICLE 2. - ENFORCEMENT.

§ 25-10-21 - ENFORCEMENT AND IMPLEMENTATION.

The building official shall:

(1) enforce and implement this chapter;

(2) issue permits and collect fees required by this chapter;

(3) conduct inspections to insure compliance with this chapter;

(4) institute legal proceedings to insure compliance with this chapter, including suits for injunctive relief; and

(5) investigate complaints of alleged violations of this chapter.

Source: Section 13-2-852(a); Ord. 990225-70; Ord. 031211-11.

§ 25-10-22 - AUTHORIZATION TO EXCEED SIZE OR HEIGHT RESTRICTION.

(A) The building official may authorize installation of a sign that exceeds the applicable size or height restriction by up to 20 percent of the maximum size or height prescribed by this chapter after determining that:

(1) the sign owner or user has demonstrated the existence of practical difficulties in complying with this chapter;

(2) a unique circumstance exists that makes compliance with the requirements of this chapter impractical;

(3) the modification is in conformity with the purposes of this chapter; and

(4) the modification does not lessen public safety requirements.

(B) The building official shall record the details of a modification authorized under this section in the City files.

Source: Section 13-2-852(b); Ord. 990225-70; Ord. 031211-11.

§ 25-10-23 - HAZARDOUS SIGNS DESCRIBED AND PROHIBITED.

(A) A sign installed, maintained, or used in violation of Subsection (B) is a hazardous sign.

(B) A person may not install, maintain, or use a sign that:

(1) obstructs a fire escape, required exit, window, or door used as a means of escape;

(2) interferes with a ventilation opening, except that the sign may cover a transom window if the window and the sign comply with the Building Code and Fire Code;

(3) substantially obstructs the lighting of public right-of-way or other public property, or interferes with a public utility or traffic control device;

(4) contains or uses a supporting device placed on public right-of-way or other public area within the full purpose boundaries of the city, unless the use of the public right-of-way or other public area has been approved by city council;

(5) is illuminated in a manner that creates a hazard to pedestrian or vehicular traffic;

(6) creates a traffic hazard by restricting visibility at a curb cut;

(7) has less than nine feet of clearance and is located within a triangle formed by connecting the intersection point of two streets and the points 45 feet from the intersection point on the street frontage property line of each intersecting street;

(8) violates a requirement of the Electric Code;

(9) does not comply with a requirement of Section 25-10-191 (*Sign Setback Requirements*); or

(10) is determined by the building official to be dangerous because of a condition or defect described in Section 302 of the Dangerous Buildings Code.

Source: Section 13-2-888; Ord. 990225-70; Ord. 031211-11.

§ 25-10-24 - ABATEMENT OF A HAZARDOUS SIGN.

(A) The building official shall give notice that abatement of a hazardous sign is required to the sign owner, sign user, or property owner. The notice must:

(1) be sent by certified mail, return receipt requested, or hand-delivery; and

(2) include a statement that the building official may exercise the powers granted by Subsection (C) if the hazardous sign is not abated.

(B) The recipient of a notice described in Subsection (A) shall remove, modify, or repair the hazardous sign and abate the hazardous condition within a reasonable period of time established by the building official, not to exceed 10 days after receipt of the notice.

(C)

If the hazardous condition is not abated in accordance with Subsection (B), the building official may enter the premises and abate the hazardous condition. The reasonable cost of abating the hazardous sign, together with interest on the unpaid balance at an interest rate of six percent, shall be taxed as a lien against the record owner of the property on which the sign is located.

(D) If the building official removes a sign under Subsection (C), the building official shall retain the sign for at least 10 days before disposing of the sign. If during this period the sign owner pays the storage fee established by the city council, the building official shall return the sign to its owner.

Source: Section 13-2-853; Ord. 990225-70; Ord. 031211-11.

ARTICLE 3. - VARIANCES.

§ 25-10-41 - BOARD OF ADJUSTMENT POWERS.

The Board of Adjustment may grant a variance in accordance with this article.

Source: Section 13-2-921(a); Ord. 990225-70; Ord. 020207-35; Ord. 031211-11; Ord. No. 20141211-204, 7-1-15.

§ 25-10-42 - FILING; REVIEW.

(A) To apply for a variance a person must file an application for a variance with the building official.

(B) The Board of Adjustment may establish guidelines for its review of variances.

Source: Sections 13-2-921(d) and (e); Ord. 990225-70; Ord. 020207-35; Ord. 031211-11; Ord. No. 20141211-204, Pt. 23, 7-1-15.

§ 25-10-43 - ACTION ON VARIANCE.

(A) The Board of Adjustment may grant a variance from a requirement of this chapter after determining that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated; and

(1) the variance is necessary because enforcement of the requirement prevents any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site including its dimensions, landscaping, or topography;

(2) granting the variance will not have a substantially adverse effect on neighboring properties; or

(3) granting the variance will not substantially conflict with the purposes of this chapter.

(B) The Board of Adjustment shall hold a public hearing on an application for a variance not later than the 45th day after the date the application is filed.

Source: Sections 13-2-921(b) and (c); Ord. 990225-70; Ord. 020207-35; Ord. 031211-11; Ord. 20050804-044; Ord. No. 20141211-204, Pt. 23, 7-1-15.

§ 25-10-44 - APPEAL TO CITY COUNCIL.

An interested party may appeal to the city council the Board of Adjustment's action under Section 25-10-43 (*Action On Variance Or Appeal*).

Source: Section 13-2-921(f); Ord. 990225-70; Ord. 031211-11; Ord. No. 20141211-204, Pt. 23, 7-1-15.

ARTICLE 4. - SIGN DISTRICTS.

§ 25-10-81 - SIGN DISTRICTS DESCRIBED; HIERARCHY ESTABLISHED.

Sign districts are described and established in the following hierarchy, with the historic sign district as the first district and the commercial sign district as the last district.

(1) The historic sign district includes land in:
  (a) a designated historic landmark or historic district; or
  (b) a National Register District.
(2) The expressway corridor sign district includes land within 200 feet of the street right-of-way of:
  (a) IH-35; and
  (b) those portions of U.S. Highway 183, U.S. Highway 290, and State Highway 71 that are developed as a limited access highway, or have been designated by the Texas Department of Transportation as a limited access highway and for which there is a construction contract.
(3) The scenic roadway sign district includes:
  (a) land in a Hill Country Roadway corridor;
  (b) land that would be in a Hill Country Roadway corridor if it were in the zoning jurisdiction;
  (c) land within 200 feet of a scenic arterial; and
  (d) land in a tract that is partially within 200 feet if a scenic roadway and that has frontage on and direct access to the scenic roadway.
(4) The neighborhood sign district includes land located:
  (a) in a traditional neighborhood zoning district; or
  (b) in a neighborhood plan combining district, and that is used for:
    (i) a corner store special use;

(ii) a neighborhood mixed use building special use;

(iii) a residential infill special use; or

(iv) a neighborhood urban center special use.

(5) The low-density residential sign district includes land in a zoning district that is more restrictive than a townhouse and condominium residence (SF-6) zoning district.

(6) The multifamily residential sign district includes land in the following zoning districts:

(a) townhouse and condominium residence (SF-6);

(b) multifamily residence limited density (MF-1);

(c) multifamily residence low density (MF-2);

(d) multifamily residence medium density (MF-3);

(e) multifamily residence moderate-high density (MF-4);

(f) multifamily residence high density (MF-5);

(g) multifamily residence highest density (MF-6);

(h) mobile home residence (MH);

(i) neighborhood office (NO);

(j) agricultural (AG); and

(k) development reserve (DR).

(7) The neighborhood commercial sign district includes land in the LO, LR, CR, or W/LO zoning districts.

(8) The downtown sign district includes land in the CBD and the DMU zoning districts.

(9) The commercial sign district includes land that is not in any other sign district.

Source: Section 13-2-861; Ord. 990225-70; Ord. 000406-81; Ord. 030306-48A; Ord. 031030-11; Ord. 031211-11.

§ 25-10-82 - DETERMINATION OF APPLICABLE SIGN DISTRICT.

(A) Except as otherwise provided in this section, the sign regulations for a sign district apply to all land in the sign district.

(B) If a sign is located in more than one sign district, the regulations for the sign district that first appears in the hierarchy described in Section 25-10-81 (*Sign Districts Described And Established*) apply to the sign.

(C) A nonconforming use is in the sign district that would apply if that nonconforming use were located in the most restrictive zoning district in which that nonconforming use is a permitted use.

(D) For property that is not permanently zoned, the building official shall:

(1)

determine the use or proposed use and determine which base zoning district would be the most restrictive base zoning district in which that use would be a permitted use; and

(2) designate the property as a sign district in accordance with the determination under Subsection (D)(1).

Source: Sections 13-2-860 and 13-2-861(b) and (c); Ord. 990225-70; Ord. 031211-11.

ARTICLE 5. - REGULATIONS APPLICABLE TO ALL SIGN DISTRICTS.

§ 25-10-101 - GENERAL ON-PREMISE SIGNS.

(A) Purpose and Applicability. This section establishes general requirements for on-premise signs associated with particular land uses. A sign allowed under this section:

(1) must comply with all applicable regulations of this chapter and the Building Code, but may be installed or modified without obtaining a permit or other approval from the City; and

(2) is in addition to other signs allowed by this section or by another provision of this chapter.

(B) Signs for Commercial, Multi-Family, Civic and Industrial Uses. Unless specifically limited to a particular use, the following signs are allowed on a site containing any lawfully permitted commercial, multi-family, civic, or industrial use:

(1) A freestanding or wall sign, such as those typically used to direct the movement or placement of vehicular or pedestrian traffic, provided that:

(a) no more than one sign is allowed for each building or curb cut;

(b) sign area may not exceed 12 square feet; and

(c) sign height may not exceed:

(i) four feet, for a freestanding sign; or

(ii) the height of the building facade, for a wall sign.

(2) Outside of the low-density or multifamily residential sign districts, one or more small wall signs, such as emblems and decals typically associated with on-premise goods, services or facilities, which may not exceed a total of six square feet per site.

(3) For a permitted restaurant use that includes drive-through service, no more than two signs for each drive-through lane that:

(a) may not exceed:

(i) 32 square feet in area per sign; or

(ii) a height of eight feet above grade; and

(b) must be located within or adjacent to a drive-through lane and substantially screened from view of the street right-of-way.

(4) For a permitted retail use, a sign accompanying the display of an item for sale or affixed to a product dispenser.

(5) For a civic use, one or more signs such as a bulletin board, directory, or other changeable copy sign, that may not exceed:

(a) a height of six feet above grade; or

(b) a total area of 32 square feet for all signs.

(C) Signs for Residential Uses. Unless otherwise specified, the following signs are allowed on a site containing any lawfully permitted residential use:

(1) One or more non-illuminated signs that:

(a) have no moving parts; and

(b) may not exceed:

(i) a height of eight feet; or

(ii) a total area of 36 square feet for all signs.

(2) Within a single-family zoning district, flags that meet the following requirements:

(a) The maximum number of flags may not exceed three flags per acre of site area, rounded up to the nearest whole acre.

(b) The maximum area of a flag may not exceed 15 square feet.

(D) Signs for All Land Uses. Unless otherwise specified, the following signs are allowed on any property:

(1) Outside of the historic, low-density residential, or traditional neighborhood sign districts:

(a) One or more wall signs that:

(i) are non-electrical and are securely affixed to a building, fence, or wall;

(ii) may not exceed a total of 32 square feet in area for all wall signs associated with an individual building or, if a site contains no building, a total area of 32 square feet; and

(iii) may not exceed a thickness of 3 inches.

(b) One freestanding sign that:

(i) is non-electrical; and

(ii) may not exceed 20 square feet in area or a height of eight feet above grade.

(2) Outside of a single-family zoning district, flags that meet the following requirements:

(a) Except as provided in Paragraph (2)(b):

(i) the maximum number of flags may not exceed two flags per 25 feet of frontage up to a maximum of eight flags per premises; and

(ii) the maximum area of a flag may not exceed 25 square feet.

(b) For an automotive rentals or sales use, one small flag may be attached to each vehicle, provided that the flag may not exceed:

(i) one square foot in area; or

(ii) a height of two feet above the vehicle or other item, measured as if it were displayed at grade level.

(3) An engraved sign, such as those traditionally associated with building name, provided that the sign:

(a) is cut into a building surface or inlaid to become part of the building; and

(b) does not exceed an area of ten percent of the building's facade; and

(c) when aggregated with all other wall signs on the building, does not exceed a total area of 32 square feet.

(4) One or more non-electrical electrical signs, such as those typically used to identify an address or occupant, which may not exceed a total of three square feet in area for each site associated with the address on which the sign is located.

Source: Ord. No. 20170817-072 , Pt. 4, 8-28-17.

Editor's note— Ord. No. 20170817-072 , Pt. 4, effective August 28, 2017, repealed the former § 25-10-101, and enacted a new § 25-10-101 as set out herein. The former § 25-10-101 pertained to signs allowed in all sign districts without an installation permit. See Code Comparative Table for complete derivation.

§ 25-10-102 - TEMPORARY ON-PREMISE SIGNS.

(A) Purpose and Applicability. This section establishes general requirements for signs that are allowed on a temporary basis. A sign allowed under this section:

(1) must comply with all applicable regulations of this chapter and the Building Code, but may be installed or modified without obtaining a permit or other approval from the City; and

(2) is in addition to other signs allowed by this section or by another provision of this chapter.

(B) Signs Associated with Activity Affecting Real Property.

(1) For purposes of this subsection, an "activity affecting real property" means the construction, remodeling, improvement, development, sale, or lease of a building or the land on which the building is located.

(2) One freestanding or wall sign that meets the following requirements may be displayed no sooner than 30 days before an activity affecting real property begins and no later than 30 days after that same activity ends:

(a) No more than one sign for each lot is allowed or, for a unified development, one sign for each access point.

(b) For a freestanding sign, the maximum sign area is the lesser of:

(i) 128 square feet;

(ii) in a low-density residential sign district, 12 square feet; or

(iii) in a multifamily residential sign district, 48 square feet.

(c) For a wall sign, the maximum sign area is ten percent of the area of the building façade.

(d) The height of a freestanding or wall sign may not exceed:

(i) 22 feet above grade; or

(ii) for a low-density residential sign district, six feet above grade.

(C) Decorative Signs. A decoration, such as those which displayed during a holiday season, that would otherwise not be allowed under this chapter may be displayed on a property for no more than 45 consecutive days or 90 days per year.

(D) Signs Associated with Commercial Events, Sales, Products, and Services. A wall sign, such as those typically associated with a commercial event, sale, or similar activity that does not normally occur on a property, is allowed if:

(1) the property contains a commercial use;

(2) the sign is displayed for not more than 30 days, at least one of which must be a day on which a lawfully permitted special event, sale, or other activity that does not normally occur on the property is scheduled to occur; and

(3) limited to a maximum sign area of:

(a) 96 square feet, for a sign attached to a building; or

(b) 30 percent of the window area, for a sign displayed in a window.

(E) Signs Associated with Residential Garage Sales and Neighborhood Meetings. A sign, such as those typically associated with a garage sale, yard sale, neighborhood meeting, or similar activity that does not normally occur on a property, is allowed if:

(1) the property contains a residential use; and

(2) the sign is displayed for no more than seven consecutive days, at least one of which must be a day on which a lawfully permitted activity or event that does not normally occur on the property is scheduled to occur.

(F) Signs Associated with Political Elections. A freestanding or wall sign that meets the following requirements may be displayed no sooner than 60 days before, and no later than 10 days after, an election is held for any federal, state or local political office representing citizens of the City:

(1) For each premise, the total sign area of the signs described in this subsection may not exceed 36 square feet.

(2) A sign described in this subsection may not:

(a) exceed eight feet in height;

(b) have a moving part.

(G) Signs Associated with School Events. A sign or banner located on a site containing a public primary or secondary educational facility may be placed on a lawfully permitted building or fence located on the facility's property, but may not be displayed for more than 150 consecutive days.

Source: Ord. No. 20170817-072 , Pt. 4, 8-28-17.

§ 25-10-103 - SIGNS PROHIBITED IN ALL SIGN DISTRICTS.

Unless the accountable official determines that the sign is a nonconforming sign, the following signs are prohibited:

(1) an off-premise sign, unless the sign is authorized by another provision of this chapter;

(2) a sign placed on a vehicle or trailer that is parked or located for the primary purpose of displaying the sign;

(3) a festoon, including tinsel, strings of ribbon, small commercial flags, streamers, and pinwheels;

(4) a sign not permanently affixed to a building, structure, or the ground that is designed or installed in a manner allowing the sign to be moved or relocated without any structural or support changes, excluding a sidewalk sign described in Section 25-10-153 (*Sidewalk Sign In Downtown Sign District*);

(5) a tethered, pilotless balloon or other gas-filled device used as a sign;

(6) a sign that uses an intermittent or flashing light source to attract attention, excluding an electronically controlled changeable-copy sign; and

(7) a mobile billboard within the City's full-purpose jurisdiction.

Source: Section 13-2-863; Ord. 990225-57; Ord. 990225-70; Ord. 031030-11; Ord. 031211-11; Ord. 20080605-076; Ord. No. 20170817-072 , Pt. 5, 8-28-17.

§ 25-10-104 - SIGNS PROHIBITED IN PUBLIC EASEMENTS AND RIGHT-OF-WAY.

(A) A person may not cause or authorize a sign to be installed, used, or maintained on or over public right-of-way or other public property, including any public easement or other public encumbrance over private property, except as authorized by this chapter.

(B) The primary beneficiary of any sign installed in violation of this section is presumed to have authorized or caused the installation, use, or maintenance of the sign in violation of this section and commits an offense.

(C) Proof of a culpable mental state is not required for conviction of an offense under this section.

(D) An offense under this section is punishable by a fine of not less than:

(1) $ 50 for a first conviction;

(2) $ 200 for a second conviction within any 24-month period; and

(3) $ 400 for a third or subsequent conviction within any 24-month period.

(E) To determine the minimum fine under Subsection (D), one or more fines assessed during a 24-hour period beginning at midnight and ending at 11:59 p.m. constitute a single conviction.

(F) A person who commits an offense under Subsection (A) shall remove the object. In addition to other enforcement remedies, a person who fails to remove an object within 48 hours after being notified of the offense in writing by an authorized City representative is subject to a civil penalty of $200 per day for every day or part of a day the object is in place.

(G) The city manager may remove a sign or other advertising device installed, used, or maintained on or over any public property or public right-of-way in violation of this chapter. Notice is not required to be given to the owner or beneficiary of a sign removed under this section, either before the removal or before the disposition or destruction of the sign.

(H) This section does not prohibit the installation, use, or maintenance in the right-of-way of:

(1) a sidewalk sign;

(2) a projecting sign in the downtown sign district;

(3) a street banner;

(4) a wall sign that is mounted flat against the building and extends not more than 18 inches from the facade of a building and into right-of-way; or

(5) a sign installed by a governmental agency for a governmental purpose.

(I) A sign installed, used, or maintained on or over public property or public right-of-way is presumed to be abandoned, unless the sign is authorized by this chapter. Chapter 9-1 (*Abandoned Property And Vehicles*) does not apply to a sign abandoned under this section.

(J) The remedies authorized under this section are cumulative. If the City files a civil or criminal action, it is not precluded from pursuing any other action or remedy.

Source: Section 13-2-864; Ord. 990225-70; Ord. 031030-11; Ord. 031211-11; Ord. 040422-49; Ord. 20100610-064; Ord. No. 20170817-072 , Pt. 6, 8-28-17.

ARTICLE 6. - REGULATIONS APPLICABLE TO CERTAIN SIGN DISTRICTS.

§ 25-10-121 - HISTORIC SIGN DISTRICT REGULATIONS.

(A) Notwithstanding any other provision in this chapter, a person may not install a sign in the historic sign district, except:

(1) for a sidewalk sign; or

(2)

in compliance with the requirements of Section 25-10-122 (*Historic Landmark Commission Review*).

(B) The following are prohibited in the historic sign district:

(1) a sign, or any portion of a sign, that rotates; and

(2) a roof sign.

(C) A person may not place a handbill, poster, placard, or other temporary sign on a structure in the historic sign district, except inside a window or on a bulletin board with the consent of the owner or tenant.

Source: Section 13-2-866; Ord. 990225-70; Ord. 031211-11; Ord. No. 20170817-072 , Pt. 7, 8-28-17.

§ 25-10-122 - HISTORIC LANDMARK COMMISSION REVIEW.

(A) If a person files an application for a sign permit in the historic sign district and the application complies with all applicable regulations of this chapter and the Building Code, the building official shall immediately notify the historic preservation officer.

(B) The historic preservation officer shall review the application and determine whether it complies with the historic sign district guidelines described in Subsection (F), if any. If the application complies with the guidelines, the historic preservation officer shall approve the application. Otherwise, the historic preservation officer shall:

(1) immediately notify the presiding officer of the Historic Landmark Commission of the application; and

(2) give at least 10 days' written notice to the applicant and land owner of the date, time, and place of the meeting at which the Landmark Commission will consider the application.

(C) The applicant or land owner may waive the 10 day notice of the hearing.

(D) In reviewing a sign permit application, the Historic Landmark Commission shall consider:

(1) the proposed size, color, and lighting of the sign;

(2) the material from which the sign is to be constructed;

(3) the proliferation of signs on a building or lot;

(4) the proposed orientation of the sign with respect to structures; and

(5) other factors that are consistent with the Historic Landmark Preservation Plan, the character of the National Register District, and the purpose of historic landmark regulations.

(E) The Historic Landmark Commission shall approve a sign permit application if it determines that the proposed sign:

(1) will not adversely affect a significant architectural or historical feature of the historic sign district; and

(2) as applicable, is consistent with the Historic Landmark Preservation Plan, the character of the National Register District, and the purpose of the historic landmark regulations.

(F) The Historic Landmark Commission may adopt historic sign district guidelines that describe typical signs that comply with the criteria prescribed by Subsections (D) and (E).

(G) If the Historic Landmark Commission does not review a sign permit application by the 40th day after the date the application is filed, the application is considered approved by the Historic Landmark Commission.

(H) The applicant or land owner may appeal a decision of the Historic Landmark Commission under this section to the city council in accordance with Chapter 25-1, Article 7, Division 1 (*Appeals*).

Source: Section 25-10-866; Ord. 990225-70; Ord. 031211-11; Ord. 041202-16; Ord. No. 20170817-072 , Pt. 8, 8-28-17.

§ 25-10-123 - EXPRESSWAY CORRIDOR SIGN DISTRICT REGULATIONS.

(A) This section applies to an expressway corridor sign district.

(B) This subsection prescribes regulations for freestanding signs.

(1) One freestanding sign is permitted on a lot. Additional freestanding signs may be permitted under Section 25-10-131 (*Additional Freestanding Signs Permitted*).

(2) The sign area may not exceed:

(a) on a lot with not more than 86 linear feet of street frontage, 60 square feet; or

(b) on a lot with more than 86 linear feet of street frontage, the lesser of:

(i) 0.7 square feet for each linear foot of street frontage; or

(ii) 300 square feet.

(3) The sign height may not exceed the greater of:

(a) 35 feet above frontage street pavement grade; or

(b) 20 feet above grade at the base of the sign.

(C) A roof sign may be permitted instead of a freestanding sign under Section 25-10-132 (*Roof Sign Instead Of Freestanding Sign*).

(D) Wall signs are permitted.

(E) One flag for each curb cut is permitted.

(F) For signs other than freestanding signs or roof signs, the total sign area for a lot may not exceed 20 percent of the facade area of the first 15 feet of the building.

Source: Section 13-2-867; Ord. 990225-70; Ord. 031211-11; Ord. No. 20170817-072 , Pt. 9, 8-28-17.

§ 25-10-124 - SCENIC ROADWAY SIGN DISTRICT REGULATIONS.

(A) This section applies to a scenic roadway sign district.

(B) One freestanding sign is permitted on a lot.

(1) The sign area may not exceed the lesser of:

(a) 0.4 square feet for each linear foot of street frontage; or

(b) 64 square feet.

(2) The sign height may not exceed 12 feet.

(C) Wall signs are permitted.

(D) For signs other than freestanding signs, the total sign area for a lot may not exceed 10 percent of the facade area of the first 15 feet of the building.

(E) In a Hill Country Roadway corridor, a spotlight on a sign or exterior lighting of a sign must be concealed from view and oriented away from adjacent properties and roadways.

(F) Internal lighting of signs is prohibited, except for the internal lighting of individual letters.

(G) In addition to the sign setback requirements established by Section 25-10-191 (*Sign Setback Requirements*), a sign or sign support must be installed at least 12 feet from the street right-of-way, or at least 25 feet from street pavement or curb in the right-of-way, whichever setback is the lesser distance from the street. This subsection does not apply to a sign permitted by Section 25-10-102(F) (*Signs Associated with Political Elections*).

Source: Sections 13-2-867 and 13-2-868; Ord. 990225-70; Ord. 031030-11; Ord. 031211-11; Ord. No. 20170817-072 , Pt. 10, 8-28-17.

§ 25-10-125 - NEIGHBORHOOD SIGN DISTRICT REGULATIONS.

(A) Except as otherwise provided in this chapter, a sign in a neighborhood sign district must comply with this section.

(B) A sign may be a wall sign, an awning sign, a berm sign, or a hanging sign.

(C) The area of a hanging sign may not exceed eight square feet, and there must be not less than eight feet clearance between the bottom of the sign and the finished grade.

(D) A building in a Neighborhood Center Area of a traditional neighborhood zoning district or used for a neighborhood urban center special use in a neighborhood plan combining district may have not more than three signs with a total sign area of not more than 24 square feet.

(E) A commercial building in a Mixed Residential Area of a traditional neighborhood zoning district or used for a residential infill special use in a neighborhood plan combining district may have not more than two signs with a total sign area of not more than 12 square feet.

(F) A townhouse, condominium, or multifamily building within a Mixed Residential Area of a traditional neighborhood zoning district or used for a residential infill special use in a neighborhood plan combining district may have not more than two signs with a total sign area of not more than eight square feet.

(G)

A spotlight on a sign or exterior lighting of a sign must be concealed from view and oriented away from adjacent properties and roadways.

(H) Internal lighting of a sign is prohibited, except for the internal lighting of individual letters.

Source: Section 13-2-867.1; Ord. 990225-70; Ord. 000406-81; Ord. 031211-11.

§ 25-10-126 - LOW DENSITY RESIDENTIAL SIGN DISTRICT REGULATIONS.

The only signs permitted in a low density residential sign district are those authorized under Section 25-10-101 (*Signs Allowed In All Sign Districts Without An Installation Permit*) and Articles 8 (*Special Signs*) and 9 (*Street Banners*) of this chapter.

Source: Section 13-2-865; Ord. 990225-70; Ord. 031211-11.

§ 25-10-127 - MULTIFAMILY RESIDENTIAL SIGN DISTRICT REGULATIONS.

(A) This section applies to a multifamily residential sign district.

(B) One freestanding sign for each curb cut is permitted.

(1) The sign height may not exceed six feet.

(2) The sign area may not exceed 35 square feet.

(C) Wall signs are permitted.

(D) One flag for each curb cut is permitted. The sign height may not exceed 30 feet.

(E) For signs other than freestanding signs, the total sign area for a lot may not exceed the lesser of:

(1) 0.5 square feet for each linear foot of street frontage; or

(2) 35 square feet.

Source: Section 13-2-867; Ord. 990225-70; Ord. 031211-11; Ord. No. 20170817-072 , Pt. 11, 8-28-17.

§ 25-10-128 - NEIGHBORHOOD COMMERCIAL SIGN DISTRICT REGULATIONS.

(A) This section applies to a neighborhood commercial sign district.

(B) One freestanding sign is permitted on a lot.

(C) Wall signs are permitted.

(D) One flag for each curb cut is permitted.

(E) This subsection prescribes the maximum sign area.

(1) For a freestanding sign, the total sign area for a lot may not exceed the lesser of:

(a) 0.3 square feet for each linear foot of street frontage; or

(b) 100 square feet.

(2)

For signs other than freestanding signs, the sign area may not exceed 10 percent of the facade area of the first 15 feet of building height.

(F) The sign height may not exceed the greater of:

(1) 20 feet above frontage street pavement grade; or

(2) six feet above grade at the base of the sign.

Source: Section 13-2-867; Ord. 990225-70; Ord. 000309-39; Ord. 031211-11; Ord. No. 20170817-072 , Pt. 12, 8-28-17.

§ 25-10-129 - DOWNTOWN SIGN DISTRICT REGULATIONS.

(A) This section applies to a downtown sign district.

(B) One freestanding sign is permitted on a lot. Additional freestanding signs may be permitted under Section 25-10-131 (*Additional Freestanding Signs Permitted*).

(C) Wall signs are permitted.

(D) A wall sign may be a projecting sign if the sign complies with this subsection.

(1) One projecting sign for each building facade is permitted.

(2) The sign area of a projecting sign may not exceed 35 square feet.

(3) A sign may extend from the building facade not more than the lesser of:

(a) six feet; or

(b) a distance equal to two-thirds the width of the abutting sidewalk.

(4) For a sign that projects over state right-of-way, the state must approve the sign.

(E) One flag for each curb cut is permitted. A flag may be suspended over public right-of-way.

(F) This subsection prescribes the maximum sign area.

(1) For signs other than freestanding signs, the total sign area for a lot may not exceed 20 percent of the facade area of the first 15 feet of the building.

(2) For a freestanding sign, the sign area may not exceed the lesser of

(a) 0.5 square feet for each linear foot of street frontage; or

(b) 200 square feet.

(G) The sign height may not exceed:

(1) for a freestanding sign, six feet; or

(2) for a commercial flag, 30 feet.

Source: Sections 13-2-867 and 13-2-869; Ord. 990225-70; Ord. 031211-11; Ord. No. 20170817-072 , Pt. 13, 8-28-17.

§ 25-10-130 - COMMERCIAL SIGN DISTRICT REGULATIONS.

(A) This section applies to a commercial sign district.

(B) One freestanding sign is permitted on a lot. Additional freestanding signs may be permitted under Section 25-10-131 (*Additional Freestanding Signs Permitted*).

(C) A roof sign may be permitted instead of a freestanding sign under Section 25-10-132 (*Roof Sign Instead of Freestanding Sign*).

(D) Wall signs are permitted.

(E) One flag for each curb cut is permitted.

(F) This subsection prescribes the maximum sign area.

(1) For signs other than freestanding signs, the total sign area for a lot may not exceed 20 percent of the facade area of the first 15 feet of the building.

(2) For a freestanding sign, the sign area may not exceed the lesser of

(a) 0.7 square feet for each linear foot of street frontage; or

(b) for a sign other than a multi-tenant sign, 200 square feet; or

(c) for a multi-tenant sign, 250 square feet.

(G) The sign height may not exceed the greater of:

(1) 30 feet above frontage street pavement grade; or

(2) 6 feet above grade at the base of the sign.

Source: Section 13-2-867; Ord. 990225-70; Ord. 031211-11; Ord. No. 20170817-072 , Pt. 14, 8-28-17.

§ 25-10-131 - ADDITIONAL FREESTANDING SIGNS PERMITTED.

(A) This section applies in the expressway corridor, downtown, and commercial sign districts.

(B) In this section, "lot" includes contiguous lots used for a single use or unified development.

(C) For a lot with total street frontage of more than 400 feet, two freestanding signs are permitted.

(D) For a lot fronting on two streets, one freestanding sign is permitted on each street.

(E) For a pad site within a unified development, one freestanding sign is permitted in addition to the other freestanding signs permitted by this chapter.

Source: Section 13-2-870; Ord. 990225-70; Ord. 031211-11.

§ 25-10-132 - ROOF SIGN INSTEAD OF FREESTANDING SIGN.

(A) This section applies in the expressway corridor and commercial sign districts.

(B) A roof sign may be substituted for a freestanding sign.

(C) A roof sign may not exceed the lesser height of:

(1) five feet above the building facade; or

(2) five feet above the maximum height permitted for a freestanding sign.

Source: Section 13-2-871; Ord. 990225-70; Ord. 031211-11.

§ 25-10-133 - UNIVERSITY NEIGHBORHOOD OVERLAY ZONING DISTRICT SIGNS.

(A) This section applies to property that is:

(1) within the university neighborhood overlay (UNO) zoning district; and

(2) outside a historic sign district.

(B) This section supersedes the other provisions of this article to the extent of conflict.

(C) A sign may not exceed 150 square feet of sign area, except that this limitation does not apply along the following roadways:

(1) Guadalupe Street, from Martin Luther King, Jr. Blvd. to West 29th Street;

(2) West 24th Street, from Guadalupe Street to Leon Street;

(3) Martin Luther King, Jr. Blvd., from Pearl Street to the alley one block east of University Avenue; and

(4) West 29th Street, from Guadalupe Street to Rio Grande Street.

(D) A freestanding sign is prohibited.

(E) A roof sign is prohibited.

(F) No sign may be placed above the second floor of a building, except for a non-electric sign that is engraved, cut into the building surface, or otherwise inlaid to become part of the building.

(G) A wall sign is permitted if the sign complies with this subsection.

(1) One projecting sign for each building facade is permitted.

(2) The sign area of a projecting sign may not exceed 35 square feet.

(3) A sign may extend from the building facade not more than the lesser of:

(a) six feet; or

(b) a distance equal to two-thirds the width of the abutting sidewalk.

(4) For a sign that projects over state right-of-way, the state must approve the sign.

(H) A sign may not be illuminated or contain electronic images or moving parts.

Source: Ord. 20070726-132; Ord. No. 20170817-072 , Pt. 15, 8-28-17; Ord. No. 20191114-067 , Pt. 8, 11-25-19.

ARTICLE 7. - SPECIAL SIGNS.

§ 25-10-151 - SEARCHLIGHT SIGNS.

(A) A person may use a searchlight sign if the building official issues a permit for the use.

(B) Except as provided in Subsection (C), the building official shall issue a permit for the use of a searchlight sign if the applicant demonstrates compliance with this subsection.

(1) Not more than four beams of light may be projected from a lot.

(2) The aggregate light intensity of searchlight signs on a lot may not exceed 1,600 million foot candles.

(3) A searchlight sign located within 25 feet of street right-of-way may not project beams at an angle of less than 30 degrees above grade.

(4) A searchlight sign may not:

(a) project a beam at a street right-of-way or adjoining property; or

(b) impair the vision of a driver of a vehicle.

(5) A searchlight sign may not be operated between the hours of 1:00 a.m. and 7:00 a.m.

(6) A searchlight sign may not be operated on a lot for more than 10 consecutive days.

(C) The building official may not issue a permit to operate a searchlight sign at a location at which a searchlight sign was used within the two months preceding the date of the permit application.

Source: Section 13-2-873; Ord. 990225-70; Ord. 031030-11; Ord. 031211-11; Ord. No. 20170817-072 , Pt. 16, 8-28-17.

§ 25-10-152 - NONCONFORMING SIGNS.

(A) A person may continue or maintain a nonconforming sign at its existing location.

(B) A person may not change or alter a nonconforming sign except as provided in this subsection.

(1) The face of the sign may be changed.

(2) The sign may be changed or altered if the change or alteration does not:

(a) increase the degree of the existing nonconformity;

(b) change the method or technology used to convey a message; or

(c) increase the illumination of the sign.

(3) The sign may be relocated on a tract, if the building official determines that the relocated sign will not be hazardous, and the sign is:

(a) located on a tract that is partially taken by condemnation or partially conveyed under threat of condemnation; or

(b) moved to comply with other regulations.

(4) A nonconforming sign may be modified or replaced in the same location, if the modification or replacement reduces:

(a) the sign area by at least 20 percent;

(b) the height of the sign by at least 20 percent; or

(c) both sign area and height of the sign by an amount which, combined, is equal to at least 20 percent of the sign area and height.

(5) The owner of a nonconforming off-premise sign may relocate the sign to another tract under these provisions if the requirements of this paragraph are met.

(a) The original location of the sign must be:

(i) in the area bounded by Highway 183 from Burnet Road to Highway 71, Highway 71 from Highway 183 to Lamar Boulevard, Lamar Boulevard from Highway 71 to 45th Street, 45th Street from Lamar Boulevard to Burnet Road, and Burnet Road from 45th Street to Highway 183, or on a tract that abuts the street right-of-way of a boundary street;

(ii) in a scenic roadway sign district;

(iii) within 500 feet of:

1. a historic sign district; or

2. a residential structure located in a residential base zoning district; or

(iv) within the boundaries of a registered neighborhood association that has requested removal of the sign.

(b) The sign must be permanently removed from the original tract and may not be replaced. Any tract upon which an off-premise sign has been unlawfully replaced shall not be eligible as a site for a relocated sign.

(c) The relocated sign:

(i) must be in:

1. an expressway corridor sign district; or

2. for a sign with a sign area of 300 square feet or less, an expressway corridor sign district or a commercial sign district;

(ii) may not be on a tract located on a scenic roadway;

(iii) may not be within 500 feet of:

1. a historic sign district;

2. a residential dwelling unit;

3. a tract located in a zoning district, other than an interim rural residence (RR) or commercial highway (CH) zoning district, in which:

a. a single-family residential use, a multi-family residential use, or a mixed use development is a permitted use; and

b. if the tract is developed, the existing uses on that tract include at least one dwelling unit; or

4. a residential lot in a residential subdivision in the extraterritorial jurisdiction; and

(iv) if the sign is relocated within the zoning jurisdiction, it must be within a commercial or industrial base zoning district.

(d) Sign district restrictions on sign height and face size otherwise applicable to the relocation tract do not apply to the relocated sign, but the face size of the relocated sign may not exceed that of the original sign, and the sign height of the relocated sign may not exceed 42 feet above ground level street pavement.

(e) A relocated sign must be permanently removed from the new location not later than 25 years after the date the relocation application is approved unless within the 25 year time period the sign owner permanently removes and does not relocate a second nonconforming off-premise sign from a location described in Paragraph (5)(a).

(f) The council may waive or modify, with or without conditions, a requirement of Paragraph (5)(a) - (e) if the council determines that the waiver or modification is justified by the aesthetic benefit to the City.

(i) In making the determination, the council may consider:

1. the number of nonconforming off-premises signs to be removed;
2. the characteristics of the sites from which the signs are to be removed;
3. the characteristics of the site on which the sign is to be relocated; and
4. other relevant factors.

(ii) The council shall hold a public hearing before acting on a proposed waiver or modification.

(iii) The director of the Watershed Protection and Development Review Department shall give notice of the hearing in accordance with Section 25-1-132(B) (*Notice Of Public Hearing*).

(g) A sign may not be relocated or removed under this paragraph unless the sign is registered and all registration fees are paid as required by Subsection (F).

(h) For each non-conforming off-premise sign relocated under this section, the sign owner must install lighting that is energy efficient, as determined by Austin Energy, and meets or exceeds International Dark Sky standards for pollution reduction. The lighting required under this subsection must be installed:

(i) no later than six months after the effective date of Ordinance No. 20080605-076, if the sign was relocated prior to that date;

(ii)

upon installation of the relocated sign, if the relocation occurs after the effective date of Ordinance No. 20080605-076; or

(iii) for all other off-premise signs, within 36 months after the sign is registered in accordance with Subsection (F).

(i) An applicant must:

(i) be the owner of each sign to be relocated or removed;

(ii) file an application for sign relocation with the director at least 90 days before relocating the sign; and

(iii) include with the application:

1. a statement from the owner of each tract from which the sign is to be removed agreeing to the permanent removal of the sign; or

2. a document approved by the city attorney indemnifying the city for all costs and claims arising from the sign relocation, sign removal, or permit issuance and providing that the city attorney may hire counsel for and shall direct the defense of the claims.

(j) An applicant must relocate a sign not later than one year after the date the director of the Watershed Protection and Development Review Department approves the application.

(C) This subsection applies to a nonconforming sign that is damaged by accident, natural catastrophe, or the intentional act of a person other than the sign owner or land owner.

(1) The sign owner or land owner may repair the damaged sign if the cost of repairing the sign does not exceed 60 percent of the cost of installing a new sign of the same type in the same location. Otherwise, the sign owner or land owner shall remove the sign.

(2) The sign owner or land owner:

(a) must apply to the building official for a repair permit not later than the 30th day after the date of damage, and shall finish the repairs not later than the 90th day after the date the building official approves the permit application; or

(b) shall remove the sign.

(D) This subsection applies to the replacement or relocation of a nonconforming sign under Subsections (B)(3) through (B)(5).

(1) The sign owner or land owner may not replace or relocate the sign if it is dismantled before an application for a permit authorizing the replacement or relocation is filed.

(2) The sign owner or land owner shall:

(a) finish the replacement or relocation of the sign not later than the 90th day following the date of dismantling; or

(b) remove the sign.

(E) The building official may not issue a permit for maintenance of a nonconforming sign if the maintenance cost exceeds 60 percent of the cost of installing a new sign of the same type in the same location.

(F) This subsection applies to an off-premise sign.

(1) This paragraph prescribes registration and identification requirements.

(a) The owner of the sign must register the sign every year with the director.

(b) The sign owner shall, on a form prescribed by the director, provide:

(i) information regarding the sign location, height, size, construction type, materials, setback from property boundaries, and illumination; and

(ii) the name and address of the sign owner.

(c) The sign owner shall initially register the sign by August 31, 1999, or within 180 days after the date the sign becomes subject to the City's planning jurisdiction, as applicable, and shall pay a registration fee set by separate ordinance.

(d) A person who fails to register a sign as required by this paragraph commits an offense.

(e) A sign owner is prohibited from relocating a sign if the sign owner is in violation of the registration requirements for any sign owned by that sign owner within the City's jurisdiction.

(f) The sign owner shall place identifying markers on the sign as required by the director. Such markers shall include, but not be limited to, the applicable registration number and measurement points to assist in verifying the height of a sign.

(g) A sign owner shall, in a manner prescribed by the director, provide an annual inventory of all signs owned by that sign owner, including but not limited to a description of the sign, the location of the sign, and the owner of the property on which the sign is located.

(h) The building official shall notify the property owner of the pending expiration of a sign registration, no earlier than 90 days and no later than 30 days prior to the expiration. The director shall provide the same notice to the sign owner if the inventory required under subsection (f) has been provided.

(2) The director shall mail notice of an application to repair or replace a sign not later than the 7th day after the application is filed to the:

(a) applicant;

(b) neighborhood organization; and

(c) sign owner, if a sign owner is identified in accordance with Paragraph (1).

Source: Section 13-2-854; Ord. 990225-57; Ord. 990225-70; Ord. 010419-11; Ord. 020207-35; Ord. 031211-11; Ord. 040205-29; Ord. 20051117-041; Ord. 20080605-076; Ord. 20091217-141.

§ 25-10-153 - SIDEWALK SIGNS.

(A) A sidewalk sign is permitted in accordance with the requirements of this section.

(B) A sidewalk sign may be installed without a permit, but must comply with the requirements of this subsection.

(1) The sign must be located:

(a) on a sidewalk at least 10 feet in width;

(b) directly in front of a building that is not set back from street right-of-way, if the sign is located in the street right-of-way;

(c) for a unified development, on a sidewalk directly in front of the business associated with the sign;

(d) no closer than 20 feet from a driveway or pedestrian crosswalk; and

(e) in coordination with other permitted right-of-way uses, as determined by the building official.

(2) The sign must not:

(a) narrow the sidewalk to less than 6 feet in width;

(b) obstruct the line of sight for oncoming traffic;

(c) be more than four feet high; or

(d) be wider than the lesser of one-third the width of the sidewalk, or 30 inches.

(C) The owner or operator of the sign must, upon request, provide the building official with proof of:

(1) an insurance policy protecting the City from liability arising from installation, use, or maintenance of the sign, in accordance with the requirements of Section 25-10-235 (*Insurance*); and

(2) indemnification of the City for liability arising from the installation, use or maintenance of the sign.

(D) A sign may be displayed at a designated location on the sidewalk only during the hours the business it advertises is open to the public.

(E) A business may not use more than one sidewalk sign.

(F) Notwithstanding any other provision of this Code to the contrary:

(1) a sidewalk sign may contain or use a supporting device placed on street right-of-way; and

(2) approval by the city council of a license agreement for the use of street right-of-way is not required for a sidewalk sign.

Source: Section 13-2-875; Ord. 990225-70; Ord. 031030-11; Ord. 031211-11; Ord. 20070726-132.; Ord. 20090423-090; Ord. No. 20140828-148, Pt. 1, 9-8-14 .

§ 25-10-154 - SUBDIVISION SIGN.

For each major entry to a multi-lot, master planned subdivision, two permanent signs with combined sign area of not more than 128 square feet are permitted.

Source: Section 13-2-872; Ord. 990225-70; Ord. 031211-11; Ord. No. 20170817-072 , Pt. 17, 8-28-17.

§ 25-10-155 - URBAN FARM AND MARKET GARDEN SIGNS.

(A) For an urban farm use, a non-electrified sign is permitted that:

(1) is not more than eight square feet in size;

(2) is not more than four feet above grade.

(B) For a market garden use, a non-electrified sign is permitted that:

(1) is not more than four square feet in size; and

(2) is not more than four feet above grade.

Source: Ord. 000406-86; Ord. 031211-11; Ord. 20131121-105, Pt. 6, 3-21-14 .

§ 25-10-156 - HOME OCCUPATION SIGNS.

(A) A home occupation that is allowed under Section 25-2-900 (*Home Occupations*) may display one on-premise sign if the following requirements are met:

(1) The home occupation sign and the principal structure associated with the home occupation must both directly front a Core Transit Corridor or Future Core Transit Corridor.

(2) The home occupation sign may not exceed:

(a) for a sign that is placed on or attached directly to the ground, six square feet in area and three feet in height, as measured from the lower of natural or finished grade adjacent to the principal structure; or

(b) for a sign attached to a monopole of four feet in height and up to 12 inches in diameter, three square feet in area and four feet in height, with the height of both the pole and the sign measured from the lower of natural or finished grade adjacent to the principal structure.

(3) If an electric home occupation sign is used, the sign must be:

(a) non-illuminated or externally illuminated;

(b) energy efficient, as determined by Austin Energy; and

(c) compliant with International Dark Sky standards for pollution reduction.

(B)

A home occupation sign permitted under this section must be removed if the home occupation ceases to be used or fails to comply with the requirements of this section or Section 25-2-900 (*Home Occupations*).

Source: 20090827-032; Ord. No. 20170817-072 , Pt. 18, 8-28-17.

§ 25-10-157 - SPECIAL EVENTS SIGNS.

(A) A permit may be issued under this section only for a sign to be used at a permitted special event that meets the criteria specified in Paragraphs (b) and (c) of Section 25-10-3(17) (*Definitions*) and includes public streets that have been closed to traffic in accordance with Title 14 (*Use of Streets and Public Property*).

(B) For a special event occurring in the downtown sign district, the director shall issue a permit to install a projected special event sign in accordance with the requirements of this subsection.

(1) No more than two projected special event signs are permitted per special event.

(2) A projected special event sign may only be displayed on a single façade of a legally permitted building and may not exceed the lesser of:

(a) 50% of the area of the façade, or

(b) 6,000 square feet.

(3) An application for a projected special event sign must be submitted by the special event permit holder and must include letters of approval from the owners of the building where the projected image will appear and the property where the projected image will originate.

(4) A projected special event sign may not:

(a) shine, either fully or partially, on any property, building, or public right-of-way, including a street or sidewalk other than the building where the image will appear;

(b) impair the vision of or distract a driver of a vehicle;

(c) be controlled through social media or by any person other than the applicant; or

(d) be displayed at any time outside the hours of 7:00 a.m. to 2:00 a.m. during the approved duration of the special event.

(C) A special event permit holder may install a non-projected special event sign in accordance with the requirements of this subsection.

(1) A non-projected special event sign:

(a) may not exceed 96 square feet; and

(b) must be attached to:

(i) a fence located at the boundaries of the special event venue; or

(ii)

the wall of a legally permitted permanent or temporary structure included within the boundaries of a special event venue, if the owner of the building or structure has agreed to placement of the sign.

(2) A non-projected special event sign may not impair the vision of or distract a driver of a vehicle.

(D) The director may revoke a permit for a special event sign approved under this section if operation of the sign is deemed to constitute a threat to public health and safety.

Source: Ord. 20140213-088, Pt. 3, 2-24-14 ; Ord. No. 20170817-072 , Pts. 19, 20, 8-28-17.

§ 25-10-158 - IDENTIFICATION SIGNS ON PUBLIC RIGHT-OF-WAY INSTALLATIONS.

(A) A sign may be installed on a right-of-way installation in accordance with the requirements of this section.

(B) Signage installed under Subsection (A) of this section must:

(1) face away from portions of the right-of-way that are open to automobile traffic;

(2) not contain electronic images or lighting; and

(3) be limited in total area to the lesser of:

(a) 30% of the area of the face of the installation on which it is installed; or

(b) 4 square feet.

Source: Ord. No. 20140828-146, Pt. 2, 9-8-14 ; Ord. No. 20170817-072 , Pts. 19, 21, 8-28-17.

ARTICLE 8. - STREET BANNERS.

§ 25-10-171 - PERMITS.

(A) The building official may issue a permit for display of a street banner advertising a noncommercial or nonpolitical event, including a:

(1) charitable, humanitarian, or eleemosynary event;

(2) educational, scholastic, or artistic event;

(3) community or public interest activity; and

(4) the sale of goods or services in conjunction with an event the proceeds of which will primarily benefit a charitable, humanitarian, scholastic, or eleemosynary cause.

(B) The building official shall issue a street banner display permit after determining that:

(1) the street banner advertises an event described in Subsection (A);

(2) the proposed display location has been approved under Section 25-10-173 (*Location*);

(3)

the street banner and the manner of installation comply with the requirements established by the Electric Utility Department; and

(4) installation of the street banner complies with all other applicable requirements of this Code.

(C) The building official may issue a street banner display permit subject to reasonable conditions concerning the location, mounting, duration, or manner of display.

(D) For a street banner proposed to be displayed at a location not previously approved under Section 25-10-173 (*Location*):

(1) the application to display the street banner must be accompanied by payment of an evaluation fee established by ordinance; and

(2) after evaluation of the location and before the building official may issue a street banner display permit, the applicant shall pay the City a non-refundable fee established by ordinance to reimburse the expenses of labor, materials, and equipment incurred to establish a street banner location.

(E) The building official may suspend or revoke a street banner display permit for a violation of this Code, the conditions of the permit, or other applicable law.

Source: Sections 13-2-874(b), (c), (d), (h), and (I); Ord. 990225-70; Ord. 031211-11.

§ 25-10-172 - RESTRICTIONS.

(A) An event or activity may not be advertised at more than three locations. A street banner for an event or activity may not be displayed more than 14 days at one location during a 12 month period.

(B) A street banner display permit is a license that does not confer a property right on the permittee with respect to occupancy of street right-of-way. A person may not assign or transfer a street banner display permit.

Source: Sections 13-2-874(f) and (d); Ord. 990225-70; Ord. 031030-11; Ord. 031211-11.

§ 25-10-173 - LOCATION.

(A) The building official, in consultation with the Electric Utility Department, may establish a location for display of a street banner if the building official determines that:

(1) display at the proposed location is feasible considering the placement of utility poles, installation of mounting brackets, or other necessary fixtures;

(2) display at the proposed location will not produce a public safety hazard;

(3) display at the proposed location is consistent with existing land uses in the area;

(4) display at the proposed location is consistent with other applicable laws and ordinances, including those regarding scenic views or historic preservation;

(5) the Electric Utility Department has inspected the proposed site and has not found a technical, logistical, or safety problem with display at the proposed location; and

(6) the applicant has agreed in writing that all accessions or improvements added to establish a display location shall be the property of the Electric Utility Department.

Source: Section 13-2-874(g); Ord. 990225-70; Ord. 031211-11.

§ 25-10-174 - INSTALLATION.

(A) The Electric Utility Department shall install a street banner after:

(1) the applicant delivers the street banner to the Electric Utility Department; and

(2) the Electric Utility Department verifies that:

(a) the building official has approved the street banner display permit; and

(b) the street banner complies with street banner specifications.

(B) An improvement or accession installed at a display location becomes the property of the Electric Utility Department.

Source: Section 13-2-874(e) and (j); Ord. 990225-70; Ord. 031211-11.

§ 25-10-175 - REMOVAL; DESTRUCTION.

(A) The building official or the Electric Utility Department may remove a street banner that:

(1) is displayed after expiration of the street banner display permit; or

(2) in the opinion of the building official or the Electric Utility Department, creates a public safety hazard;

(3) was installed in the public right-of-way without a permit; or

(4) is illegal.

(B) The building official may destroy a street banner:

(1) after the 10th day following the expiration of the street banner display permit, if the street banner is removed under Subsection (A)(1) or (A)(2) and not reclaimed by the permittee; or

(2) immediately, if the street banner is removed under Subsection (A)(3) or (A)(4).

Source: Sections 13-2-874(k) and (l); Ord. 990225-70; Ord. 031211-11.

ARTICLE 9. - SETBACK AND STRUCTURAL REQUIREMENTS.

§ 25-10-191 - SIGN SETBACK REQUIREMENTS.

(A) A sign installed in compliance with this section is not required to comply with building setback requirements established elsewhere in this title.

(B) A sign support 12 inches or less in diameter is not required to be set back from a street right-of-way.

(C) A sign support more than 12 inches and not more than 24 inches in diameter must be set back at least three feet from a street right-of-way.

(D) A sign support more than 24 inches and not more than 36 inches in diameter must be set back at least five feet from the street right-of-way.

(E) A sign support more than 36 inches in diameter must be set back at least 12 feet from the street right-of-way.

(F) Except for a wall sign, a sign within 12 feet of a street right-of-way must have either:

(1) a height of not more than 30 inches; or

(2) a clearance of at least nine feet.

(G) This section does not apply to a sign permitted by Section 25-10-102(F) (*Signs Associated with Political Elections*).

Source: Section 13-2-886; Ord. 990225-70; Ord. 031030-11; Ord. 031211-11; Ord. No. 20170817-072 , Pt. 22, 8-28-17.

§ 25-10-192 - STRUCTURAL REQUIREMENTS.

(A) Except for a wall sign, a sign must be designed, installed, and maintained so that it will withstand a horizontal pressure of 30 pounds per square foot of exposed surface.

(B) A lighted sign:

(1) may not produce glare visible to vehicle drivers; and

(2) must be visually separated from traffic signs, signals, and devices.

Source: Section 13-2-887; Ord. 990225-70; Ord. 031211-11.

ARTICLE 10. - INSTALLATION PERMITS.

§ 25-10-211 - SIGN INSTALLATION PERMIT REQUIRED.

(A) A person may not install, move, structurally alter, or structurally repair a sign unless the building official has issued a sign installation permit. This prohibition does not apply to:

(1) a sign described in Section 25-10-101 (*Signs Allowed In All Sign Districts Without An Installation Permit*); or

(2) routine maintenance, nonstructural repair, or re-facing of an existing sign.

(B) The fee for a sign installation permit is established by separate ordinance and is nonrefundable.

(C) For an electrical sign, an electric permit is required before:

(1) a person may install, move, structurally alter, or structurally repair the sign; or

(2) the building official may issue an installation permit for the sign.

(D) For a sign to be replaced under Section 25-10-152(B)(5) (*Nonconforming Signs*), the building official may not issue an installation permit until the required sign removal is completed.

Source: Section 13-2-900; Ord. 990225-70; Ord. 020207-35; Ord. 031211-11.

§ 25-10-212 - EXPIRATION AND EXTENSION OF SIGN INSTALLATION PERMIT.

(A) Except as provided in Subsection (B), a sign installation permit expires on the 180th day after the permit is granted unless the applicant requests a final inspection before the permit expires.

(B) The building official may grant a single 90 day extension of a sign installation permit if the applicant requests an extension before the permit expires.

(C) If an extension is granted under Subsection (B), the permit expires on the 270th day after the permit is granted unless the applicant requests a final inspection before the permit expires.

Source: Section 13-2-902; Ord. 990225-70; Ord. 031211-11.

ARTICLE 11. - REGISTRATION.

§ 25-10-231 - REGISTRATION REQUIRED.

(A) Except as provided in this section, a person may not install, move, structurally alter, structurally repair, or maintain a sign unless the person is registered with the building official in accordance with this article.

(B) The registration requirement of Subsection (A) does not apply to:

(1) an employee of a person who is registered; or

(2) a person who:

(a) paints or refaces an existing sign;

(b) installs or maintains a sign authorized under Section 25-10-101 (*Signs Allowed In All Sign Districts Without An Installation Permit*);

(c) installs individual components of a wall sign not attached to each other as part of a larger sign, if each component is less than 32 square feet in size, securely affixed to a building, fence, or wall, and not more than three inches thick;

(d) installs or maintains a freestanding sign that is not more than eight feet in height; or

(e) installs a sidewalk sign.

Source: Sections 13-2-905 and 13-2-875(d)(2); Ord. 990225-70; Ord. 031211-11.

§ 25-10-232 - REGISTRATION FEE.

An applicant must pay a registration fee in the amount established by separate ordinance when the applicant files an application for the registration required by this article.

Source: Section 13-2-910; Ord. 990225-70; Ord. 031211-11.

§ 25-10-233 - PREREQUISITES; EXPIRATION; NONTRANSFERABLE.

(A) The indemnification agreement and proof of insurance required by this article is a prerequisite to registration.

(B) Registration expires on December 31 of each calendar year.

(C) Registration under this article is not transferable.

Source: Section 13-2-906; Ord. 990225-70; Ord. 031211-11.

§ 25-10-234 - INDEMNIFICATION.

A registrant shall:

(1) indemnify the City from all liability arising from the person's activities or operations; and

(2) pay all expenses incurred in defending against a claim made against the City.

Source: Section 13-2-907; Ord. 990225-70; Ord. 031211-11.

§ 25-10-235 - INSURANCE.

A registrant shall purchase and maintain at all times insurance for bodily injury and property damage liability in amounts and with the coverages, terms, and conditions required by rules promulgated by the city manager in accordance with Chapter 1-2 (*Adoption Of Rules*) of the Code.

Source: Section 13-2-908; Ord. 990225-70; Ord. 031211-11.

§ 25-10-236 - REVOCATION AND SUSPENSION.

(A) The Board of Adjustment may suspend or revoke the registration of a person after determining that the person is guilty of:

(1) fraud or deceit in registering under this article;

(2)

allowing a person other than the registrant who obtained the sign installation permit, or an employee acting under the direct supervision of that person, to perform work for which that permit is required;

(3) gross negligence, incompetency, or misconduct in the performance of sign work;

(4) intentionally making a false or misleading material statement on the application for a sign installation permit or in providing facts to support the building official's determination that a particular sign is a nonconforming sign;

(5) installing, moving, or structurally altering or repairing a sign in violation of this chapter; or

(6) failing to maintain the insurance required by this article.

(B) This subsection prescribes the procedure by which the Board of Adjustment shall determine whether a registrant has violated a provision of Subsection (A).

(1) If the Board of Adjustment receives sworn information alleging a violation from a person of sound mind and legal age, the Board of Adjustment shall determine whether the information is sufficient to support further action in its part.

(2) If the Board of Adjustment determines that the information supports further action, it shall schedule a public hearing on the allegation.

(3) Notice of the date, time, and place of the hearing shall be mailed to the registrant by registered mail, not less than 15 days before the date of the hearing.

(4) The registrant may appear in person or be represented by counsel to present a defense to the Board of Adjustment. If the registrant does not appear, the Board of Adjustment may hear evidence and make a determination on the allegation in the registrant's absence.

(5) If the registrant admits the violation, or if the Board of Adjustment, by at least a two-thirds vote, determines that the allegation is true, the Board of Adjustment shall suspend or revoke the registration. A suspension shall be for a period of not less than 30 days and not more than 180 days.

(6) When the Board of Adjustment has completed its hearing, it shall file a record of its determination with the city clerk and forward a certified copy of its finding and decision to the registrant.

(C) The Board's decision may be appealed to the city council in accordance with Chapter 25-1, Article 7, Division 1 (*Appeals*).

(D) A person whose registration is revoked may not register for a period of one year after the revocation.

Source: Section 13-2-909; Ord. 990225-70; Ord. 031211-11; Ord. No. 20141211-204, Pt. 23, 7-1-15.

§ 25-10-237 - PENALTY FOR FAILURE TO REGISTER.

A person who fails to register a sign as required by Section 25-10-152(F) commits an offense punishable by a fine of up to $500 per day for each day that the offense continues, and for each sign that is not registered. A person who violates Section 25-10-152(B)(6)(b) commits an offense punishable by a fine of up to $500 per day for each day the violation continues.

Source: Ord. 20080605-076.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CITY OF AUSTIN, TEXAS *v.* REAGAN NATIONAL ADVERTISING OF AUSTIN, LLC, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 20–1029. Argued November 10, 2021—Decided April 21, 2022

Like a great many jurisdictions around the country, the City of Austin, Texas (City), specially regulates signs that advertise things that are not located on the same premises as the sign, as well as signs that direct people to offsite locations. See City Code §25–10–102(1). These are known as off-premises signs. The City's sign code at the time of this dispute prohibited construction of new off-premises signs. *Ibid.* Grandfathered off-premises signs could remain in their existing locations as "nonconforming signs," but could not be altered in ways that increased their nonconformity. §§25–10–3(10), 25–10–152(A)–(B). On-premises signs were not similarly restricted. §25–10–102(6).

Respondents, Reagan National Advertising of Austin, LLC, and Lamar Advantage Outdoor Company, L. P., own billboards in Austin. When Reagan sought permits to digitize some of its billboards, the City denied its applications. Reagan filed suit in state court, alleging that the City's prohibition against digitizing off-premises signs, but not on-premises signs, violated the First Amendment's Free Speech Clause. The City removed the case to federal court, and Lamar intervened. The District Court held that the challenged sign code provisions were content neutral under *Reed* v. *Town of Gilbert*, 576 U. S. 155, reviewed the City's on-/off-premises distinction under intermediate scrutiny, and found that the distinction satisfied that standard. The Court of Appeals reversed. It found the on-/off-premises distinction to be facially content based because a government official had to read a sign's message to determine whether the sign was off-premises. The court then reviewed the City's on-/off-premises distinction under strict scrutiny, and it held that the City failed to satisfy that onerous standard.

Held: The City's on-/off-premises distinction is facially content neutral

under the First Amendment. Pp. 6–14.

(a) *Reed* held that a regulation of speech is content based under the First Amendment if it "target[s] speech based on its communicative content," *i.e.,* if it "applies to particular speech because of the topic discussed or the idea or message expressed." 576 U. S., at 163. The Court of Appeals' interpretation of *Reed*—to mean that a regulation cannot be content neutral if its application requires reading the sign at issue—is too extreme an interpretation of this Court's precedent. Pp. 6–12.

(1) In *Reed*, the town of Gilbert, Arizona, adopted a comprehensive sign code that applied distinct size, placement, and time restrictions to 23 different categories of signs, giving more favorable treatment to some categories (such as ideological signs or political signs) and less favorable treatment to others (such as temporary directional signs relating to religious events, educational events, or other similar events). The Court rejected the contention that the restrictions were content neutral because they did not discriminate on the basis of particular viewpoints, reasoning that "a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter." 576 U. S., at 169. Unlike the sign code in *Reed*, the City's sign ordinances here do not single out any topic or subject matter for differential treatment. A sign's message matters only to the extent that it informs the sign's relative location. Thus, the City's on-/off-premises distinction is more like ordinary time, place, or manner restrictions, which do not require the application of strict scrutiny. Cf. *Frisby* v. *Schultz,* 487 U. S. 474, 482. Pp. 6–8.

(2) This Court's precedents and doctrines have consistently recognized that restrictions on speech may require some evaluation of the speech and nonetheless remain content neutral. Most relevant here, the First Amendment allows for regulations of solicitation, and speech must be read or heard to determine whether it entails solicitation. See *Heffron* v. *International Soc. for Krishna Consciousness, Inc.,* 452 U. S. 640. Moreover, the Court has previously understood distinctions between on-premises and off-premises signs to be content neutral. See *Suffolk Outdoor Advertising Co.* v. *Hulse*, 439 U. S. 808 (order dismissing appeal); *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789. Underlying these cases and others is a rejection of the view that *any* examination of speech or expression inherently triggers heightened First Amendment concern. Rather, content-based regulations are those that discriminate based on "the topic discussed or the idea or message expressed." *Reed*, 576 U. S., at 171. Pp. 8–10.

(3) Reagan's counterargument relies primarily on a sentence in *Reed* recognizing 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." 576 U. S., at 163. Reagan contends that the City's sign code defines off-premises signs on the basis of function or purpose and is therefore content based and subject to strict scrutiny. This stretches *Reed*'s "function or purpose" language too far. *Reed* held that subtler forms of content discrimination cannot escape classification as content based simply because they swap an obvious subject-matter distinction for a function or purpose proxy. That does not mean that any classification that considers function or purpose is *always* content based. Reagan's reading of *Reed* would contravene numerous precedents and cast doubt on the Nation's history of regulating off-premises signs. Pp. 11–12.

(b) This Court's determination that the City's on-/off-premises distinction is facially content neutral does not end the First Amendment inquiry. Evidence that an impermissible purpose or justification underpins a facially content-neutral restriction may mean that the restriction is nevertheless content based. Moreover, to survive intermediate scrutiny, a restriction on speech or expression must be "'narrowly tailored to serve a significant governmental interest.'" *Ward* v. *Rock Against Racism,* 491 U. S. 781, 791. Because the Court of Appeals did not address these issues, the Court leaves them for remand and expresses no view on the matters. Pp. 13–14.

972 F. 3d 696, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and BREYER, KAGAN, and KAVANAUGH, JJ., joined. BREYER, J., filed a concurring opinion. ALITO, J., filed an opinion concurring in the judgment in part and dissenting in part. THOMAS, J., filed a dissenting opinion, in which GORSUCH and BARRETT, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 20–1029

CITY OF AUSTIN, TEXAS, PETITIONER *v.*
REAGAN NATIONAL ADVERTISING
OF AUSTIN, LLC, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April 21, 2022]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Like thousands of jurisdictions around the country, the City of Austin, Texas (City), regulates signs that advertise things that are not located on the same premises as the sign, as well as signs that direct people to offsite locations. These are known as off-premises signs, and they include, most notably, billboards. The question presented is whether, under this Court's precedents interpreting the Free Speech Clause of the First Amendment, the City's regulation is subject to strict scrutiny. We hold that it is not.

I

A

American jurisdictions have regulated outdoor advertisements for well over a century. See C. Taylor & W. Chang, The History of Outdoor Advertising Regulation in the United States, 15 J. of Macromarketing 47, 48 (Spring 1995). By some accounts, the proliferation of conspicuous patent-medicine advertisements on rocks and barns prompted States to begin regulating outdoor advertising in the late 1860s. *Ibid.*; F. Presbrey, The History and

Development of Advertising 500–501 (1929). As part of this regulatory tradition, federal, state, and local governments have long distinguished between signs (such as billboards) that promote ideas, products, or services located elsewhere and those that promote or identify things located onsite. For example, this Court in 1932 reviewed and approved of a Utah statute that prohibited signs advertising cigarettes and related products, but allowed businesses selling such products to post onsite signs identifying themselves as dealers. *Packer Corp.* v. *Utah*, 285 U. S. 105, 107, 110.

On-/off-premises distinctions, like the one at issue here, proliferated following the enactment of the Highway Beautification Act of 1965 (Act), 23 U. S. C. §131. In the Act, Congress directed States receiving federal highway funding to regulate outdoor signs in proximity to federal highways, in part by limiting off-premises signs. See §§131(b)–(c) (allowing exceptions for "signs, displays, and devices advertising the sale or lease of property upon which they are located" and "signs, displays, and devices . . . advertising activities conducted on the property on which they are located"). Under the Act, approximately two-thirds of States have implemented similar on-/off-premises distinctions. See App. A to Reply to Brief in Opposition (collecting statutes); Brief for State of Florida et al. as *Amici Curiae* 7, n. 3 (same). The City represents, and respondents have not disputed, that "tens of thousands of municipalities nationwide" have adopted analogous on-/off-premises distinctions in their sign codes. Brief for Petitioner 19; see also App. B to Reply to Brief in Opposition (collecting examples of ordinances); Brief for State of Florida et al. as *Amici Curiae* 8, n. 4 (same).

The City of Austin is one such municipality. The City distinguishes between on-premises and off-premises signs in its sign code, and specially regulates the latter, in order to "protect the aesthetic value of the city and to protect public safety." App. 39.

During the time period relevant to this dispute, the City's sign code defined the term "off-premise sign" to mean "a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site." Austin, Tex., City Code §25–10–3(11) (2016). This definition was materially analogous to the one used in the federal Highway Beautification Act and many other state and local codes referenced above. The code prohibited the construction of any new off-premises signs, §25–10–102(1), but allowed existing off-premises signs to remain as grandfathered "non-conforming signs," §25–10–3(10). An owner of a grandfathered off-premises sign could "continue or maintain [it] at its existing location" and could change the "face of the sign," but could not "increase the degree of the existing nonconformity," "change the method or technology used to convey a message," or "increase the illumination of the sign." §§25–10–152(A)–(B). By contrast, the code permitted the digitization of on-premises signs. §25–10–102(6) (permitting "electronically controlled changeable-copy sign[s]").[1]

B

Respondents, Reagan National Advertising of Austin, LLC (Reagan), and Lamar Advantage Outdoor Company, L. P. (Lamar), are outdoor-advertising companies that own billboards in Austin. In April and June of 2017, Reagan sought permits from the City to digitize some of its off-premises billboards. The City denied the applications. Reagan filed suit against the City in state court alleging that the code's prohibition against digitizing off-premises signs, but not on-premises signs, violated the Free Speech Clause of the First Amendment. The City removed the case

[1]The City subsequently amended its sign code. The parties agree that the amendments do not affect this dispute. Reply to Brief in Opposition 11–12; Brief for Respondent Reagan 9.

to federal court, and Lamar intervened as a plaintiff.[2]

After the parties stipulated to the pertinent facts, the District Court held a bench trial and entered judgment in favor of the City. 377 F. Supp. 3d 670, 673, 683 (WD Tex. 2019). As relevant, the court held that the challenged sign code provisions were content neutral under *Reed* v. *Town of Gilbert*, 576 U. S. 155 (2015). The court explained that "the on/off premises distinction [did] not impose greater restrictions for political messages, religious messages, or any other subject matter," and "d[id] not require a viewer to evaluate the topic, idea, or viewpoint on the sign"; instead, it required the viewer only "to determine whether the subject matter is located on the same property as the sign." 377 F. Supp. 3d, at 681. The court therefore held that the distinction was a facially content-neutral "regulation based on location." *Ibid.* The court further found "no evidence in the record" that the City had applied the sign code provisions "differently for different messages or speakers" or that its stated concern for esthetics and safety was "pretext for any other purpose." *Id.,* at 681–682. Accordingly, the court reviewed the City's on-/off-premises distinction under the standard of intermediate scrutiny applicable to content-neutral regulations of speech. *Id.,* at 682. The court found that the distinction satisfied this standard. *Id.,* at 682–683.

The Court of Appeals reversed. 972 F. 3d 696, 699 (CA5 2020). The court opined that because the City's on-/off-premises distinction required a reader to inquire "who is the speaker and what is the speaker saying," "both hallmarks of a content-based inquiry," the distinction was content based. *Id.,* at 706. It reasoned that "[t]he fact that a government official ha[s] to read a sign's message to determine the sign's purpose [i]s enough to" render a regulation content based and "subject [it] to strict scrutiny." *Ibid.*

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[2] Lamar did not participate in the proceedings on the merits before this Court. Brief for Respondent Reagan II.

(citing *Thomas* v. *Bright*, 937 F. 3d 721, 730–731 (CA6 2019)); see also 972 F. 3d, at 704 ("To determine whether a sign is on-premises or off-premises, one must read the sign . . . "). The court acknowledged that its interpretation of *Reed* was "broad," but reasoned that the consequences were "not . . . unforeseen," given the concerns raised by Justices who did not join the opinion of the Court. 972 F. 3d, at 707.

Because the Court of Appeals determined that the City's on-/off-premises distinction imposed a content-based restriction on speech, it reviewed that distinction under the onerous standard of strict scrutiny. Recognizing that strict scrutiny "is, understandably, a hard standard to meet" and that it "leads to almost certain legal condemnation," *id.,* at 709, the court held that the City's justifications for the distinction could not meet that standard, rendering it unconstitutional, *id.,* at 709–710.[3]

This Court granted certiorari. 594 U. S. ___ (2021).

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[3]The Court of Appeals further considered the possibility that the code provisions regulated only commercial speech, such that only intermediate scrutiny would apply even if the provisions were content based. 972 F. 3d, at 707–709; see *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557, 566 (1980). The court rejected this view because the provisions "applie[d] with equal force to both commercial and noncommercial messages." 972 F. 3d, at 709. Before this Court, the City makes a similar argument, claiming that "[a]s applied to billboards like those owned by respondents," the contested code provisions regulate commercial speech and so are subject to intermediate scrutiny. Brief for Petitioner 49. It is undisputed, however, that Reagan's billboards also display noncommercial messages, meaning that the City's denial of Reagan's applications for digitization implicated Reagan's commercial and noncommercial speech alike. See Brief for Respondent Reagan 45–46; App. 130–141. More importantly, as the Court of Appeals explained, the contested code provisions admit of no exception for noncommercial speech. The only way in which they differentiate speech is by distinguishing between on-premises and off-premises signs. The Court thus must determine which level of scrutiny applies to the manner in which the provisions actually regulate speech.

II

A regulation of speech is facially content based under the First Amendment if it "target[s] speech based on its communicative content"—that is, if it "applies to particular speech because of the topic discussed or the idea or message expressed." *Reed*, 576 U. S., at 163. The Court of Appeals interpreted *Reed* to mean that if "[a] reader must ask: who is the speaker and what is the speaker saying" to apply a regulation, then the regulation is automatically content based. 972 F. 3d, at 706. This rule, which holds that a regulation cannot be content neutral if it requires reading the sign at issue, is too extreme an interpretation of this Court's precedent. Unlike the regulations at issue in *Reed*, the City's off-premises distinction requires an examination of speech only in service of drawing neutral, location-based lines. It is agnostic as to content. Thus, absent a content-based purpose or justification, the City's distinction is content neutral and does not warrant the application of strict scrutiny.

A

The *Reed* Court confronted a very different regulatory scheme than the one at issue here: a comprehensive sign code that "single[d] out specific subject matter for differential treatment." 576 U. S., at 169. The town of Gilbert, Arizona, had adopted a code that applied distinct size, placement, and time restrictions to 23 different categories of signs. *Id.,* at 159. The Court focused its analysis on three categories defined by whether the signs displayed ideological, political, or certain temporary directional messages. The code gave the most favorable treatment to "'Ideological Sign[s],'" defined as those "'communicating a message or ideas for noncommercial purposes'" with certain exceptions. *Id.,* at 159–160 (alteration in original). It offered less favorable treatment to "'Political Sign[s],'" defined as those "'designed to influence the outcome of an election.'" *Id.,* at

160 (alteration in original). Most restricted of all were "'Temporary Directional Signs Relating to a Qualifying Event,'" with qualifying events defined as gatherings "'sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar nonprofit organization.'" *Id.,* at 160–161.

The *Reed* Court determined that these restrictions were facially content based. *Id.,* at 164–165. Rejecting the contention that the restrictions were content neutral because they did not discriminate on the basis of viewpoint, the Court explained: "[I]t is well established that '[t]he 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.'" *Id.,* at 169 (quoting *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537 (1980)); accord, *e.g., Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 95 (1972) (explaining that "[t]he central problem" with a municipality's effort to exempt labor picketing from a prohibition on picketing near public schools was "that it describes permissible picketing in terms of its subject matter"); *Carey* v. *Brown*, 447 U. S. 455, 460–461 (1980) (subjecting a similar statute that "accord[ed] preferential treatment to the expression of views on one particular subject" to strict scrutiny).[4] Applying these principles, the Court reasoned that "a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. . . . For example, a law

[4]The concurrence in *Reed*, which spoke for three of the six Justices in the majority, similarly explained that "[c]ontent-based laws merit th[e] protection" of strict scrutiny "because they present, albeit sometimes in a subtler form, the same dangers as laws that regulate speech based on viewpoint. Limiting speech based on its 'topic' or 'subject' favors those who do not want to disturb the status quo. Such regulations may interfere with democratic self-government and the search for truth." 576 U. S., at 174 (ALITO, J., concurring) (quoting *Consolidated Edison Co. of N. Y.*, 447 U. S., at 537).

banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed." 576 U. S., at 169. By treating ideological messages more favorably than political messages, and both more favorably than temporary directional messages, "[t]he Town's Sign Code likewise single[d] out specific subject matter for differential treatment, even if it [did] not target viewpoints within that subject matter." *Ibid.*

In this case, enforcing the City's challenged sign code provisions requires reading a billboard to determine whether it directs readers to the property on which it stands or to some other, offsite location. Unlike the sign code at issue in *Reed*, however, the City's provisions at issue here do not single out any topic or subject matter for differential treatment. A sign's substantive message itself is irrelevant to the application of the provisions; there are no content-discriminatory classifications for political messages, ideological messages, or directional messages concerning specific events, including those sponsored by religious and nonprofit organizations. Rather, the City's provisions distinguish based on location: A given sign is treated differently based solely on whether it is located on the same premises as the thing being discussed or not. The message on the sign matters only to the extent that it informs the sign's relative location. The on-/off-premises distinction is therefore similar to ordinary time, place, or manner restrictions. *Reed* does not require the application of strict scrutiny to this kind of location-based regulation. Cf. *Frisby* v. *Schultz*, 487 U. S. 474, 482 (1988) (sustaining an ordinance that prohibited "only picketing focused on, and taking place in front of, a particular residence" as content neutral).

B

This Court's First Amendment precedents and doctrines have consistently recognized that restrictions on speech

may require some evaluation of the speech and nonetheless remain content neutral.

Most relevant here, the First Amendment allows for regulations of solicitation—that is, speech "requesting or seeking to obtain something" or "[a]n attempt or effort to gain business." Black's Law Dictionary 1677 (11th ed. 2019). To identify whether speech entails solicitation, one must read or hear it first. Even so, the Court has reasoned that restrictions on solicitation are not content based and do not inherently present "the potential for becoming a means of suppressing a particular point of view," so long as they do not discriminate based on topic, subject matter, or viewpoint. *Heffron* v. *International Soc. for Krishna Consciousness, Inc.*, 452 U. S. 640, 649 (1981).

Thus, in 1940, the Court invalidated a statute prohibiting solicitation for religious causes but observed that States were "free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience." *Cantwell* v. *Connecticut*, 310 U. S. 296, 306–307. Decades later, the Court reviewed just such a time, place, and manner regulation restricting all solicitation at the Minnesota State Fair, as well as all sale or distribution of merchandise, to a specific location. *Heffron*, 452 U. S., at 643–644. The State had applied the restriction against a religious practice that included "solicit[ing] donations for the support of the Krishna religion." *Id.,* at 645. As a result, members of the religion were free to roam the fairgrounds and discuss their beliefs, but they were prohibited from asking for donations for their cause outside of a designated location. *Id.,* at 646, 655. The Court upheld the State's application of this restriction as content neutral, emphasizing that it "applie[d] evenhandedly to all who wish[ed] . . . to solicit funds," whether for "commercial or charitable" reasons. *Id.,* at 649.

Consistent with these precedents, the Court has previously understood distinctions between on-premises and off-

premises signs, like the one at issue in this case, to be content neutral. In 1978, the Court summarily dismissed an appeal "for want of a substantial federal question" where a state court had approved of an on-/off-premises distinction as a permissible time, place, and manner restriction under the Free Speech Clause. *Suffolk Outdoor Advertising Co.* v. *Hulse*, 439 U. S. 808 (1978). Three years later, the Court upheld in relevant part an ordinance that prohibited all off-premises commercial advertising but allowed on-premises commercial advertising. *Metromedia, Inc.* v. *San Diego*, 453 U. S. 490, 503–512 (1981) (plurality opinion).[5] The *Metromedia* Court did not need to decide whether the off-premises prohibition was content based, as it regulated only commercial speech and so was subject to intermediate scrutiny in any event. See *id.,* at 507–512 (citing *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557 (1980)). Shortly thereafter, however, the Court applied the relevant portion of *Metromedia* and described the off-premises prohibition as "a *content-neutral* prohibition against the use of billboards." *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789, 807 (1984) (emphasis added).

Underlying these cases and others is a rejection of the view that *any* examination of speech or expression inherently triggers heightened First Amendment concern. Rather, it is regulations that discriminate based on "the topic discussed or the idea or message expressed" that are content based. *Reed*, 576 U. S., at 171. The sign code provisions challenged here do not discriminate on those bases.

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[5] Although the opinion in *Metromedia* was labeled a plurality for four Justices, the relevant portion of the opinion was also joined by a fifth. See 453 U. S., at 541 (Stevens, J., dissenting in part) ("join[ing] Parts I through IV of JUSTICE WHITE's opinion").

C

Reagan does not claim *Reed* expressly or implicitly overturned the precedents discussed above. Its argument relies primarily on one sentence in *Reed* recognizing 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." *Id.,* at 163. Seizing on this reference, Reagan asserts that the City's sign code "defines off-premises signs based on their 'function or purpose.'" Brief for Respondent Reagan 20 (quoting *Reed*, 576 U. S., at 163). It asks the Court to "reaffirm that, where a regulation 'define[s] regulated speech by its function or purpose,' it is content-based on its face and thus subject to strict scrutiny." Brief for Respondent Reagan 34 (quoting *Reed*, 576 U. S., at 163).

The argument stretches *Reed*'s "function or purpose" language too far. The principle the *Reed* Court articulated is more straightforward. While overt subject-matter discrimination is facially content based (for example, "'Ideological Sign[s],'" defined as those "'communicating a message or ideas for noncommercial purposes'"), so, too, are subtler forms of discrimination that achieve identical results based on function or purpose (for example, "'Political Sign[s],'" defined as those "'designed to influence the outcome of an election'"). *Id.,* at 159, 160, 163–164 (alterations in original). In other words, a regulation of speech cannot escape classification as facially content based simply by swapping an obvious subject-matter distinction for a "function or purpose" proxy that achieves the same result. That does not mean that any classification that considers function or purpose is *always* content based. Such a reading of "function or purpose" would contravene numerous precedents, including many of those discussed above. *Reed* did not purport to cast doubt on these cases.

Nor did *Reed* cast doubt on the Nation's history of regulating off-premises signs. Off-premises billboards of the sort that predominate today were not present in the founding era, but as large outdoor advertisements proliferated in the 1800s, regulation followed. As early as 1932, the Court had already approved a location-based differential for advertising signs. See *Packer Corp.*, 285 U. S., at 107, 110. Thereafter, for the last 50-plus years, federal, state, and local jurisdictions have repeatedly relied upon on-/off-premises distinctions to address the distinct safety and esthetic challenges posed by billboards and other methods of outdoor advertising. See *supra,* at 2. The unbroken tradition of on-/off-premises distinctions counsels against the adoption of Reagan's novel rule. See *Williams-Yulee* v. *Florida Bar*, 575 U. S. 433, 446 (2015) (recognizing "history and tradition of regulation" as relevant when considering the scope of the First Amendment).[6]

D

Tellingly, even today's dissent appears reluctant to embrace the read-the-sign rule adopted by the court below. In-

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[6]The Court of Appeals, for its part, understood *Reed* to have deemed a regulation content based solely because "it 'single[d] out signs bearing a particular message: the time and location of a specific event.'" 972 F. 3d 696, 706 (CA5 2020) (quoting *Reed*, 576 U. S., at 171). Reagan does not rely as heavily on this language, and for good reason. As a preliminary matter, the *Reed* Court found that the provisions at issue in that case did not, in fact, "hinge on 'whether and when an event is occurring.'" *Id.,* at 170. More fundamentally, those provisions did not target all events generally, regardless of topic; they targeted "a specific event" (an election) "because of the topic discussed or the idea or message expressed" (political speech). *Id.,* at 171. The Court of Appeals' contrary reading would render the majority opinion in *Reed* irreconcilable with the concurrence, which recognized that "[r]ules imposing time restrictions on signs advertising a one-time event," which "do not discriminate based on topic or subject," would be content neutral. *Id.,* at 174, 175 (ALITO, J., concurring).

stead, the dissent attacks a straw man. Contrary to its accusations, we do not "nullif[y]" *Reed*'s protections, "resuscitat[e]" a decision that we do not cite, or fashion a novel "specificity test" simply by quoting the standard repeatedly enunciated in *Reed*. *Post,* at 9, 11, 21 (opinion of THOMAS, J.). Nor do we cast doubt on any of our precedents recognizing examples of topic or subject-matter discrimination as content based. See, *e.g., post,* at 9–10. We merely apply those precedents to reach the "commonsense" result that a location-based and content-agnostic on-/off-premises distinction does not, on its face, "singl[e] out specific subject matter for differential treatment." *Reed*, 576 U. S., at 163, 169.

It is the dissent that would upend settled understandings of the law. Where we adhere to the teachings of history, experience, and precedent, the dissent would hold that tens of thousands of jurisdictions have presumptively violated the First Amendment, some for more than half a century, and that they have done so by use of an on-/off-premises distinction this Court has repeatedly reviewed and never previously questioned. For the reasons we have explained, the Constitution does not require that bizarre result.

III

This Court's determination that the City's ordinance is facially content neutral does not end the First Amendment inquiry. If there is evidence that an impermissible purpose or justification underpins a facially content-neutral restriction, for instance, that restriction may be content based. See *Reed*, 576 U. S., at 164. Moreover, to survive intermediate scrutiny, a restriction on speech or expression must be "'narrowly tailored to serve a significant governmental interest.'" *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791 (1989).

The parties dispute whether the City can satisfy these requirements. This Court, however, is "a court of final review

and not first view," and it does not "[o]rdinarily . . . decide in the first instance issues not decided below." *Zivotofsky* v. *Clinton*, 566 U. S. 189, 201 (2012) (internal quotation marks omitted). "In particular, when we reverse on a threshold question, we typically remand for resolution of any claims the lower courts' error prevented them from addressing." *Ibid.* Because the Court of Appeals did not address these issues, the Court leaves them for remand and expresses no view on the matters.

* * *

For these reasons, the judgment of the Court of Appeals for the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 20–1029

CITY OF AUSTIN, TEXAS, PETITIONER *v.*
REAGAN NATIONAL ADVERTISING
OF AUSTIN, LLC, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April 21, 2022]

JUSTICE BREYER, concurring.

Reed v. *Town of Gilbert*, 576 U. S. 155 (2015), is binding precedent here. Given that precedent, I join the majority's opinion. I write separately because I continue to believe that the Court's reasoning in *Reed* was wrong. The Court there struck down a city's sign ordinance under the First Amendment. It wrote that the First Amendment requires strict scrutiny whenever a regulation "target[s] speech based on its communicative content." *Id.,* at 163. It therefore concluded that "[c]ontent-based laws . . . are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Ibid.*

But the First Amendment is not the Tax Code. Its purposes are often better served when judge-made categories (like "content discrimination") are treated, not as bright-line rules, but instead as rules of thumb. And, where strict scrutiny's harsh presumption of unconstitutionality is at issue, it is particularly important to avoid jumping to such presumptive conclusions without first considering "whether the regulation at issue works harm to First Amendment interests that is disproportionate in light of the relevant regulatory objectives." *Id.,* at 179 (BREYER, J., concurring in judgment); *Barr* v. *American Assn. of Political Consultants,*

Inc., 591 U. S. ___, ___–___ (2020) (BREYER, J., concurring in judgment and dissenting in part) (slip op., at 9–10); *Sorrell* v. *IMS Health Inc.*, 564 U. S. 552, 582 (2011) (BREYER, J., dissenting). Here, I would conclude that the City of Austin's (City's) regulation of off-premises signs works no such disproportionate harm. I therefore agree with the majority's conclusion that strict scrutiny and its attendant presumption of unconstitutionality are unwarranted. The majority reaches this conclusion by applying *Reed*'s formal framework, as *stare decisis* requires. I would add that *Reed*'s strict formalism can sometimes disserve the very First Amendment interests it was designed to protect.

I

The First Amendment helps to safeguard what Justice Holmes described as a marketplace of ideas. *Abrams* v. *United States,* 250 U. S. 616, 630 (1919) (dissenting opinion). A democratic people must be able to freely "generate, debate, and discuss both general and specific ideas, hopes, and experiences." *Barr*, 591 U. S., at ___ (opinion of BREYER, J.) (slip op., at 3). They "must then be able to transmit their resulting views and conclusions to their elected representatives, which they may do directly, or indirectly through the shaping of public opinion." *Ibid.* Those representatives can respond by turning the people's ideas into policies. The First Amendment, by protecting the "marketplace" and the "transmission" of ideas, thereby helps to protect the basic workings of democracy itself. See *Meyer* v. *Grant*, 486 U. S. 414, 421 (1988) ("The First Amendment was 'fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people'").

Courts help to protect these democratic values in part by strictly scrutinizing certain categories of laws that threaten to "'drive certain ideas or viewpoints from the marketplace.'" *R. A. V.* v. *St. Paul*, 505 U. S. 377, 387 (1992). We

have recognized, for example, that First Amendment values are in danger when the government imposes restrictions upon "'core political speech,'" *Buckley* v. *American Constitutional Law Foundation, Inc.*, 525 U. S. 182, 186–187 (1999); when it discriminates against "particular views taken by speakers on a subject," *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829–830 (1995); and, in some contexts, when it removes "an entire topic" of discussion from public debate, *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537–538 (1980).

But not all laws that distinguish between speech based on its content fall into a category of this kind. That is in part because many ordinary regulatory programs may well turn on the content of speech without posing any "realistic possibility that official suppression of ideas is afoot." *R. A. V.*, 505 U. S., at 390. Those regulations, rather than hindering the ability of the people to transmit their thoughts to their elected representatives, may constitute the very product of that transmission. *Barr*, 591 U. S., at ___ (opinion of BREYER, J.) (slip op., at 4).

The U. S. Code (as well as its state and local equivalents) is filled with regulatory laws that turn, often necessarily, on the content of speech. Consider laws regulating census reporting requirements, *e.g.,* 13 U. S. C. §224; securities-related disclosures, *e.g.,* 15 U. S. C. §78*l*; copyright infringement, *e.g.,* 17 U. S. C. §102; labeling of prescription drugs, *e.g.,* 21 U. S. C. §353(b)(4)(A), or consumer electronics, *e.g.,* 42 U. S. C. §6294; highway signs, *e.g.,* 23 U. S. C. §131(c); tax disclosures, *e.g.,* 26 U. S. C. §6039F; confidential medical records, *e.g.,* 38 U. S. C. §7332; robocalls, *e.g.,* 47 U. S. C. §227; workplace safety warnings, *e.g.,* 29 CFR §1910.145 (2021); panhandling, *e.g.,* Ala. Code §13A–11–9(a) (2022); solicitation on behalf of charities, *e.g.,* N. Y. Exec. Law Ann. §174–b (West 2019); signs at petting zoos, *e.g.,* N. Y. Gen. Bus. Law Ann. §399–ff(3) (West 2015); and many more.

If *Reed* is taken as setting forth a formal rule that courts must strictly scrutinize regulations simply because they refer to particular content, we have good reason to fear the consequences of that decision. One possibility is that courts will strike down "'entirely reasonable'" regulations that reflect the will of the people. *Reed*, 576 U. S., at 171; *e.g., Barr*, 591 U. S., at ___ (slip op., at 9) (striking down the Telephone Consumer Protection Act's exception allowing robocalls that collect government debt); *IMDB.com* v. *Becerra*, 962 F. 3d 1111, 1125–1127 (CA9 2020) (striking down a California law prohibiting certain websites from publishing the birthdates of entertainment professionals). If so, the Court's content-based line-drawing will "substitut[e] judicial for democratic decisionmaking" and threaten the ability of the people to translate their ideas into policy. *Sorrell*, 564 U. S., at 603 (BREYER, J., dissenting).

A second possibility is that courts instead will (perhaps unconsciously) dilute the stringent strict scrutiny standard in an effort to avoid striking down reasonable regulations. Doing so would "weaken the First Amendment's protection in instances where 'strict scrutiny' should apply in full force." *Reed*, 576 U. S., at 178 (opinion of BREYER, J.).

A third possibility is that courts will develop a matrix of formal subsidiary rules and exceptions that seek to distinguish between reasonable and unreasonable content-based regulations. Such a patchwork, however, may prove overly complex, unwieldy, or unworkable. And it may make it more difficult for ordinary Americans to understand the importance of First Amendment values and to live their lives in accord with those values.

For these reasons, as I have said before, I would reject *Reed's* approach, which too rigidly ties content discrimination to strict scrutiny (and, consequently, to "almost certain legal condemnation"). *Id.*, at 176. Instead, I would treat content discrimination as a rule of thumb to be applied with what JUSTICE KAGAN has called "a dose of common sense."

Id., at 183 (opinion concurring in judgment). Where content-based regulations are at issue, I would ask a more basic First Amendment question: Does "the regulation at issue wor[k] harm to First Amendment interests that is disproportionate in light of the relevant regulatory objectives"? *Id.,* at 179 (opinion of BREYER, J.). I believe we should answer that question by examining "the seriousness of the harm to speech, the importance of the countervailing objectives, the extent to which the law will achieve those objectives, and whether there are other, less restrictive ways of doing so." *Ibid.*

II

The regulation at issue in this case is the City of Austin's sign code, which regulates billboards and other "off-premises" signs. The City defines an "off-premises" sign as "a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site." Austin, Tex., City Code §25–10–3(11) (2016).

Some years ago, the City forbid construction of new off-premises signs. §25–10–102(1). At the same time, it grandfathered in existing off-premises signs, allowing them to remain but subjecting them to regulation. §§25–10–3(10), 25–10–152(A), (B). Owners of grandfathered off-premises signs are allowed to change the face of their signs, but not to digitize them. *Ibid.* In the case before us, owners who wanted to digitize their off-premises signs challenged the City's regulation on the ground that it violates the First Amendment.

The Court remands for the lower courts to assess the constitutionality of this regulation in the first instance, so I need not answer that question conclusively now. I wish only to illustrate why I believe a strong presumption of unlawfulness is out of place here.

Billboards and other roadside signs can generally be categorized as a form of outdoor advertising. Regulation of outdoor advertising in order to protect the public's interest in "avoiding visual clutter," *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789, 806 (1984), or minimizing traffic risks, *Metromedia, Inc.* v. *San Diego*, 453 U. S. 490, 507–508 (1981), is unlikely to interfere significantly with the "marketplace of ideas." In this case, for example, there is no evidence that the City regulated off-premises signs in order to censor a particular viewpoint or topic, or that its regulations have had that effect in practice. There is consequently little reason to apply a presumption of unconstitutionality to this kind of regulation.

Without such a presumption, I would weigh the First Amendment harms that a regulation imposes against the regulatory objectives that it serves. The City's regulation here appears to work at most a limited, niche-like harm to First Amendment interests. Respondents own a number of grandfathered off-premises signs. They can use those signs to communicate whatever messages they choose. They complain only that they cannot digitize the signs, which would allow them to display several messages in rapid succession. Perhaps digitization would enable them to make more effective use of their billboard space. But their inability to maximize the use of their space in this way is unlikely to meaningfully interfere with their participation in the "marketplace of ideas."

At the same time, the City has asserted a legitimate interest in maintaining the regulation. As I have said, the public has an interest in ensuring traffic safety and preserving an esthetically pleasing environment, *supra* this page, and the City here has reasonably explained how its regulation of off-premises signs in general, and digitization in particular, serves those interests. *Amici* tell us that billboards, especially digital ones, can distract drivers and cause accidents. See, *e.g.,* Brief for United States as *Amicus*

Curiae 21 (citing a study of 450 crashes in Alabama and Florida that "revealed that the presence of digital billboards increased the overall crash rates in areas of billboard influence"); Brief for National League of Cities et al. as *Amici Curiae* 22 ("'The Wisconsin Department of Transport found a 35% increase in collisions near a variable message sign'" (alteration omitted)). They add that on-premises signs are less likely to cause accidents. *Id.,* at 23 ("[A] 2014 study found no evidence that on premises digital signs led to an increase in crashes"). The City further says that billboards cause more visual clutter than on-premises signs because the latter are "typically 'small in size' and integrated into the premises." Reply Brief 19.

I would leave for the courts below to weigh these harms and interests, and any alternatives, in the first instance, without a strong presumption of unconstitutionality.

SUPREME COURT OF THE UNITED STATES

No. 20–1029

CITY OF AUSTIN, TEXAS, PETITIONER *v.*
REAGAN NATIONAL ADVERTISING
OF AUSTIN, LLC, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April 21, 2022]

JUSTICE ALITO, concurring in the judgment in part and dissenting in part.

I agree with the majority that we must reverse the decision of the Court of Appeals holding that the provisions of the Austin City Code regulating on- and off-premises signs are facially unconstitutional. *Ante*, at 6. The Court of Appeals reasoned that those provisions impose content-based restrictions and that they cannot satisfy strict scrutiny, but the Court of Appeals did not apply the tests that must be met before a law is held to be facially unconstitutional. "Normally, a plaintiff bringing a facial challenge must 'establish that no set of circumstances exists under which the [law] would be valid,' or show that the law lacks 'a plainly legitimate sweep.'" *Americans for Prosperity Foundation* v. *Bonta*, 594 U. S. ___, ___ (2021) (slip op., at 15) (citation omitted). A somewhat less demanding test applies when a law affects freedom of speech. Under our First Amendment "overbreadth" doctrine, a law restricting speech is unconstitutional "if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States* v. *Stevens*, 559 U. S. 460, 473 (2010) (internal quotation marks omitted).

In this case, the Court of Appeals did not apply either of those tests, and it is doubtful that they can be met. Many

(and possibly the great majority) of the situations in which the relevant provisions may apply involve commercial speech, and under our precedents, regulations of commercial speech are analyzed differently. See *Sorrell* v. *IMS Health Inc.*, 564 U. S. 552, 571–572 (2011).

It is also questionable whether those code provisions are unconstitutional as applied to most of respondents' billboards. It appears that most if not all of those billboards are located off-premises in both the usual sense of that term,[1] and in the sense in which the term is used in the Austin code. See Austin, Tex., City Code §25–10–3(11) (2016) (a sign is off-premises if it "advertis[es] a business, person, activity, goods, products, or services not located on the site where the sign is installed" or if it "directs persons to any location not on that site"). The record contains photos of some of these billboards, see App. 130–147, and all but one appears to be located on otherwise vacant land. Thus, they are clearly off-premises signs, and because they were erected before the enactment of the code provisions at issue, the only relevant restriction they face is that they cannot be digitized.[2] The distinction between a digitized and non-digitized sign is not based on content, topic, or subject matter. Even if the message on a billboard were written in a secret code, an observer would have no trouble determining whether it had been digitized.

Because the Court of Appeals erred in holding that the code provisions are facially unconstitutional, I agree that

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[1] In ordinary usage, a sign that is attached to or located in close proximity to a building is not described as located "off-premises." The distinction between on- and off-premises signs is based solely on location, and that is why such a classification is not content-based. See *Reed* v. *Town of Gilbert*, 576 U. S. 155, 175 (2015) (ALITO, J., concurring).

[2] A grandfathered sign can be maintained at its existing location, but the owner cannot "increase the degree of the existing nonconformity," "change the method or technology used to convey a message," or "increase the illumination of the sign." Austin, Tex., City Code §§25–10–152(A)–(B).

we should reverse that decision. On remand, the lower courts should determine whether those provisions are unconstitutional as applied to each of the billboards at issue.

Today's decision, however, goes further and holds flatly that "[t]he sign code provisions challenged here do not discriminate" on the basis of "'the topic discussed or the idea or message expressed,'" *ante*, at 10, and that categorical statement is incorrect. The provisions defining on- and off-premises signs clearly discriminate on those grounds, and at least as applied in some situations, strict scrutiny should be required.

As the Court notes, under the provisions in effect when petitioner's applications were denied, a sign was considered to be off-premises if it "advertis[ed]," among other things, a "person, activity, . . . or servic[e] not located on the site where the sign is installed" or if it "direct[ed] persons to any location not on that site." Austin, Tex., City Code §25–10–3(11). Consider what this definition would mean as applied to signs posted in the front window of a commercial establishment, say, a little coffee shop. If the owner put up a sign advertising a new coffee drink, the sign would be classified as on-premises, but suppose the owner instead mounted a sign in the same location saying: "Contribute to X's legal defense fund" or "Free COVID tests available at Y pharmacy" or "Attend City Council meeting to speak up about Z." All those signs would appear to fall within the definition of an off-premises sign and would thus be disallowed. See also *post*, at 3–4 (THOMAS, J., dissenting). Providing disparate treatment for the sign about a new drink and the signs about social and political matters constitutes discrimination on the basis of topic or subject matter. The code provisions adopted in 2017 are worded differently, but the new wording may not rule out similar results.[3]

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[3]The amended code now defines "off-premise[s] sign" as "a sign that

For these reasons, I would simply hold that the provisions at issue are not facially unconstitutional, and I would refrain from making any broader pronouncements.

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displays any message directing attention to a business, product, service, profession, commodity, activity, event, person, institution, or other commercial message which is generally conducted, sold, manufactured, produced, offered, or occurs elsewhere than on the premises where the sign is located," and defines an "on-premise[s] sign" as "a sign that is not an off-premise[s] sign." Austin, Tex., City Code §§25–10–4(9)–(10) (2021). It is not clear that the inclusion of "other commercial message" modifies the terms "activity," "event," "person," or "institution" such that the provision would not draw topic-based distinctions as applied to non-commercial speech.

SUPREME COURT OF THE UNITED STATES

No. 20–1029

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REAGAN NATIONAL ADVERTISING
OF AUSTIN, LLC, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April 21, 2022]

JUSTICE THOMAS, with whom JUSTICE GORSUCH and JUSTICE BARRETT join, dissenting.

In *Reed* v. *Town of Gilbert*, 576 U. S. 155 (2015), we held that a speech regulation is content based—and thus presumptively invalid—if it "draws distinctions based on the message a speaker conveys." *Id.*, at 163. Here, the city of Austin imposes special restrictions on "off-premise[s] sign[s]," defined as signs that "advertis[e] a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that direc[t] persons to any location not on that site." Austin, Tex., City Code §25–10–3(11) (2016). Under *Reed*, Austin's off-premises restriction is content based. It discriminates against certain signs based on the message they convey—*e.g.*, whether they promote an on- or off-site event, activity, or service.

The Court nevertheless holds that the off-premises restriction is content neutral because it proscribes a sufficiently broad category of communicative content and, therefore, does not target a specific "topic or subject matter." *Ante*, at 8. This misinterprets *Reed*'s clear rule for content-based restrictions and replaces it with an incoherent and malleable standard. In so doing, the majority's reasoning is reminiscent of this Court's erroneous decision in *Hill* v. *Colorado*, 530 U. S. 703 (2000), which upheld a blatantly

content-based prohibition on "counseling" near abortion clinics on the ground that it discriminated against "an extremely broad category of communications." *Id.*, at 723. Because I would adhere to *Reed* rather than echo *Hill*'s long-discredited approach, I respectfully dissent.

I

A

The First Amendment, applicable to the States through the Fourteenth, prohibits laws "abridging the freedom of speech." U. S. Const., Amdt. 1; see also *Stromberg* v. *California*, 283 U. S. 359, 368 (1931). "When enforcing this prohibition, our precedents distinguish between content-based and content-neutral regulations." *National Institute of Family and Life Advocates* v. *Becerra*, 585 U. S. ___, ___ (2018) (slip op., at 6). A content-based law is "presumptively invalid," *United States* v. *Playboy Entertainment Group*, *Inc.*, 529 U. S. 803, 817 (2000) (internal quotation marks omitted), and may generally be upheld only if the government proves that the regulation is narrowly tailored to serve compelling state interests, *R. A. V.* v. *St. Paul*, 505 U. S. 377, 395 (1992).[1]

In *Reed* v. *Town of Gilbert*, we held that courts should identify content-based restrictions by applying a "commonsense" test: A speech regulation is content based if it

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[1] For several categories of historically unprotected speech, including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct, the government ordinarily may enact content-based restrictions without satisfying strict scrutiny. See *United States* v. *Stevens*, 559 U. S. 460, 468–469 (2010). This Court's precedents have also declined to apply strict scrutiny to several other types of content-based restrictions, including laws targeting "commercial speech." *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557, 561–566 (1980). But see *Lorillard Tobacco Co.* v. *Reilly*, 533 U. S. 525, 572 (2001) (THOMAS, J., concurring in part and concurring in judgment). As the Court recognizes, Austin's off-premises sign rule is not limited to any of these categories of speech. See *ante,* at 5, n. 3.

"target[s] speech based on its communicative content." 576 U. S., at 163. Put another way, a law is content based "'on its face' [if it] draws distinctions based on the message a speaker conveys." *Ibid.* While we noted that "[s]ome facial distinctions based on a message are obvious," we emphasized that others could be "more subtle, defining regulated speech by its function or purpose." *Ibid.* In all events, whether a law is characterized as targeting a "topic," "idea," "subject matter," or "communicative content," the law is content based if it draws distinctions based in any way "on the message a speaker conveys." *Id.*, at 163–164.[2]

Applying this standard, we held that the town of Gilbert's sign code was "a paradigmatic example of content-based discrimination" because it classified "various categories of signs based on the type of information they convey[ed], [and] then subject[ed] each category to different restrictions." *Id.*, at 169, 159. For instance, Gilbert defined "'Temporary Directional Signs'" as any sign that "convey[ed] the message of directing the public to [a] 'qualifying event,'" and permitted their display for no more than 12 hours before and 1 hour after the event occurred. *Id.*, at 164, 161. Meanwhile, "'Ideological Sign[s],'" defined as any sign (not covered by another category) that "'communicat[ed] a message or ideas for noncommercial purposes,'" were subject to no temporal limitations. *Id.*, at 159–160. In short, the restrictions on any given sign depended "on the communicative content of the sign." *Id.*, at 164. Gilbert's

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[2] In *Reed*, we acknowledged that some prior decisions had skipped over this facial analysis and applied a justification-focused test. See 576 U. S., at 165–167. But we explained that the justification-focused test implicated a "separate and additional category of laws that, though facially content neutral, [are] content-based regulations [because they] cannot be '"justified without reference to the content of the regulated speech,"' or . . . were adopted by the government 'because of disagreement with the message [the speech] conveys.'" *Id.,* at 164 (quoting *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791 (1989)). All agree that this second type of content-based regulation is not at issue here.

sign code was thus facially content based and presumptively unlawful. See *id.*, at 159.

In contrast to *Reed*'s "commonsense" test, Gilbert urged us to define "content based" as a "term of art that 'should be applied flexibly' with the goal of protecting 'viewpoints and ideas from government censorship or favoritism.'" *Id.*, at 168. Such a functionalist test, Gilbert argued, could ferret out illicit government motives while obviating the need to subject reasonable laws to strict scrutiny. See *ibid.* We rejected Gilbert's attempt to cast the phrase "content based" as a "term of art" because "[i]nnocent motives do not eliminate the danger of censorship presented by a facially content-based statute." *Id.*, at 167. We noted that "one could easily imagine a Sign Code compliance manager who disliked [a] Church's substantive teachings deploying the Sign Code to make it more difficult for the Church to inform the public of the location of its services." *Id.*, at 167–168. Thus, we concluded that "a clear and firm rule governing content neutrality is an essential means of protecting the freedom of speech, even if laws that might seem entirely reasonable will sometimes be struck down because of their content-based nature." *Id.*, at 171 (internal quotation marks omitted).

We also rejected the Ninth Circuit's reasoning that Gilbert's sign restrictions were content neutral because they depended on "the content-neutral elements of . . . whether and when an event is occurring." *Id.*, at 169 (internal quotation marks omitted). That is, whether a temporary directional sign was permissible depended, in part, on its temporal proximity to a "'qualifying event.'" *Id.*, at 164. This partial dependence on content-neutral elements was immaterial, we explained, because the restrictions also depended on the signs' communicative content. Gilbert officials still had to examine a sign's message to determine what type of sign it was, and this "obvious content-based inquiry d[id] not evade strict scrutiny simply because an

event [was] involved." *Id.*, at 170.

B

Under *Reed*'s approach for identifying content-based regulations, Austin's off-premises sign restriction is content based. As relevant to this suit, Austin's sign code imposes stringent restrictions on a category of "off-premise[s] sign[s]." §25–10–3(11). The code defines "off-premise[s] sign[s]" as those "advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed," or as signs "direct[ing] persons to any location not on that site." *Ibid.* This broad definition sweeps in a wide swath of signs, from 14- by 48-foot billboards to 24- by 18-inch yard signs. The sign code prohibits new off-premises signs and makes it difficult (or impossible) to change existing off-premises signs, including by digitizing them. See *ante*, at 3.

Like the town of Gilbert in *Reed*, Austin has identified a "categor[y] of signs based on the type of information they convey, [and] then subject[ed that] category to different restrictions." 576 U. S., at 159. A sign that conveys a message about off-premises activities is restricted, while one that conveys a message about on-premises activities is not. See *id.*, at 171 (regulating signs based on "a particular message" about "the time and location of a specific event" is content based). And, per *Reed*, it does not matter that Austin's code "defin[es] regulated speech by its function or purpose"—*i.e.*, advertising or directing passersby elsewhere. *Id.*, at 163. Again, all that matters is that the regulation "draws distinctions based on" a sign's "communicative content," which the off-premises restriction plainly does. *Ibid.*

This conclusion is not undermined because the off-premises sign restriction depends in part on a content-neutral element: the location of the sign. Much like in *Reed*, that an Austin official applying the sign code must know

where the sign is does not negate the fact that he also must know *what* the sign says. Take, for instance, a sign outside a Catholic bookstore. If the sign says, "Visit the Holy Land," it is likely an off-premises sign because it conveys a message directing people elsewhere (unless the name of the bookstore is "Holy Land Books"). But if the sign instead says, "Buy More Books," it is likely a permissible on-premises sign (unless the sign also contains the address of another bookstore across town). Finally, suppose the sign says, "Go to Confession." After examining the sign's message, an official would need to inquire whether a priest ever hears confessions at that location. If one does, the sign could convey a permissible "on-premises" message. If not, the sign conveys an impermissible off-premises message. Because enforcing the sign code in any of these instances "requires [Austin] officials to determine whether a sign" conveys a particular message, the sign code is content based under *Reed*. *Id.*, at 170.

In sum, the off-premises rule is content based and thus invalid unless Austin can satisfy strict scrutiny. See *Playboy Entertainment Group*, 529 U. S., at 813. Because Austin has offered nothing to make that showing, the Court of Appeals did not err in holding that the off-premises rule violates the First Amendment.

II

To reach the opposite result, the majority implicitly rewrites *Reed*'s bright-line rule for content-based restrictions. In the majority's view, the off-premises restriction is not content based because it does not target a specific "topic or subject matter." *Ante*, at 8. The upshot of the majority's reasoning appears to be that a regulation based on a sufficiently general or broad category of communicative content is not actually content based.

Such a rule not only conflicts with *Reed* and many pre-*Reed* precedents but is also incoherent and unworkable.

Tellingly, the only decision that even remotely supports the majority's rule is one it does not cite: *Hill* v. *Colorado*. There, the Court held that an undeniably content-based law was nonetheless content neutral because it discriminated against "an extremely broad category of communications," supposedly without regard to "subject matter." 530 U. S., at 723. The majority's decision today is erroneous for the same reasons that *Hill* is an aberration in our case law.

A

The majority concedes that "[t]he message on the sign matters" when applying Austin's sign code. *Ante*, at 8. That concession should end the inquiry under *Reed*. But the majority nonetheless finds the sign code to be content neutral by recasting facially content-based restrictions as only those that target sufficiently specific categories of communicative content and not as those that depend on communicative content *simpliciter*.

For example, while *Reed* defined content-based restrictions as those that "dra[w] distinctions based on the *message* a speaker conveys," 576 U. S., at 163 (emphasis added), the majority decides that Austin's sign code is not content based because it draws no distinctions based on "[a] sign's *substantive* message," *ante*, at 8 (emphasis added). Elsewhere, the majority speaks not of "substantive message[s]" but of "topic[s] or subject matter[s]," which the majority thinks are sufficiently *specific* categories of communicative content. *Ibid.* As a result, the majority contends that a law targeting directional messages concerning "events generally, regardless of topic," would not be content based, but one targeting "directional messages concerning *specific* events" (*e.g.*, "religious" or "political" events) would be. *Ante*, at 12, n. 6, 8 (emphasis added).[3] Regardless of the

[3] On this point, the majority's analysis tracks the position advanced by

label, the majority today excises, without a word of explanation, a subset of supposedly non-substantive or unspecific messages from the First Amendment's protection against content-based restrictions.

This understanding of content-based restrictions contravenes *Reed*, which held that a law is content based if it "target[s] speech based on its communicative content"—not "specific" or "substantive" categories of communicative content. 576 U. S., at 163; see also, *e.g.*, *Norton* v. *Springfield*, 806 F. 3d 411, 412 (CA7 2015) ("*Reed* effectively abolishes any distinction between content regulation and subject-matter regulation. Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification"). Only by jettisoning *Reed*'s "commonsense" definition of what it means to be content based can the majority assert that the off-premises rule is strictly "location-based" and "agnostic as to content," *ante*, at 6, even though the law undeniably depends on *both* location *and* communicative content, *supra*, at 5–6.

Moreover, the majority's suggestion that laws targeting broad categories of communicative content are not content based is hard to square with the sign categories that *Reed* invalidated. For instance, we found Gilbert's expansive definition of "Ideological Sign[s]" to be content based even though it broadly covered any "sign communicating a message or ideas for noncommercial purposes" that did not already fall into one of the other categories. 576 U. S., at 159 (internal quotation marks omitted). Nor did we suggest that the outcome in *Reed* would have been different if the sign categories were defined even more generally.

The majority answers that it is not "fashion[ing] a novel

Austin, which asserted that content neutrality was a "question of generality." Tr. of Oral Arg. 14; see also *id.,* at 19 (explaining that whether a law is content based turns on the "level of specificity" at which the government regulates speech).

'specificity test,'" but instead "simply" "quoting the standard repeatedly enunciated in *Reed*." *Ante*, at 13. The majority finds this alleged specificity test in a paragraph near the end of *Reed*, where we noted that a law "targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter," and then affirmed that Gilbert's sign code "single[d] out specific subject matter for differential treatment." 576 U. S., at 169.

These statements never purported to endorse a specificity test of the sort now suggested by the majority. Read in context, *Reed*'s two references to "specific subject matter" naturally address laws that target a "subject matter," however broadly defined, as opposed to some other subject matter; they did not refer only to laws targeting some sufficiently "specific" category of "subject matter." Moreover, the concept of "specificity" or "generality" appears nowhere in the part of *Reed* that set forth its "commonsense" test for content neutrality. See *id.*, at 163–164. If *Reed*'s content-neutrality test turned on specificity, we would have said so explicitly when stating the test. Finally, even crediting the majority's strained reading of *Reed*'s passing references to "specific subject matter," the paragraph where they appear made clear that it was describing only "a paradigmatic *example* of content-based discrimination." *Id.*, at 169 (emphasis added). That part of *Reed* never professed to announce a comprehensive rule with respect to all laws targeting speech based on its communicative content.

Our pre-*Reed* precedents likewise foreclose a construction of "content based" that applies only to some content. We have held many capacious speech regulations to be content based, including restrictions on "'advice or assistance derived from scientific, technical or other specialized knowledge,'" *Holder* v. *Humanitarian Law Project*, 561 U. S. 1, 12–13 (2010); "'advertising, promotion, or any activity . . . used to influence sales or the market share of a

prescription drug,'" *Sorrell* v. *IMS Health Inc.*, 564 U. S. 552, 559 (2011); "editorializing," *FCC* v. *League of Women Voters of Cal.*, 468 U. S. 364, 382–383, and n. 14 (1984); "'[publication] for philatelic, numismatic, educational, historical, or newsworthy purposes,'" *Regan* v. *Time*, *Inc.*, 468 U. S. 641, 644 (1984); and "anonymous speech," *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334, 348, 357 (1995). These speech categories are no more "specific" or "substantive" than messages regarding off-premises activities. And some of these examples, like "editorializing" or publishing "newsworthy" information, are clearly *less* so. What unites these speech restrictions is that their application turns "on the nature of the message being conveyed," *Carey* v. *Brown*, 447 U. S. 455, 461 (1980), not whether they regulate specific or general categories of speech, or whether they address substantive or non-substantive categories of speech.

We have defined content-based restrictions to include *all* content-based distinctions because any other rule would be incoherent. After all, off-premises advertising could be considered a "subject" or a "topic" as those words are ordinarily used. See *L. D. Management Co.* v. *Gray*, 988 F. 3d 836, 839 (CA6 2021) (off-premises billboard restriction "turns on the '*topic* discussed'" (emphasis added)). And, in any event, there is no principled way to decide whether a category of communicative content is "substantive" or "specific" enough for the majority to deem it a "topic" or "subject" worthy of heightened protection. Although off-premises advertising is a more general category of speech than some (*e.g.*, off-premises advertising of religious events), it is a more specific category than others (*e.g.*, advertising generally). The majority offers only its own *ipse dixit* to explain why off-premises advertising is insufficiently specific to qualify as content based under *Reed*. Worse still, the majority does not explain how courts should draw the line between a sufficiently substantive or specific content-based classification and one that is insufficiently substantive or specific.

On this point, Austin suggests there is no need to worry because our cases provide "guideposts" from which one can divine what "level of generality" renders a speech regulation content based. Tr. of Oral Arg. 18, 24. To be sure, that is the sort of inquiry the majority's opaque test invites. But *Reed* directed us elsewhere—to the text of the law in question and whether that law "'on its face' draws distinctions based on the message a speaker conveys." 576 U. S., at 163. The majority's holding that some rules based on content are not, as it turns out, content based nullifies *Reed*'s clear test.

B

The majority offers several reasons why its approach is consistent with *Reed* and other cases. None of these arguments is persuasive. Instead, they only serve to underscore the Court's ill-advised departure from our doctrine.

1

The majority first suggests that deeming Austin's sign code content based would require us to adopt an "extreme" reinterpretation of *Reed*. *Ante*, at 6. Specifically, the majority faults the Court of Appeals for concluding that Austin's regulation was content based because, to enforce the off-premises rule, "'[a] reader must ask: who is the speaker and what is the speaker saying'"? *Ibid.* (quoting 972 F. 3d 696, 706 (CA5 2020)). In the majority's view, *Reed* cannot stand for such a simplistic read-the-sign test.

The majority's skepticism is misplaced. We have often acknowledged that the need to examine the content of a message is a strong indicator that a speech regulation is content based. One year before *Reed*, for example, we stated that an abortion clinic buffer-zone law "would be content based if it required enforcement authorities to examine the content of the message that is conveyed to determine whether a violation has occurred." *McCullen* v. *Coakley*, 573 U. S. 464, 479 (2014) (internal quotation

marks omitted). That statement was not an outlier. See, *e.g.*, *Arkansas Writers' Project*, *Inc.* v. *Ragland*, 481 U. S. 221, 230 (1987) (tax exemption for periodicals "uniformly devoted to religion or sports" was content based because it required state officials to "examine the content of the message" (internal quotation marks omitted)); *Forsyth County* v. *Nationalist Movement*, 505 U. S. 123, 134 (1992) (regulation requiring parade organizers to pay a fee depending on the security costs anticipated for the event was content based because "[i]n order to assess accurately the cost of security for parade participants, the administrator must necessarily examine the content of the message that is conveyed" (internal quotation marks omitted)); *League of Women Voters*, 468 U. S., at 366, 383 (law forbidding public broadcasting stations from "engag[ing] in editorializing" was content based because it required "enforcement authorities [to] necessarily examine the content of the message that is conveyed" (internal quotation marks omitted)).

Ultimately, the majority's objection to the Court of Appeals' reliance on a read-the-sign test is a red herring; its real objection is to *Reed*'s rule that any law that draws distinctions based on communicative content is content based.

2

The majority next argues that Austin's sign code is content neutral under our precedents. See *ante*, at 8–10. But none of the cases the majority cites supports its crabbed view of what constitutes a content-based restriction.

First, in *Heffron* v. *International Soc. for Krishna Consciousness*, *Inc.*, 452 U. S. 640 (1981), the Court upheld, as content neutral, an ordinance providing that the "[s]ale or distribution of any merchandise, including printed or written material," could occur only from certain booths at the fairgrounds. *Id.*, at 643 (internal quotation marks omitted). Such a statute is facially content neutral under *Reed* because it does not "'on its face' dra[w] distinctions

based on the message a speaker conveys" when selling or distributing merchandise subject to the ordinance. 576 U. S., at 163. True, the Court construed the ordinance also to limit "fund solicitation operations," 452 U. S., at 644, but that was not, as the majority claims, a prohibition on "asking for donations," *ante*, at 9. Rather, anyone was free to "as[k] for donations" wherever he liked, because the ordinance did "not prevent respondents from wandering throughout the fairgrounds and directing interested donors or purchasers to their booth." 452 U. S., at 664, n. 2 (Blackmun, J., concurring in part and dissenting in part). Then, once "at the booth," the donor could "make a contribution." *Ibid.*

Second, in *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940), the Court invalidated a licensing system for religious and charitable solicitation while acknowledging in dicta that a State could regulate the time, place, and manner of solicitation. *Id.*, at 304, 307. But here, we are not faced with a true time, place, or manner restriction, as even the majority concedes. See *ante*, at 8.[4] And, in any event, *Cantwell* did not suggest that a content-based restriction could be sustained as a time, place, or manner restriction; its analysis focused predominantly on the plaintiff's free exercise claim; and the case predated our modern content-neutrality doctrine by nearly three decades. Thus, nothing in *Heffron* or *Cantwell* supports the majority's narrow approach to identifying content-based restrictions.

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[4]The majority says only that Austin's sign code is "similar" to a time-place-manner restriction, citing *Frisby* v. *Schultz*, 487 U. S. 474 (1988). *Ante,* at 8. But *Frisby* upheld an ordinance that regulated only *where* picketing may take place and not *what* message the picketers could communicate. See 487 U. S., at 477 (ordinance made it "unlawful for any person to engage in picketing before or about the residence or dwelling of any individual" (internal quotation marks omitted)); cf. *Hill* v. *Colorado*, 530 U. S. 703, 766 (2000) (Kennedy, J., dissenting) ("[n]o examination of the content of a speaker's message is required to determine whether an individual is picketing").

Finally, the majority argues that we have "previously understood distinctions between on-premises and off-premises signs . . . to be content neutral." *Ante*, at 9–10. To be sure, in both *Suffolk Outdoor Adv. Co.* v. *Hulse*, 439 U. S. 808 (1978), and *Metromedia, Inc.* v. *San Diego*, 453 U. S. 490, 503–512 (1981) (plurality opinion), this Court suggested that some restrictions on off-premises advertising were constitutional. And later, in *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789 (1984), the Court described *Metromedia* as upholding "a *content-neutral* prohibition against the use of billboards." 466 U. S., at 807 (emphasis added). But the statement in *Vincent* was dictum, and, as the majority concedes, both our summary decision in *Suffolk* and the plurality opinion in *Metromedia* sanctioned off-premises restrictions only insofar as they applied to *commercial* speech. *Ante*, at 10. That is, the "Court did not need to decide"—and did not decide—"whether the off-premises prohibition was content based" because restrictions on commercial speech are "subject to intermediate scrutiny in any event." *Ibid.*

3

The majority also claims that finding Austin's sign code to be content based "would render the majority opinion in *Reed* irreconcilable with" JUSTICE ALITO's *Reed* concurrence. *Ante*, at 12, n. 6. In particular, JUSTICE ALITO identified nine different types of sign regulations that he believed "would not be content based," including "[r]ules distinguishing between on-premises and off-premises signs" and "[r]ules imposing time restrictions on signs advertising a one-time event." 576 U. S., at 174–175. The majority evidently believes that these two types of sign regulations necessarily turn on a sign's communicative content, like the off-premises sign restriction at issue here.

That reading of the *Reed* concurrence makes little sense.

First, there is no reason to interpret the concurrence as referring to off-premises or one-time-event rules that turn on a sign's communicative content. Doing so would make those two rules categorically different from the other seven, none of which would ever turn on message content. See, *e.g.*, *id.*, at 174 ("Rules distinguishing between lighted and unlighted signs"). And although off-premises and one-time-event rules *could* be drafted in terms of a sign's communicative content, as is true here, they need not be. "There might be many formulations of an on/off-premises distinction that are content-neutral." *Thomas* v. *Bright*, 937 F. 3d 721, 733 (CA6 2019); see also *ante*, at 2, n. 1 (ALITO, J., concurring in judgment in part and dissenting in part) (explaining that "[i]n ordinary usage" an "off-premises" sign is one that is not "attached to or located in close proximity to a building"). For instance, a city could define "'an o[n]-premise[s] sign as any sign within 500 feet of a building,'" 937 F. 3d, at 732, or a sign that is installed by "'a business . . . licensed to occupy . . . the premises where the sign is located,'" Brief for Summus Outdoor as *Amicus Curiae* 10. As for regulations of one-time-event signs, Austin itself amended its sign code, at the behest of its lawyers, specifically to make its ordinance content neutral. See Austin, Tex., City Code §25–10–102(D) (2021); App. 152. Thus, interpreting JUSTICE ALITO's concurrence as referring to rules that turn on communicative content, as opposed to rules that are content neutral, is unwarranted.

Second, it would be strange to interpret the concurrence as proclaiming that *all* off-premises sign restrictions are content neutral considering the longstanding dispute over that question. In fact, 20 years before *Reed*, then-Judge Alito opined that there was "no easy answer to [the] question" whether "exceptions for 'for sale' signs and signs relating to on-site activities" would render a sign code content based. *Rappa* v. *New Castle County*, 18 F. 3d 1043, 1080

(CA3 1994) (concurring opinion); see also, *e.g.*, *Ackerly Communications of Mass., Inc.* v. *Cambridge*, 88 F. 3d 33, 36, n. 7 (CA1 1996) ("In 'commonsense' terms, the distinction surely is content-based because determining whether a sign must stay up or must come down requires consideration of the message it carries"); *Norton Outdoor Adv., Inc.* v. *Arlington Heights*, 69 Ohio St. 2d 539, 541, 433 N. E. 2d 198, 200 (1982) ("In prohibiting all forms of offsite billboard advertising, the ordinance is thus inescapably directed to the content of protected speech"). Ultimately, it seems quite unlikely that JUSTICE ALITO's quick recital of some content-neutral rules purported to pre-emptively decide an issue that had long perplexed federal and state courts.

4

Near the end of its analysis, the majority invokes an allegedly "unbroken tradition of on-/off-premises distinctions" that it claims "counsels against" faithful application of *Reed*. *Ante*, at 12. To be sure, history and tradition are relevant to identifying and defining those "few limited areas" where, "[f]rom 1791 to the present," "the First Amendment has permitted restrictions upon the content of speech." *Brown* v. *Entertainment Merchants Assn.*, 564 U. S. 786, 791 (2011) (internal quotation marks omitted); see *supra*, at 2, n. 1. But the majority openly admits that off-premises regulations "were not present [at] the founding." *Ante*, at 12. And while it asserts that "large outdoor advertisements proliferated in the 1800s," *ibid.*, it offers no evidence of any content-based restrictions from that period, let alone off-premises restrictions on *noncommercial* speech. The *earliest* example of an off-premises restriction that the majority cites arose in *Packer Corp.* v. *Utah*, 285 U. S. 105 (1932), but that case involved a restriction on *commercial* advertising and did not even feature a First Amendment claim. See *id.*, at 108–112.

Ultimately, the majority's only "historical" support is that

regulations like Austin's "proliferated following the enactment of the Highway Beautification Act of 1965." *Ante*, at 2. The majority's suggestion that the First Amendment should yield to a speech restriction that "proliferated"—under pressure from the Federal Government—some two centuries after the founding is both "startling and dangerous." *United States* v. *Stevens*, 559 U. S. 460, 470 (2010). This Court has never hinted that the government can, with a few decades of regulation, subject "new categories of speech" to less exacting First Amendment scrutiny. *Id.*, at 472.

Regardless, even if this allegedly "unbroken tradition" did not fall short by a century or two, the majority offers no explanation why historical regulation is relevant to the question whether the off-premises restriction is content based under *Reed* and our modern content-neutrality jurisprudence. If Austin had met its burden of identifying a historical tradition of analogous regulation—as can be done, say, for obscenity or defamation—that would not make the off-premises rule content neutral. It might simply mean that the off-premises rule is a constitutional form of content-based discrimination. But content neutrality under *Reed* is an empirical question, not a historical one. Thus, the majority's historical argument is not only meritless but misguided.

C

Despite asserting that the Court of Appeals' analysis under *Reed* would "contravene numerous precedents," *ante*, at 11, the majority identifies no decision of this Court supporting the idea that a speech restriction is not content based so long as it regulates a sufficiently broad or nonsubstantive category of communicative content. In fact, there is only one case that could possibly validate the majority's aberrant analysis: *Hill* v. *Colorado*. That *Hill* is the majority's only support underscores the danger that today's

decision poses to the First Amendment.

Hill involved a law that prohibited persons outside abortion clinics from knowingly approaching within eight feet of another person without consent "for the purpose of . . . engaging in oral protest, education, or counseling." 530 U. S., at 707 (internal quotation marks omitted). *Hill* concluded, implausibly, that this regulation was content neutral.

The majority's reasoning in this case is just as implausible. The majority asserts that the off-premises rule is not content based because it does not target a sufficiently "specific" or "substantive" category of communications. *Ante*, at 8. *Hill* correspondingly held that restrictions on "protest, education, or counseling" were not content-based classifications because they cover "an extremely broad category of communications." 530 U. S., at 723. The majority also tries to disguise its redefinition of content neutrality by characterizing Austin's rule as a "neutral, location-based" restriction. *Ante*, at 6. So too did *Hill* try to conceal its doctrinal innovation by characterizing the buffer-zone law as a neutral "place restriction." 530 U. S., at 723. Finally, the majority finds it immaterial that Austin's rule can be enforced only by "reading a [sign] to determine whether it" contains an off-premises message. *Ante*, at 8. *Hill* likewise found it irrelevant that "the content of the oral statements" would need to "be examined to determine whether" the prohibition applied. 530 U. S., at 720.

The parallel between the majority's opinion and *Hill* should be discomforting given that *Hill* represented "an unprecedented departure" from this Court's First Amendment jurisprudence. *Id.*, at 772 (Kennedy, J., dissenting). Its content-neutrality analysis was, as Justice Scalia explained, "absurd" given that the buffer-zone law was "obviously and undeniably content based." *Id.*, at 742–743 (dissenting opinion). First Amendment scholars from across the ideological spectrum agree. See, *e.g.*, M.

McConnell, Professor Michael W. McConnell's Response, in K. Sullivan, Sex, Money, and Groups: Free Speech and Association Decisions in the October 1999 Term, 28 Pepperdine L. Rev. 723, 748 (2001) ("The Court said that this statute is content-neutral. I just literally cannot see how they could possibly come to that conclusion"); Colloquium, *id.*, at 750 (Laurence Tribe stating *Hill* "was slam-dunk simple and slam-dunk wrong"); R. Fallon, Strict Judicial Scrutiny, 54 UCLA L. Rev. 1267, 1298, and n. 174 (2007) (*Hill* "unconvincingly . . . maintain[ed] that a content-based restriction on speech [was] not really content-based"). And, since *Hill*, this Court has all but interred its flawed content-neutrality analysis in both *McCullen*, see *supra*, at 11, and *Reed*. See *Price* v. *Chicago*, 915 F. 3d 1107, 1118 (CA7 2019) ("In the wake of *McCullen* and *Reed*, it's not too strong to say that what *Hill* explicitly rejected is now prevailing law").

The majority's refusal to acknowledge *Hill* simply underscores the decision's defunct status. Again, *Hill* is the only case that could support the majority's ill-conceived content-neutrality analysis, and yet the majority disclaims reliance on it. Lower courts should take the majority's disclaimer at face value: *Hill* is "a decision that we do not cite." *Ante*, at 13. And today's decision amounts to little more than an ad hoc exemption for the "location-based" and supposedly "content-agnostic on-/off-premises distinction." *Ibid*.

Even so, the majority's approach should offer little comfort because arbitrary carveouts from *Reed* undermine the "clear and firm rule governing content neutrality" that we understood to be "an essential means of protecting the freedom of speech." 576 U. S., at 171. The majority's deviation from that "clear and firm rule" poses two serious threats to the First Amendment's protections.

First, transforming *Reed*'s clear definition of "content based regulation" back into an opaque and malleable "term

of art" turns the concept of content neutrality into a "vehicl[e] for the implementation of individual judges' policy preferences." *Tennessee* v. *Lane*, 541 U. S. 509, 556 (2004) (Scalia, J., dissenting). *Hill* exemplifies this danger. See 530 U. S., at 742 (Scalia, J., dissenting) ("I have no doubt that this regulation would be deemed content based *in an instant* if the case before us involved antiwar protesters, or union members seeking to 'educate' the public about the reasons for their strike"). The majority's approach in this case is cut from the same cloth. As the majority transparently admits, it seeks to "apply [our] precedents to reach the 'commonsense' *result*" and avoid what it perceives as a "bizarre *result*." *Ante*, at 13 (emphasis added). But *Reed* mandates a "commonsense" test for content neutrality even if the *result* is that "laws that might seem entirely reasonable will sometimes be struck down." 576 U. S., at 163, 171 (internal quotation marks omitted).

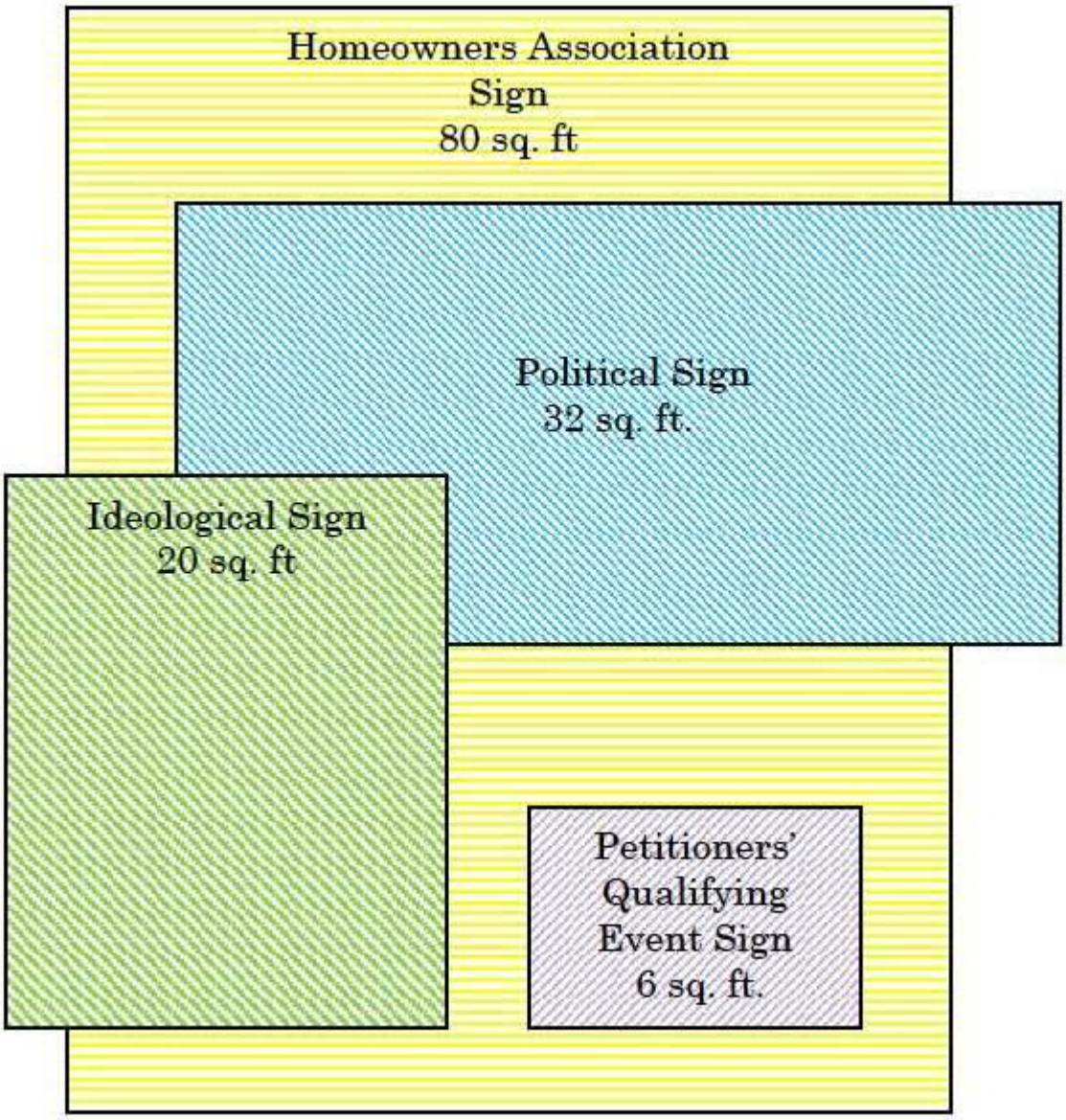
Second, sanctioning certain content-based classifications but not others ignores that even seemingly reasonable content-based restrictions are ready tools for those who would "suppress disfavored speech." *Id.*, at 167; see also *Hill*, 530 U. S., at 743 (Scalia, J., dissenting) ("'The vice of content-based legislation . . . is not that it is always used for invidious, thought-control purposes, but that it lends itself to use for those purposes'"). This is because "the responsibility for distinguishing between" permissible and impermissible content "carries with it the potential for invidious discrimination of disfavored subjects." *Cincinnati* v. *Discovery Network, Inc.*, 507 U. S. 410, 423–424, n. 19 (1993). That danger only grows when the content-based distinctions are "by no means clear," giving more leeway for government officials to punish disfavored speakers and ideas. *Ibid.*

The content-based distinction drawn by Austin's off-premises speech restriction is "by no means clear," *ibid.*, and plainly lends itself "to suppress[ing] disfavored

speech," *Reed*, 576 U. S., at 167. As the Court of Appeals noted, Austin's "prepared counsel" "struggled to answer whether" signs conveying messages like "'God Loves You,'" "'Vote for Kathy,'" or "'Sally makes quilts here and sells them at 3200 Main Street'" would be regulated as off-premises signs. 972 F. 3d, at 706. Before us, Austin's counsel had similar difficulties, and *amici* have proposed dozens of religious and political messages that would be next to impossible to categorize under Austin's rule. See, *e.g.*, Brief for Alliance Defending Freedom et. al. as *Amici Curiae* 15–19; Brief for Institute for Justice as *Amicus Curiae* 3–9. These pervasive ambiguities offer enforcement officials ample opportunity to suppress disfavored views. And they underscore *Reed*'s warning that "[i]nnocent motives do not eliminate the danger of censorship presented by a facially content-based statute." 576 U. S., at 167.

* * *

Because *Reed* provided a clear and neutral rule that protected the freedom of speech from governmental caprice and viewpoint discrimination, I would adhere to that precedent rather than risk resuscitating *Hill*. I respectfully dissent.


Homeowners Association
Sign
80 sq. ft
Political Sign
32 sq. ft.
Ideological Sign
20 sq. ft
Petitioners'
Qualifying
Event Sign
6 sq. ft.

LEADING CASES

CONSTITUTIONAL LAW

First Amendment — Freedom of Speech — Content Discrimination — City of Austin v. Reagan National Advertising of Austin, LLC

Imagine three kinds of statutes: The first limits only signs displaying political messaging. The second restricts only signs directing passersby to nearby events. And the third regulates only signs advertising off-premises activities. When the Supreme Court decided *Reed v. Town of Gilbert*[1] several Terms ago, it suggested that all three posed serious threats to First Amendment interests and therefore warranted "strict" judicial review.[2] A law is "presum[ed] unconstitutional," *Reed* announced, if it regulates speech "based on the message a speaker conveys."[3] That sweeping rule, taken at face value, surely applies to all three of the statutes listed above — as well as many other, perhaps "entirely reasonable" laws.[4] But one of these statutes, the Supreme Court held last Term in *City of Austin v. Reagan National Advertising of Austin, LLC*,[5] is not like the others; the third — a location-based sign restriction — just doesn't belong.[6] *City of Austin* made two important contributions to constitutional free speech law: It clarified that *Reed* does not go as far as many had feared. And it provided lower courts with some direction for how to think about *Reed* going forward. But serious concerns about *Reed*'s breadth remain — concerns that will continue to trouble and divide courts as they figure out how exactly to apply *Reed*.

Content-based restrictions on speech must overcome "strict" judicial scrutiny.[7] Much therefore rides on whether a speech regulation is "content based" or "content neutral."[8] Yet the Supreme Court, for decades, failed to consistently distinguish one from the other.[9] Instead, it wavered between two different standards: In some cases, the Court would treat

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[1] 576 U.S. 155 (2015).

[2] *See id.* at 163–64.

[3] *Id.* at 163. A law survives "strict scrutiny" only if it serves a "compelling interest" that the government "has no other way" of achieving. *Id.* at 181 (Kagan, J., concurring in the judgment).

[4] *Id.* at 171 (majority opinion) (quoting City of Ladue v. Gilleo, 512 U.S. 43, 60 (1994) (O'Connor, J., concurring)).

[5] 142 S. Ct. 1464 (2022).

[6] *See id.* at 1468–69.

[7] United States v. Playboy Ent. Grp., Inc., 529 U.S. 803, 813 (2000) (citing Sable Commc'ns of Cal., Inc. v. FCC, 492 U.S. 115, 126 (1989)). For an account of why strict scrutiny applies to content-based laws, see Elena Kagan, *Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine*, 63 U. CHI. L. REV. 413, 450–51 (1996) (arguing that the designation reflects "the view that content-based regulation emerges from illicit motives," *id.* at 451).

[8] *See, e.g.*, Kagan, *supra* note 7, at 443 (describing "[t]he distinction between content-based and content-neutral regulations of speech" as "the keystone of First Amendment law").

[9] *See* Genevieve Lakier, Reed v. Town of Gilbert, Arizona*, And the Rise of the Anticlassificatory First Amendment*, 2016 SUP. CT. REV. 233, 249 (2017).

any law that drew subject matter distinctions as content based.[10] In others, it would insist that only regulations lacking a content-neutral purpose were content based.[11] It was only a few Terms ago, in *Reed v. Town of Gilbert*,[12] that the Court settled on a purportedly "clear and firm rule"[13]: a restriction on speech is content based, no matter its purpose, if its text draws distinctions "based on the message a speaker conveys."[14] So an ordinance that treats different subject matters differently — that treats, for instance, "ideological" signs more favorably than "political" signs and "temporary directional" signs least favorably of them all — is content based and subject to strict scrutiny.[15]

Reed appeared to initiate "a drastic change" in free speech law,[16] prompting fresh challenges to speech regulations that had long been considered permissible under the First Amendment.[17] Location-based limits on signage, such as those challenged in *City of Austin*, are one such example. Like most jurisdictions, the City of Austin regulates outdoor advertising.[18] By ordinance, Austin had imposed restrictions on the use of "off-premises" signs — signs that advertise a business, person, product, or service "not located on the site where the sign is installed."[19] Specifically, in order to minimize visual blight and promote traffic safety, Austin's sign code prohibited the construction of new off-premises signs and the digitization of old off-premises signs.[20]

In 2017, two years after the Court had decided *Reed*, Reagan National Advertising of Austin, a local outdoor-advertising agency, applied to install digital sign faces on various off-premises billboards.[21] When Austin denied the applications, the agency brought a First

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[10] *See, e.g.*, Burson v. Freeman, 504 U.S. 191, 197 (1992) (plurality opinion) (holding that law prohibiting campaign-related speech near polling places was content based).

[11] *See, e.g.*, Hill v. Colorado, 530 U.S. 703, 724 (2000) (holding that law that furthered state's interest in protecting patients from "potential physical and emotional harm," *id.* at 718 n.25, by prohibiting "oral protest, education, or counseling" near health care facilities, *id.* at 724, was content neutral).

[12] *Reed* involved a challenge to a sign code that treated "ideological" signs, "political" signs, and "temporary directional" signs differently. Reed v. Town of Gilbert, 576 U.S. 155, 159–60 (2015).

[13] *Id.* at 171.

[14] *Id.* at 164.

[15] *Id.* at 159–60, 163–64.

[16] Reagan Nat'l Advert. of Austin, Inc. v. City of Austin, 972 F.3d 696, 702 (5th Cir. 2020) (quoting Free Speech Coal., Inc. v. Att'y Gen. U.S., 825 F.3d 149, 160 n.7 (3d Cir. 2016); and citing other opinions across circuits). However, some courts have characterized *Reed* differently. *See, e.g.*, Reagan Nat'l Advert. of Austin, Inc. v. City of Austin, 377 F. Supp. 3d 670, 678 (W.D. Tex. 2019) ("*Reed* did not change the test for content-based speech. Rather, *Reed* recites the familiar standard.").

[17] *See* Note, *Free Speech Doctrine After* Reed v. Town of Gilbert, 129 HARV. L. REV. 1981, 1986–87 (2016) (noting post-*Reed* challenges to "other municipal sign codes, antipanhandling regulations, commercial speech regulations, and regulations of general commercial conduct" (footnotes omitted)).

[18] *City of Austin*, 142 S. Ct. at 1469.

[19] *Id.* (citing AUSTIN, TEX., CITY CODE § 25-10-3(11) (2016)).

[20] *Id.* at 1469–70.

[21] *Id.* at 1470.

Amendment challenge against the city's sign code, asserting that, under *Reed*, the ordinance's on/off premises distinction was a content-based restriction of speech subject to strict scrutiny.[22]

The Western District of Texas disagreed. Judge Pitman rejected Reagan National's theory that a sign regulation is content based simply because its enforcement requires the government to read what the sign says.[23] Such a broad rule, he explained, "would apply strict scrutiny to all regulations for signs with written text," even "stop signs."[24] Instead, Judge Pitman embraced a more modest interpretation of *Reed*: a regulation of speech is not content based if it does not restrict "discussion of any specific topics, ideas[,] or viewpoints."[25] And because Austin's ordinance regulated signs based on location, not on the message conveyed, it was not content based on its face.[26]

The Fifth Circuit reversed and remanded.[27] Writing for a unanimous panel, Judge Elrod[28] held that the challenged ordinance was content based under *Reed* because its application "depend[ed] on the content" of the sign's message.[29] To determine whether a sign was "off-premises," an Austin official would have to read it and ask: Does this sign advertise a business, product, or service located elsewhere?[30] "This," Judge Elrod concluded, "is an 'obvious content-based inquiry,' and it 'does not evade strict scrutiny' simply because a location is involved."[31]

The Supreme Court reversed and remanded.[32] A majority of the Court, speaking through Justice Sotomayor,[33] held that Austin's on/off premises distinction was content neutral on its face.[34] Justice Sotomayor began with the history of outdoor-advertising regulation in the United States. "American jurisdictions," she explained, "have regulated outdoor advertisements for well over a century."[35] And, "[a]s part of this regulatory tradition," governments "have long distinguished" between signs that promote things located elsewhere and those that promote things located onsite.[36] The Court's own free speech precedents,

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[22] Reagan Nat'l Advert. of Austin, Inc. v. City of Austin, 377 F. Supp. 3d 670, 675 (W.D. Tex. 2019).

[23] *Id.* at 680.

[24] *Id.*

[25] *Id.* at 681.

[26] *Id.*

[27] Reagan Nat'l Advert. of Austin, Inc. v. City of Austin, 972 F.3d 696, 699 (5th Cir. 2020).

[28] Judge Elrod was joined by Judges Southwick and Haynes.

[29] *City of Austin*, 972 F.3d at 705 (quoting Thomas v. Bright, 937 F.3d 721, 731 (6th Cir. 2019)).

[30] *Id.* at 704.

[31] *Id.* at 707 (quoting Reed v. Town of Gilbert, 576 U.S. 155, 170 (2015)).

[32] *City of Austin*, 142 S. Ct. at 1476.

[33] Justice Sotomayor was joined by Chief Justice Roberts and Justices Breyer, Kagan, and Kavanaugh.

[34] *City of Austin*, 142 S. Ct. at 1471.

[35] *Id.* at 1469.

[36] *Id.*

she noted, have permitted this regulatory practice.[37] And, more broadly, they teach that not all restrictions that "require[] an examination of speech" are content based.[38] The Court, for example, has held that location-based regulations on solicitation — speech "requesting or seeking to obtain something"[39] — are not content based even though, "[t]o identify whether speech entails solicitation, one must read or hear it first."[40]

Reed did not disturb these traditions.[41] It did not, Justice Sotomayor urged, hold that a sign-code provision is content based simply because "it requires reading the sign at issue."[42] Such a broad interpretation "would upend settled understandings of the law" — of "history, experience, and precedent" — while reaching a "bizarre result."[43] Rather, she instructed, *Reed* stood for the much narrower view that a regulation of speech is facially content based if it "applies to particular speech because of the topic discussed or the idea or message expressed"[44] — that is, when it "single[s] out specific subject matter for differential treatment."[45]

So, on this view of *Reed*, Austin's sign code is not a facially content-based restriction. Much like an "ordinary time, place, or manner restriction[]," [46] Justice Sotomayor reasoned, the challenged ordinance "distinguish[es] based on location," not on topic or subject matter: "A given sign is treated differently based solely on whether it is located on the same premises as the thing being discussed . . . ."[47] And to the extent that the "distinction requires an examination of speech," it does so "only in service of drawing neutral, location-based lines."[48]

Justice Breyer concurred.[49] He agreed that *Reed* controlled the outcome of the case, but insisted that *Reed* had been wrongly decided.[50] Some restrictions on speech, he acknowledged, threaten democratic values by "driv[ing] certain ideas or viewpoints from the marketplace [of ideas]."[51] "But not all laws that distinguish between speech based on its

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[37] *Id.* at 1473–75 (citing Packer Corp. v. Utah, 285 U.S. 105, 107, 110 (1932); Suffolk Outdoor Advert. Co. v. Hulse, 439 U.S. 808 (1978); Metromedia, Inc. v. San Diego, 453 U.S. 490, 503–12 (1981) (plurality opinion)).

[38] *Id.* at 1471; *see also id.* at 1473.

[39] *Id.* at 1473 (quoting *Solicitation*, BLACK'S LAW DICTIONARY (11th ed. 2019)).

[40] *Id.*

[41] *See id.* at 1474.

[42] *Id.* at 1471.

[43] *Id.* at 1475.

[44] *Id.* at 1471 (quoting Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015)).

[45] *Id.* (quoting *Reed*, 576 U.S. at 169).

[46] *Id.* at 1473.

[47] *Id.* at 1472–73.

[48] *Id.* at 1471. The remainder of the inquiry — whether the ordinance was underpinned by an impermissible purpose or justification, or whether it could survive even intermediate scrutiny — was left for the Fifth Circuit to resolve. *See id.* at 1475–76.

[49] *Id.* at 1476 (Breyer, J., concurring).

[50] *Id.*

[51] *Id.* at 1477 (quoting R.A.V. v. City of St. Paul, 505 U.S. 377, 387 (1992)).

content" do so.[52] And categorically applying strict scrutiny whenever a regulation targets speech because of its content, as *Reed* requires, "can sometimes disserve the very First Amendment interests it was designed to protect."[53]

Indeed, Justice Breyer continued, countless federal, state, and local regulations — think laws requiring tax disclosures, prescription-drug labeling, or workplace-safety warnings — "turn, often necessarily, on the content of speech."[54] But if "courts must strictly scrutinize [these] regulations simply because they refer to particular content," then *Reed*'s formal rule comes with undue costs.[55] Courts will have to "strike down 'entirely reasonable' regulations,"[56] "dilute" the strict scrutiny standard to avoid doing so,[57] or "develop a matrix" of subrules and exceptions to sort reasonable content-based regulations from unreasonable ones.[58]

Justice Alito concurred in the judgment in part and dissented in part.[59] He disagreed with the majority as to whether Austin's ordinance was content based.[60] Under Austin's sign code, he reasoned, a coffeeshop owner can post a storefront sign promoting a new drink inside, but not one advertising free COVID-19 tests at a nearby pharmacy or urging attendance at a local city council meeting.[61] Such disparate treatment is "discrimination on the basis of topic or subject matter."[62] Justice Alito nevertheless agreed with the majority that Austin's ordinance was not facially unconstitutional. A plaintiff challenging a law on its face, he explained, must show that at least "a substantial number" of the law's applications would violate the Constitution.[63] But because applications of Austin's sign code would count as regulations of *commercial* speech,

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[52] *Id.*

[53] *Id.* at 1476.

[54] *Id.* at 1477; *see also* Reed v. Town of Gilbert, 576 U.S. 155, 177–78 (2015) (Breyer, J., concurring in the judgment) (listing "examples of speech regulated by government that inevitably involve content discrimination, but where a strong presumption against constitutionality has no place," *id.* at 177).

[55] *City of Austin*, 142 S. Ct. at 1477.

[56] *Id.* (quoting *Reed*, 576 U.S. at 171 (majority opinion)).

[57] *Id.* at 1478.

[58] *Id.*

[59] *Id.* at 1479 (Alito, J., concurring in the judgment in part and dissenting in part).

[60] *See id.* at 1480.

[61] *Id.* at 1481.

[62] *Id.*

[63] *Id.* at 1479–80 (quoting United States v. Stevens, 559 U.S. 460, 473 (2010)). Generally, "a plaintiff bringing a facial challenge must 'establish that no set of circumstances exists under which the [law] would be valid,' or show that the law lacks 'a plainly legitimate sweep.'" *Id.* at 1479 (alteration in original) (quoting Ams. for Prosperity Found. v. Bonta, 141 S. Ct. 2373, 2387 (2021)). But for a law burdening free speech, a plaintiff need show only that "a substantial number of its applications are unconstitutional," *id.* at 1480 (quoting *Stevens*, 559 U.S. at 473) — a "somewhat less demanding test," *id.* at 1479–80. Justice Alito expressed doubt that the challengers could prevail under either inquiry. *Id.* at 1480.

which are analyzed under a much more lenient standard of review, Austin's ordinance would likely survive a facial challenge.[64]

Justice Thomas,[65] who had written for the Court in *Reed*,[66] dissented.[67] Under Austin's sign code, he explained, "[a] sign that conveys a message about off-premises activities is restricted, while one that conveys a message about on-premises activities is not."[68] The ordinance thus singles out for regulation a "categor[y] of signs based on the type of information they convey."[69] And, per *Reed*'s "commonsense" test, such disparate treatment is content based and triggers strict scrutiny.[70]

The majority, Justice Thomas asserted, had reached the opposite result by "recasting facially content-based restrictions as only those that target *sufficiently specific* categories of communicative content."[71] But *Reed* drew no such distinction, and any rule that does is both "incoherent and unworkable."[72] For one thing, Justice Thomas explained, "there is no principled way" to determine how specific is "'specific' enough."[73] (Why is singling out off-premises advertising "insufficiently specific to qualify as content based under *Reed*"?[74]) Worse yet, he continued, the majority's approach "turns the concept of content neutrality into a 'vehicl[e] for the implementation of individual judges' policy preferences.'"[75] (Who is to say when a given outcome makes for a "bizarre *result*"?[76]) Replacing *Reed*'s "clear and firm rule"[77] with an "arbitrary" and "ad hoc" approach poses a "serious threat[]" to First Amendment values.[78]

When *City of Austin* came before the Court, free speech law under *Reed* was in a state of disarray. Lower courts, troubled by *Reed*'s apparent scope, had split on whether to interpret *Reed* at full breadth — and, if not, when to apply it. But *City of Austin* did little to address these troubles. The interpretations of *City of Austin* that are most plausible do little to cabin *Reed*'s scope, and the interpretations that most narrow *Reed*'s reach suffer from their own ambiguities. As a result, *City of Austin* left this core area of constitutional free speech law

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[64] *See id.* at 1480–81.
[65] Justice Thomas was joined by Justices Gorsuch and Barrett.
[66] Reed v. Town of Gilbert, 576 U.S. 155, 159 (2015).
[67] *City of Austin*, 142 S. Ct. at 1481 (Thomas, J., dissenting).
[68] *Id.* at 1483 (citing *Reed*, 576 U.S. at 171).
[69] *Id.* (alteration in original) (quoting *Reed*, 576 U.S. at 159).
[70] *Id.* at 1482 (quoting *Reed*, 576 U.S. at 163).
[71] *Id.* at 1484 (emphasis added).
[72] *Id.*
[73] *Id.* at 1486.
[74] *Id.*
[75] *Id.* at 1491–92 (alteration in original) (quoting Tennessee v. Lane, 541 U.S. 509, 556 (2004) (Scalia, J., dissenting)).
[76] *Id.* at 1492 (quoting *id.* at 1475 (majority opinion) (emphasis added)).
[77] *Id.* at 1491 (citing Reed v. Town of Gilbert, 576 U.S. 155, 171 (2015)).
[78] *Id.*

in largely the same condition it had found it: a confusing doctrinal mess for the lower courts to sort out.

In *Reed*, the Court attempted to clean up decades of doctrinal confusion by announcing what Justice Thomas described as a "clear and firm rule."[79] But *Reed*'s test has been anything but — and, as Justice Breyer predicted,[80] its apparent breadth is to blame. On its own terms, *Reed* subjects laws that seem "entirely reasonable" to exacting judicial review.[81] Taken to its logical end, *Reed* would invalidate "perhaps thousands" of speech regulations, including those that pose no plausible threat to First Amendment interests.[82] So courts, reluctant to strike down "entirely reasonable" regulations, have opted instead to narrow *Reed* from below,[83] either by diluting the strict scrutiny standard or by devising various ways to distinguish *Reed*.[84] But they've done so with little guidance from above. Because the *Reed* Court likely intended for its rule to apply broadly, the decision says little about when its rule does not.[85] The result has been considerable inconsistency and incoherency in this area of constitutional free speech law.[86]

So, in *City of Austin*, the Court had a doctrinal decision to make: Either affirm *Reed* and insist that it be interpreted at face value. Or narrow *Reed* and explain when it does (and doesn't) apply. *City of Austin* tried to do both. As to scope, *City of Austin* affirmed *Reed*'s formal test: a speech regulation is content based, the Court maintained, if it "target[s] speech based on its communicative content."[87] But the Court then clarified that *Reed* did not go as far as many had feared. It held that the Fifth Circuit's broad interpretation of *Reed* — that a law is content

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[79] *Reed*, 576 U.S. at 171.

[80] *See id.* at 176–78 (Breyer, J., concurring in the judgment).

[81] *Id.* at 171 (majority opinion) (quoting City of Ladue v. Gilleo, 512 U.S. 43, 60 (1994) (O'Connor, J., concurring)).

[82] Lakier, *supra* note 9, at 235; *see also id.* at 265–66 (listing as examples labor laws restricting certain kinds of employer speech, employment laws prohibiting discrimination, and professional rules regulating doctor and lawyer speech).

[83] *See generally* Richard M. Re, *Narrowing Supreme Court Precedent from Below*, 104 GEO. L.J. 921 (2016).

[84] *See* Brief of the Knight First Amendment Institute at Columbia University & Professor Genevieve Lakier as *Amici Curiae* in Support of Petitioner at 13–14, *City of Austin*, 142 S. Ct. 1464 (No. 20-1029) [hereinafter Knight Institute & Lakier Amicus Brief]; Note, *supra* note 17, at 2000 (summarizing how courts have distinguished *Reed* "up, down, and sideways").

[85] *See* Lakier, *supra* note 9, at 254 n.94 (noting that *Reed*'s failure "to specify in what circumstances the decision applied . . . has led to considerable debate among the lower courts about the scope of the rule"); Note, *supra* note 17, at 1998 ("*Reed* may have pushed courts to develop new ways to avoid the strict scrutiny it seems to demand.").

[86] *See* Lakier, *supra* note 9, at 293–94; Note, *supra* note 17, at 2001 ("*Reed* thus appears to have further fragmented First Amendment doctrine, not unified it."); Knight Institute & Lakier Amicus Brief, *supra* note 84, at 4 (noting the "rampant inconsistency" in the lower courts after *Reed*).

[87] *City of Austin*, 142 S. Ct. at 1471 (alteration in original) (quoting Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015)).

based so long as its application requires a government official to examine a speaker's message[88] — is wrong.[89] Rather, a regulation is facially content based only if its text discriminates on the basis of specific kinds of content — namely, "topic or subject matter."[90]

And as to guidance, *City of Austin* affirmed that history and tradition matter.[91] As Justice Sotomayor emphasized, the Court has long approved "location-based" regulations on advertising signs.[92] And jurisdictions have, for decades, relied on that endorsement to address the unique safety and aesthetic concerns posed by outdoor advertising.[93] Five Justices were not willing to unsettle this "unbroken tradition of on/off premises distinctions."[94] Nor were they inclined to endorse an interpretation of *Reed* that would call into question a good number of the Court's long-standing precedents, such as cases permitting regulations of solicitation.[95] This aversion to disturbing these regulatory and judicial traditions suggests that lower courts, too, must heed "the teachings of history, experience, and precedent" when applying *Reed*.[96]

But even after *City of Austin*, *Reed*'s breadth remains a thorny problem. A doctrine that applies strict scrutiny whenever a regulation of speech draws distinctions based on "topic or subject matter" still imperils a wide range of "entirely reasonable" regulatory activity.[97] Such scrutiny, as the saying goes, though "'strict' in theory," ends up being quite "fatal in fact."[98] So judges bothered by *Reed*'s sweeping nature have good reason to remain concerned after *City of Austin*.

And even if *Reed* is not as broad as critics initially feared, *City of Austin* offers little clarity on when it actually applies. Instead, *City of Austin*'s effort to distinguish *Reed* raises as many difficult doctrinal questions as it resolves. The Court in *City of Austin* maintained that laws discriminating between "political," "ideological," and "directional" messages are meaningfully different from laws disfavoring "off-premises"

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[88] Other circuits shared the Fifth Circuit's understanding of *Reed*. *See, e.g.*, Thomas v. Bright, 937 F.3d 721, 730 (6th Cir. 2019).

[89] *City of Austin*, 142 S. Ct. at 1471.

[90] *Id.* at 1472.

[91] *See id.* at 1474–75 (citing Packer Corp. v. Utah, 285 U.S. 105, 107, 110 (1932); Williams-Yulee v. Fla. Bar, 575 U.S. 433, 446 (2015)); *see also* Transcript of Oral Argument at 27, *City of Austin* (No. 20-1029) (statement of Kavanaugh, J.), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2021/20-1029_jifl.pdf [https://perma.cc/T5WM-CPHQ].

[92] *City of Austin*, 142 S. Ct. at 1475.

[93] *Id.*

[94] *Id.*

[95] *See id.* at 1473–74 (citing, for example, Cantwell v. Connecticut, 310 U.S. 296, 306–07 (1940)).

[96] *Id.* at 1475.

[97] *See* Transcript of Oral Argument, *supra* note 91, at 35 (statement of Breyer, J.) (noting that virtually "[e]very law on the statute books in the SEC[,] . . . railroad regulation, airline regulation, energy regulation, you name it," all refer to "specific content").

[98] Gerald Gunther, *The Supreme Court, 1971 Term — Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 8 (1972).

advertising.[99] But it didn't clearly explain why. Despite the Court's suggestion otherwise, the difference cannot simply be that the sign code in *Reed* treated certain "topic[s] or subject matter[s]" less favorably than others.[100] After all, Austin's ordinance too singled out specific topics — off-premises people, products, services, and businesses — for differential treatment.

This ambiguity leaves lower courts with at least a few plausible directions to take *City of Austin*'s treatment of *Reed*. For one, courts might interpret *City of Austin* to mean, narrowly, that a subject matter distinction does not automatically trigger strict scrutiny if the distinction bears a close relation to noncontent aspects of the regulated speech, such as where it takes place. So a subject matter distinction that disfavors off-premises advertising, and does so only to demarcate "neutral, location-based lines," evades strict scrutiny.[101] But this interpretation does little to limit *Reed*'s reach; it is hard to think of other noncontent features of speech that a subject matter distinction could plausibly track.[102]

Alternatively, courts might take *City of Austin* to mean, more expansively, that speech restrictions drawing *broad* subject matter distinctions are not content based. As the Court suggested, off-premises advertising, like solicitation, is speech that encompasses a wide range of topics.[103] It subsumes all of the categories of speech differentiated under the ordinance in *Reed* — political, ideological, and temporary directional messaging — and more. Under Austin's ordinance, a sign in a coffee-shop window may not advertise free COVID-19 testing at a nearby pharmacy. But it also can't direct patrons to church services across the street or provide directions to the charity organization next door. In other words, Austin's sign code, much like a law prohibiting solicitation, "applie[d] evenhandedly to all who wish[ed]" to advertise off-site things.[104]

The problem is that this principle will be hard to apply going forward. A breadth-based theory of content neutrality would require courts to differentiate sufficiently broad subject matters from narrower ones.[105] That is no simple task; how broad is broad enough? Why, for

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[99] *See City of Austin*, 142 S. Ct. at 1472.

[100] *Id.*

[101] *Id.* at 1471.

[102] Perhaps subject matter could serve as a proxy for the "secondary effects" of regulated speech, such as the impact an adult-movie theater has on the surrounding community, which was at issue in *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 52 (1986). But the Court seemed to have little appetite for this argument. No opinion in *City of Austin* mentions the secondary effects doctrine. And during oral argument, two Justices expressed deep skepticism about applying it here. *See* Transcript of Oral Argument, *supra* note 91, at 31 (statement of Thomas, J.) (asking whether the doctrine has ever been applied "outside of the adult entertainment business cases"); *id.* at 32 (statement of Roberts, C.J.) (finding *City of Renton* to be "a bit of a stretch").

[103] *See City of Austin*, 142 S. Ct. at 1473–74.

[104] *Id.* at 1473 (alterations in original) (quoting Heffron v. Int'l Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 649 (1981)).

[105] *Id.* at 1484–87 (Thomas, J., dissenting).

instance, is political speech, which too subsumes a wide range of more-specific topics (tax policy, abortion, gun control, and the like), insufficiently broad? It is already hard for courts to distinguish viewpoint from subject matter;[106] asking them also to differentiate between various subject matters on the basis of breadth may prove even more difficult.

Nor does *City of Austin*'s reliance on history and common practice offer much additional guidance. It's certainly true that many regulations of speech — such as those found in securities,[107] antitrust,[108] and evidence[109] law — have long fallen "well beyond the First Amendment's borders."[110] For these laws, the Court's explicit reluctance to disturb long-standing policy and judicial practice is welcome news. But it's still unclear whether these regulations really are safe from *Reed*'s reach. *City of Austin* did not specify the weight that lower courts should accord long-standing regulatory traditions. Nor did it explain whether such traditions could shield from strict scrutiny laws that clearly discriminate on the basis of topic or subject matter. And because politics and culture, not necessarily doctrinal coherence, have shaped the historical development of the First Amendment,[111] courts may have trouble explaining why, for instance, a notice requirement regarding workplace safety survives *Reed* but a disclosure requirement as to abortion services does not.[112]

In *Reed* and *City of Austin*, the Court revisited a question that has long perplexed courts: What do we do about laws that single out specific subject matter for special treatment? Both decisions, however, left this "keystone of First Amendment law"[113] in a continued state of disarray. One cannot help but wonder how much longer this doctrinal uncertainty will continue before the Court will have to settle on a definite path: Either recognize that *Reed*, interpreted at full breadth, is unworkable — and that First Amendment purposes are "better served" when designations like "content based" are treated "as rules of thumb," "not as bright-line rules."[114] Or accept *Reed* for what it plainly says — despite all the untoward consequences that will come with it.[115]

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[106] *See* Kagan, *supra* note 7, at 443 (noting the "fuzzier line" separating subject matter–based restrictions from viewpoint-based ones).

[107] *See* Frederick Schauer, *The Boundaries of the First Amendment: A Preliminary Exploration of Constitutional Salience*, 117 HARV. L. REV. 1765, 1778–80 (2004).

[108] *See id.* at 1781–82.

[109] *See id.* at 1784.

[110] *Id.* at 1778.

[111] *See id.* at 1784–87.

[112] *See* Nat'l Inst. of Fam. & Life Advocs. v. Becerra, 138 S. Ct. 2361, 2371, 2376, 2378 (2018).

[113] Kagan, *supra* note 7, at 443.

[114] *City of Austin*, 142 S. Ct. at 1476 (Breyer, J., concurring).

[115] *Cf.* Lakier, *supra* note 9, at 235–36 (noting how *Reed* "demonstrates once again the pronounced deregulatory tilt of the Roberts Court's First Amendment jurisprudence").

ORDINANCES OF THE CITY OF HELENA, MONTANA

AN ORDINANCE REVISING THE REGULATION OF SIGNS BY AMENDING CHAPTER 23 OF TITLE 11 OF THE HELENA CITY CODE

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA:

That Title 11 of the Helena City Code is hereby amended by repealing Chapter 23, General Sign Regulations, in its entirety and adopting this new Chapter 23, Sign Regulations, in lieu thereof:

CHAPTER 23

SIGN REGULATIONS

SECTION:

11-23-1: INTENT: This chapter is intended to provide standards for the erection, design, and placement of signage. The standards established by this chapter are intended to achieve proper relationship of signs to their environment, enhance the outward appearance of the community as a whole, secure pedestrian and vehicular safety, and preserve the historic aspects of the city.

Ord. No. _____

11-23-2: DEFINITIONS: For purposes of this chapter, the following terms and their derivations shall have the meanings given herein.

AWNING SIGN:	A sign that is affixed to a roof-like structure; generally composed of a skeletal frame covered in a fabric or other skin-type material typically open on the bottom side, that extends along and projects beyond the wall of the building and is generally designed and constructed to provide protection from the weather.
BILLBOARD SIGN:	A sign that is larger than two hundred fifty (250) square feet in area which is designed to advertise products, services, or businesses not located on the premises on which the sign is located by temporary poster panels or painted bulletin panels.
BUILDING FAÇADE:	The portion of any exterior elevation of a building extending from grade to the top of the parapet wall or eaves for the entire width of the building elevation, or that portion comprising the exterior elevation of one business located in a multiple-tenant structure.
BUILDING FRONTAGE:	The side of a building which faces a public street right of way.

DIRECTIONAL SIGN:	A permanently erected and incidental sign designed to guide or direct pedestrian or vehicular traffic to and within the property.
ELECTRONIC MESSAGE DISPLAY:	A sign capable of displaying words, symbols, figures or images that can be electronically changed by remote or automatic means.
FREESTANDING SIGN:	A sign supported by structures or supports that are placed on, or anchored in, the ground, and that are independent from any building or any other structure.
HEIGHT OF SIGN:	The vertical distance measured from the highest point of the sign to the highest adjacent street grade or surface beneath the sign, whichever is less.
MARQUEE SIGN:	A sign attached to or constructed on a canopy structure which is attached to and projecting horizontally beyond the wall of a building that generally is designed and constructed to provide protection from the weather.
PORTABLE MESSAGE CENTER:	A freestanding sign that is not permanently affixed or attached to the ground.
PROJECTING SIGN:	A sign affixed to the exterior wall of a structure and extends perpendicular to the facade of the building or structure.

ROOF SIGN:	A sign erected upon or above any portion of a roof or parapet wall of a building that is wholly or partially supported by the building.
SIGN:	Any identification, description, graphics, illustration, or device that is visible from any public place and exposed to the public which directs attention to a product, service, place, activity, person, institution, business, or solicitation, designed to advertise, identify, or convey information.
SIGN AREA:	The entire area within any type of perimeter or border which encloses the outer limits of writing, representation, emblem, figure, or character. The area of the sign having no such perimeter or border is computed by enclosing the entire area with parallelograms, triangles, or circles of the smallest size sufficient to cover the entire area of the sign and computing the area of these parallelograms, triangles, or circles. The area for double-faced or multiple-faced signs is the aggregate area of all the sign faces visible from any one direction at any one time.
WALL SIGN:	A sign affixed in any manner to the exterior wall of a building or

Commented [A1]: Update to reflect Reed..requires reading the sign.

structure with its face parallel to the building façade, including signs affixed to awnings.

Commented [A2]: Would have to read the content given the definition of "sign." How to distinguish from "art" or "murals" without reading the sign?

WINDOW: A sign installed inside or upon the window surgace for the purpose of viewin from outside the premises.

11-23-3: PROHIBITED SIGNS:

A. Signs that are not listed as permitted within a district are prohibited except as may be separately approved by variance granted by the Board of Adjustment.

B. No blade banners, pennants, flags, balloons, portable message centers, or air activated devices for the purposes of drawing attention to services or sales offered on the property may be erected, placed, or maintained.

B. Signs may not be erected in such a manner that they obstruct or create a hazard by blocking the clear view of vehicular, bicycle, or pedestrian traffic as set forth in section 7-3-7 of this code; or where they may obstruct the view of any traffic control device. No sign or its illumination may interfere with traffic safety or simulate emergency services.

C. Signs may not be placed on or extend into any public rights-of-way, nor be affixed to any post, tree, or pole located in any public right-of-way or upon any city owned property, including signs held by a person, except for signs placed by authorized agents of the city or except as permitted by Title 7, Chapter 13 of this code. Signs on vehicles parked on public rights-of-way for the express purpose of displaying signage is prohibited.

D. No sign may be constructed or erected that resembles any official marker erected by the city, state, or any governmental agency, or that by reason of position, shape,

or color would conflict with the proper functioning of any traffic sign or signal.

E. Signs that are flashed or projected on walls or other structures by means of a slide projector or other device are prohibited.

11-23-4: EXEMPT SIGNS: The following signs are allowed by right in all zoning districts without a permit, but must adhere to the specific size restrictions in this chapter.

A. House numbers and street names, for purposes of identifying the property for emergency services and mail delivery.

B. Legal notices that are required by law posted by a lawful officer or agent.

C. Signs required by state, federal, or local law to designate accessible parking and accessible routes of travel.

11-23-5: REGULATIONS FOR SPECIFICIED DISTRICTS: In addition to the above regulations relating to prohibited and permit exempt signs the regulations govern the specific sign standards for each zoning district within the city. Any type of sign that is not specifically listed in this section as permitted is prohibited.

A. R-1, R-2, and R-3 Districts:

1. Each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership in the R-1, R-2, and R-3 zoning districts may have one freestanding sign that may be placed and maintained on the property indefinitely and without a permit. The freestanding sign may be a maximum of _____ feet tall and not larger than ____ square feet/inches in sign area. The freestanding sign may not be permanently affixed or attached to the ground.

2. In addition to the one permit exempt freestanding sign, each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership may have up to _____ temporary freestanding signs without a permit. These temporary freestanding signs cannot be placed or maintained on the property for more than ____ days each calendar year and may not be permanently affixed or attached to the property in any way. Each individual temporary frees maye maximum of up _____inches/feet tall and not larger than ____ square feet/inches in individual sign area.

3. _____ wall or window sign up to ___ in sign area may be maintained on the property.

B. R-4, R-O, and B-1 Districts:

1. For residential uses:

a. Each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership in the R-1, R-2, and R-3 zoning districts may have one freestanding sign that may be placed and maintained on the property indefinitely and without a permit. The freestanding sign may be a maximum of _____ feet tall and not larger than ____ square feet/inches in sign area. The freestanding sign may not be permanently affixed or attached to the ground.

b. In addition to the one permit exempt freestanding sign, each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership may have up to _____ temporary freestanding signs without a permit. These temporary freestanding signs cannot be placed or maintained on the property for more than ____ consecutive or total days each calendar year and may not be permanently affixed or attached to the property in any way. Each individual temporary freestanding sign may be a maximum of up to_____inches/feet tall and not larger than ____ square feet/inches in individual sign area.

c. _____ wall or window sign up to ___ in sign area may be maintained on the property.

Commented [A3]: Allowing for on-going temporary signage for purposes of changing political messages/campaigns/elections, etc…But can specify the period allowed, number of signs, and size…for any message.No permit required.

Commented [A4]: Allows office and limited retail uses.

Commented [A5]: Need to distinguish between commercial and residential in RO/R-4 since both types of uses are allowed.

Commented [A6]: Allowing for on-going temporary signage for purposes of changing political messages/campaigns/elections, etc…

2. For non-residential uses:
a. Each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership may have ____ freestanding sign/signs that may be placed and maintained on the property indefinitely after obtaining a sign permit from the city. Freestanding sign/signs may be a maximum of _____ feet tall and not larger than ____ square feet/inches in sign area.

b. In addition to the permit approved freestanding sign/signs, each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership may have up to _____ temporary permit exempt freestanding signs without a permit. These temporary freestanding signs cannot be placed or maintained on the property for more than ____ consecutive or total days each calendar year and may not be permanently affixed or attached to the property in any way. Each individual temporary freestanding sign maybe maximum of up _____inches/feet tall and not larger than ____ square feet/inches in individual sign area.

c. _____ wall and/or _____window/awning/marquee sign up to ___ in sign area may be maintained and displayed on the property.

C. B-2 District:

1. One freestanding sign no more than thirty four feet (34') in overall height and one hundred and fifty (150) square feet per lot, tract, or parcel that is affixed or attached to the ground.

2. In addition to the permit approved freestanding sign, each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership may have up to _____ temporary permit exempt freestanding signs without a permit. These temporary freestanding signs cannot be placed or maintained on the property for more than ____ consecutive or total days each calendar year and may not be permanently affixed or attached to the property in any way. Each individual temporary freestanding sign maybe maximum

of up _____inches/feet tall and not larger than ____ square feet/inches in individual sign area.

Commented [A7]: Blade banners, pennants, and the like…?

3. Wall, awning, or marquee signs up to thirty percent (30%) of the building facade to which they are attached or two hundred (200) square feet in aggregate sign area, whichever is less.

4. Signs on windows may not exceed twenty five percent (25%) of the total window area. If the sign on a window exceeds that limitation, the sign is considered a wall sign and subject to the wall sign limitation above.

5. One projecting sign that is no more than forty (40) square feet in size.

6. One roof sign that is no more than one hundred fifty (150) square feet in size.

7. One electronic message displays subject to the specific size and luminance regulations in this chapter. No electronic message display sign may be erected or maintained closer than one hundred feet (100') from any OSR, R-1, R-2, R-3, R-4, R-O, or Airport zoning districts unless the sign is constructed and oriented in such a manner that the sign cannot be seen from said districts.

8. Directional signs that do not exceed six (6) square feet in area and four feet (4') in height. Logo identification on directional signs may not be more than twenty five percent (25%) of the sign area. If the logo identification is more than 25% then the sign is not a directional sign and is considered a freestanding sign.

E. B-3 District:

1. A wall, awning, or marquee signs up to thirty percent (30%) of the building facade to which they are attached or two hundred (200) square feet in aggregate sign area, whichever is less.

2. Sandwich board sign that is no taller than ___ feet and ___ in area is permitted on the adjacent public right-of-way subject to encroachment permit approval pursuant to Title 7, Chapter 13 of this code.

3. Signs on windows may not exceed twenty five percent (25%) of the total window area. If the sign on a window exceeds that limitation, the sign is considered a wall sign and subject to the wall sign limitation above.

4. One projecting sign that is no more than forty (40) square feet in size.

F. M-I and CLM Districts:

1. 1. One freestanding sign no more than thirty four feet (34') in overall height and three hundred (300) square feet per lot, tract, or parcel that is affixed or attached to the ground.

2. In addition to the permit approved freestanding sign/signs, each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership may have up to _____ temporary permit exempt freestanding signs without a permit. These temporary freestanding signs cannot be placed or maintained on the property for more than ____ consecutive or total days each calendar year and may not be permanently affixed or attached to the property in any way. Each individual temporary freestanding sign maybe maximum of up _____inches/feet tall and not larger than ____ square feet/inches in individual sign area.

3. Wall, awning, or marquee signs up to thirty percent (30%) of the building facade to which they are attached or three hundred and ten (300) square feet in aggregate sign area, whichever is less.

3. Signs lettered on the exterior or interior of a window may not exceed twenty five percent (25%) of the window on which they are lettered or a maximum of four (4) square feet, whichever is more. If the sign on a window exceeds

those limitations, the sign is considered a wall sign and subject to the wall sign limitation above.

4. One roof sign that is no more than three hundred (300) square feet in aggregate sign area.

5. One projecting sign that is no more than two hundred (200) square feet in aggregate sign area.

6. One electronic message display subject to the specific size and luminance regulations in this chapter. No electronic message display sign may be erected or maintained closer than one hundred feet (100') from any OSR, R-1, R-2, R-3, R-4, R-O, or Airport zoning districts unless the sign is constructed and oriented in such a manner that the sign cannot be seen from said districts.

7. Directional signs that do not exceed six (6) square feet in area and four feet (4') in height. Logo identification on directional signs may not be more than twenty five percent (25%) of the sign area. If the logo identification is more than 25%, then the sign is not a directional sign and is considered a freestanding sign.

G. PLI District:

1. Freestanding, wall, awning, or marquee signs whose aggregate sign area may not exceed more than one hundred (100) square feet per per lot, tract, or parcel that is held in common ownership. Freestanding signs may not exceed eighteen feet (18') in overall height.

2. Signs lettered on the exterior or interior of a window may not exceed twenty five percent (25%) of the window on which it is lettered or a maximum of four (4) square feet, whichever is more. If the sign on a window exceeds those limitations, the sign is considered a wall sign and subject to the wall sign limitation above.

3. One electronic message display subject to the specific size and luminance regulations in this chapter. No

electronic message display sign may be erected or maintained closer than one hundred feet (100') from any OSR, R-1, R-2, R-3, R-4, R-O, or Airport zoning districts unless the sign is constructed and oriented in such a manner that the sign cannot be seen from said districts.

4. Directional signs that do not exceed than six (6) square feet in area and four feet (4') in height. Logo identification on directional signs may not be more than twenty five percent (25%) of the sign area. If the logo identification is more than 25%, then the sign is not a directional sign and is considered a freestanding sign.

H. Airport District:

1. One freestanding sign no more than twenty four feet (24') in overall height and one hundred (100) square feet of sign area per lot, tract, or parcel that is held in common ownership.

2. Wall, awning, or marquee signs up to thirty percent (30%) of the building facade to which they are attached or two hundred and ten (200) square feet in aggregate sign area, whichever is less.

3. Signs lettered on the exterior or interior of a window may not exceed twenty five percent (25%) of the window on which it is lettered or a maximum of four (4) square feet, whichever is more. If the sign on a window exceeds those limitations, the sign is considered a wall sign and subject to the wall sign limitation above.

6. One roof sign that is no more than three hundred (300) square feet in aggregate sign area.

7. One electronic message display subject to the specific size and luminance regulations in this chapter. No electronic message display sign may be erected or maintained closer than one hundred feet (100') from any OSR, R-1, R-2, R-3, R-4, R-O, or Airport zoning districts unless the sign is constructed and oriented in such a manner that the sign cannot be seen from said districts.

8. Directional signs that are no larger than six (6) square feet in area and four feet (4') in height. Logo identification on directional signs may not be more than twenty five percent (25%) of the sign area. If the logo identification is more than 25%, then the sign is not a directional sign and is considered a freestanding sign.

9. All signs must be installed and designed in accordance with the rules regulations promulgated by the United States federal aviation administration.

11-23-6: GENERAL SIGN STANDARDS:

A. Wall signs may not project more than eighteen inches (18") from the wall and may not extend more than six inches (6") above the parapet, eaves, or facade of the building upon which they are located.

B. A roof sign must appear to be free of any extra bracing, angle iron, guywires, cables, etc. The supports must be an architectural feature and integral part of the building. Supporting columns of round, square, or shaped steel members may be erected if the required bracing that is visible to the public is minimized or covered. The roof sign height may not exceed eight feet (8') measured from the lowest point of attachment to the roof nor exceed the allowable height of a structure for the underlying zoning.

C. Projecting signs may not extend more than ten feet (10') measured at a right angle between the outer extremity of the sign and the wall or structure to which it is attached. The sign must appear to be free of any extra bracing, angle iron, guy wires, cables, etc., and sign supports must appear to be an architectural feature and integral part of the building. A projecting sign may not extend more than six inches (6") above the parapet, eave, or facade of the building to which it is attached.

D. Signs that are permitted to be lighted may only be lighted in such a manner that the light therefrom may shine only on

the sign or on the property on which it is located and may not shine onto any other property, in any direction, except by indirect reflection. No lighting arrangement is permitted which, by reason of brilliance or reflected light, is a detriment to surrounding properties or prevents the reasonable enjoyment of residential uses.

E. Electronic message display luminance must have ambient light monitors and automatic controls so that the electronic message display does not exceed 7650 nits between sunrise and sunset and 1350 nits between sunset and sunrise. Electronic message displays may not exceed fifty percent (50%) of the total allowable sign area allowed in the district or a maximum of seventy-five (75) square feet, whichever is less, and must be computed as part of the sign's total area.

11-23-7: NONCONFORMING SIGNS: Nonconforming signs are permitted to remain, subject to the following exceptions and restrictions:

A. The abandonment of a nonconforming sign terminates the right to maintain such sign.

B. A nonconforming sign may be continuously maintained or repaired in its original form with materials compatible with the existing construction until damaged or destroyed from any cause in excess of seventy percent (70%) of replacement costs or until the sign becomes substandard structurally, materially, or electrically from obsolescence or other cause, so as to pose a hazard or endangerment to the public, and is not promptly repaired as ordered by the sign administrator.

C. When a nonconforming sign is replaced or relocated, a sign permit must be obtained and the sign must then comply with this chapter.

D. A nonconforming sign may be altered only when the proposed alterations bring the sign fully into conformance with the restrictions for the district in which the sign is located.

E. A nonconforming sign shall cease to be used when the business, activity or use on, or to which the property is put, is enlarged in excess of fifty percent (50%) of either the original lot area or the building area lot coverage in place at the time the sign was installed.

G. Billboard signs must be removed after ten (10) years of the effective date of this ordinance.

11-23-8: REMOVAL OF SIGNS: The city may remove unauthorized signs from public rights-of-way and city property without notice to the owner. The city shall make all reasonable efforts to ascertain the owner of the sign and inform the owner where the signs can be retrieved.

FIRST PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, THIS ___ DAY OF _____, 2016.

_____
MAYOR

ATTEST:

_____
CITY CLERK

FINALLY PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, THIS _____ DAY OF _____, 2016.

_____
MAYOR

ATTEST:

_____
CITY CLERK

Temporary yard signs are springing up all around town. Town council wants to reduce the clutter, but also wants to respect the free speech rights of the community. Council is considering new rules that will allow campaign signs during election season, event signs within a day of the event, and ideological signs anytime. It seems like a reasonable balance—allowing the signs but limiting them to a relevant time-frame. Can the town's regulations distinguish among signs this way?

A recent U.S. Supreme Court decision says no. Such distinctions are unconstitutional content-based regulation of speech.

To be clear, every sign ordinance distinguishes among signs. Ordinances commonly distinguish between locations (commercial property, residential property, public property, etc.), between types of signs (free-standing, wall signs, electronic signs, etc.), and between messages on the signs (commercial, safety, political, etc.). Reasonable distinctions concerning location and types of signs remain permissible.

The Reed decision, though, clearly invalidated some distinctions based on the message content of signs, and it will require adjustments to many local ordinances and some state statutes. The decision, with its four separate concurring opinions, also left open several legal questions.

This blog considers the decision of Reed v. Town of Gilbert, 576 U.S. __ (2015), and its impact on local sign ordinances.

Context of Free Speech Caselaw

In thinking about the Reed decision it is helpful to recall a few key points about Constitutional protections of free speech and local government sign regulation. This area of the law is complex—far beyond the scope and space of this blog—but some context is helpful in understanding the impact of the new decision.

Content-Neutral Sign Regulations. Some sign regulations concern the form and nature of the sign, not the content of the message. These regulations—called reasonable time, place, or manner restrictions—include regulation of sign size, number, materials, lighting, moving parts, and portability, among other things. These regulations are allowed, provided they are "[1] justified without reference to the content of the regulated speech, [2] that they are narrowly tailored to serve a significant governmental interest, and [3] that they leave open ample alternative channels for communication of the information" (Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753, 105 L. Ed. 2d 661 (1989)). Over the years the courts have allowed a variety of content-neutral sign regulations.

Content-Based Sign Regulations. Some sign regulations, however, restrict the

content of the message. The Supreme Court requires that content-based regulation of noncommercial signs must meet strict scrutiny. As phrased in the Reed majority opinion, a regulation is content-based if the rule "applies to a particular [sign] because of the topics discussed or the idea or message expressed" (slip op., at 6). The strict scrutiny standard demands that the local government must show that the regulation is (i) designed to serve a compelling governmental interest and (ii) narrowly tailored to achieve that interest. That is a steep hill to climb, and in practice few, if any, regulations survive strict scrutiny review.

It is worth noting that commercial speech is subject to yet another test—a version of intermediate scrutiny outlined in Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1987). That test is described in David Owens' blog on Offensive Signs, and as discussed below, the impact of the Reed decision on the Central Hudson test is unclear.

Case Summary

The Town of Gilbert, Arizona, had a sign code requiring permits for signs, but outlining a variety of exemptions. The Reed decision focused on the exemptions for three types of signs: Political Signs, Temporary Directional Signs, and Ideological Signs. Under the local code, Political Signs were signs designed to influence the outcome of an election; they could be up to 32 square feet and displayed during political season. Temporary Directional Signs were defined to include signs that direct the public to a church or other qualifying event; they could be up to six square feet and could be displayed 12 hours before and 1 hour after the qualifying event. Ideological signs were defined to be signs that communicate a noncommercial message that didn't fit into some other category; they could be up to 20 square feet.

A local church—after being cited for violation of the rules for Temporary Directional Signs—challenged the sign code as abridging their freedom of speech. The Town argued (and the lower courts found) that its regulations were content-neutral. The distinctions among types of signs, they said, were based on objective factors not the expressive content of the sign. The distinctions did not favor nor censor a particular viewpoint or philosophy. And, the justification for the regulation was unrelated to the content of the sign.

Justice Thomas, writing for the Court, disagreed. He found that the distinctions were plainly content-based and thus subject to strict scrutiny. The distinctions—between Political Signs, Temporary Directional Signs, and Ideological Signs—"depende[ed] entirely on the communicative content of the sign" (slip op., at 7). "Regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints with that subject matter" (12). And, "an innocuous justification cannot transform a facially content-based law into one that is content neutral" (9).

In its failed attempt to meet the strict scrutiny standard, the Town offered two governmental interests to support its distinctions: aesthetic appeal and traffic safety. Even if these were considered compelling governmental interests (which

the Court assumed without ruling), the Town's distinctions were not narrowly tailored. Justice Kagan noted in her own opinion (concurring in the judgment only) that the Town's distinctions did "not pass strict scrutiny, or intermediate scrutiny, or even the laugh test" (slip op., at 6, Kagan, J., concurring in judgment).

Impact of Local Ordinances

So what does this decision mean for local ordinances? In the end, some distinctions among signs clearly are allowed and will withstand judicial review. Some code provisions, though, must be revised. And then, there are the open questions.

The Court was unanimous in judgment: The particular provisions of the Town of Gilbert's sign code violate Constitutional protections for free speech. The Court was fractured, though, in the opinions, making it harder to discern the full scope of the decision. Justice Thomas offered the majority opinion of the court with five justices joining. Justice Alito offered a concurring opinion to further clarify the impact of Justice Thomas' opinion. He was joined by Justices Kennedy and Sotomayor. Three justices concurred in judgment only, and they offered two separate opinions to outline their legal reasoning and their concerns with the majority's reasoning.

So we have a split court. Three joined the majority only; three joined the majority, but also joined an explanatory concurrence; and three disagreed with the majority's legal reasoning. This three-three-three split, unfortunately, causes even more head-scratching for an already complex topic.

Content-Based Distinctions. In thinking about your sign ordinance, ask this: Does this regulation apply to a particular sign because of the non-commercial content on the sign? If yes, the regulation must meet strict scrutiny under Reed. The government must show that the regulation is designed to serve a compelling governmental interest and narrowly tailored to achieve that interest.

If your ordinance distinguishes among noncommercial sign types—political v. ideological v. religious—those distinctions are unconstitutional and must be changed.

Justice Thomas did offer some content-based regulations that may survive strict scrutiny if they are narrowly tailored to address public safety. These include warning signs for hazards on private property, signs directing traffic, or street numbers associated with private houses.

Content-Neutral Distinctions. The several opinions of the court outline some valid distinctions for regulation. In his majority opinion, Justice Thomas noted that local governments still have "ample content-neutral options available to resolve problems with safety and aesthetics" (slip op., at 16). These include regulation of, among other things,

- size
- building materials

lighting
moving parts
portability

Moreover, “on public property the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner” (slip op., at 16). A local ordinance or state statute can prohibit all signs in the public right-of-way. But, if signs are allowed, the regulations must not distinguish based on the content of the message. Regulations that allow some, but not all, noncommercial signs run afoul of the Reed decision.

For example, NCGS § 136-32 allows for “political signs” (as narrowly defined) in the public right-of-way of state highways during election season. That statute and similar ordinances will need to be revised to either, prohibit all signs in the right-of-way, or allow compliant signs with any noncommercial message in the right-of-way during election season.

Justice Alito, in his concurring opinion, provided further explanation (although not an exhaustive list) of what distinctions may be valid, content-neutral distinctions. He included:

Size (including different sizes for different types of signs)
Location, including distinguishing between freestanding signs and attached signs
Distinguishing between lighted and unlighted
Distinguishing between fixed message and electronic signs
Distinguishing between signs on public property and signs on private property
Distinguishing between signs on commercial property and signs on residential property
Restricting the total number of signs allowed per mile of roadway
Distinguishing between on-premises and off-premises signs*
And time restrictions on signs advertising a one-time event*

* These last examples—distinguishing between on-premises/off-premises and restricting signs for one-time events—seem to conflict with the majority opinion in Reed. Here, we get back to the issue of the fractured court and multiple opinions (discussed below).

Open Questions

Content-ish Regulations

Justice Alito’s concurrence (discussed above) listed many regulatory distinctions that are clearly authorized. He listed two distinctions that do not clearly square with the reasoning of the majority opinion. But, if you consider the three justices concurring with Alito plus the three justices concurring in judgment only, there are six justices that took the question of content neutrality with more practical consideration than Justice Thomas’ hard line. Thus, Alito’s opinion may in fact hold the greatest weight of this case. Only time will tell—time and more litigation.

First, Justice Alito listed signs for one-time events. This seems to be precisely what the majority stuck down in this case. It is unclear how a local regulation could structure such regulation without relying on the content of the message itself. But the inclusion on Justice Alito's list points to some room for defining signs based on function.

And second, Justice Alito listed the distinction between on-premises and off-premises signs. The enforcement officer must read the sign in order to determine if a sign is off-premises or on-premises. As such, these would seem to be facially content-based and subject to strict scrutiny. But, prior Supreme Court caselaw has upheld the on-premise/off-premise distinction and that precedent is not overruled by the majority opinion.

Commercial and Noncommercial Speech. In past decisions the Supreme Court has treated commercial speech to slightly less protection than noncommercial speech. Commercial speech regulation needs to meet a version of intermediate scrutiny, not the strict scrutiny applied to regulation of non-commercial speech (See, generally, Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1987)).

Arguably, the Reed decision opened the door to challenge a sign ordinance that distinguishes between commercial and noncommercial speech. Justice Alito's concurring opinion noted that distinguishing based on the type of property—commercial or residential—would be valid. Regulating based on the content of the sign—commercial or noncommercial—arguably is undermined by the Reed decision.

Notably, though, the majority in Reed did not overrule its prior decisions. The Reed decision was focused on the Town code's distinctions among types of noncommercial speech. Presumably the long-held standards for regulation of commercial speech still apply.

Conclusion

In the wake of Reed, some things are clear. Governments still have an array content-neutral regulations to apply to signs. But, content-based distinctions such as the ones in the Town of Gilbert's code must survive strict scrutiny to stand. Because of mix of opinions from the Court, there are several open questions. We will not know the full scope and meaning of Reed v. Town of Gilbert until the federal courts begin to apply this decision to other sign litigation.

ORDINANCES OF THE CITY OF HELENA, MONTANA

AN ORDINANCE REVISING THE REGULATION OF SIGNS BY AMENDING CHAPTER 23 OF TITLE 11 OF THE HELENA CITY CODE

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA:

That Title 11 of the Helena City Code is hereby amended by repealing Chapter 23, General Sign Regulations, in its entirety and adopting this new Chapter 23, Sign Regulations, in lieu thereof:

CHAPTER 23

SIGN REGULATIONS

SECTION:

11-23-1: INTENT: This chapter is intended to provide standards for the erection, design, and placement of signage. The standards established by this chapter are intended to achieve proper relationship of signs to their environment, enhance the outward appearance of the community as a whole, secure pedestrian and vehicular safety, and preserve the historic aspects of the city.

11-23-2: DEFINITIONS: For purposes of this chapter, the following terms and their derivations shall have the meanings given herein.

30-DAY 6SF SIGN: A sign ~~intended for a limited period of time under specially defined requirements~~ that may be displayed without receiving a permit for no more than 30 days and is no greater than 6sf. A 30-DAY 6SF SIGN may be erected in windows, on walls, in the ground or elsewhere on a property so long as it is secured from creating a hazard or impeding the use of any easements. A 30-DAY 6SF sign is exempt from other aggregated size or window opacity requirements.

ABANDONED SIGN: A sign which no longer correctly advertises a bona fide business, lessor, owner, product or activity conducted, or product available on the premises where the sign is displayed or elsewhere.

ALTERATION OF SIGN: The moving or modification, in any manner, of a sign including, but not limited to, changes to the sign structure, height, size or area, shape or foundation, but excluding the exchange, replacement or repainting of the sign faces of cabinet type signs where there are no changes to the original cabinet.

AWNING SIGN: A sign that is affixed to a roof- like structure; generally composed of a skeletal frame covered in a fabric or other skin-type material typically open on the bottom side, that extends along and projects beyond the wall of the building and is generally designed and constructed to provide protection from the weather.

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BANNER:	A horizontally displayed sign of lightweight plastic, fabric or other material, whether or not it contains a message of any kind, suspended from or between brackets, ropes, wires or similar means of support.
BEACON:	Any light source with one or more beams directed into the atmosphere or directed at one or more points not on the same lot as the light source; also, any light with one or more beams that rotate or move.
BILLBOARD SIGN:	A sign that is larger than two hundred fifty (250) square feet in area which is designed to advertise products, services, or businesses not located on the premises on which the sign is located by temporary poster panels or painted bulletin panels.
BUILDING FAÇADE:	The portion of any exterior elevation of a building extending from grade to the top of the parapet wall or eaves for the entire width of the building elevation, or that portion comprising the exterior elevation of one business located in a multiple-tenant structure.
BUILDING FRONTAGE:	The side of a building which faces a public street right of way.
DIRECTIONAL SIGN:	A permanent~~ly~~ ~~erected~~ and incidental sign erected as a design element ~~designed~~ to guide or direct pedestrian or vehicular traffic to and within the property.
ELECTRONIC MESSAGE DISPLAY FACE:	A sign capable of displaying words, symbols, figures or images that can be electronically changed by remote or automatic means.

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ERECTED:	Attached, installed, altered, built, constructed or reconstructed, enlarged or moved, and inclusive of the painting of walls and signs, or the relocation, placement or alteration of individual sign letters (excluding manual reader board copy) or cabinets
FESTOONS AND PENNANTS:	A string of ribbons, lightweight plastic, fabric or other material, tinsel, small flags or pinwheels.
FREESTANDING SIGN:	A sign supported by structures or supports that are placed on, or anchored in, the ground, and that are independent from any building or any other structure.
HEIGHT OF SIGN:	The vertical distance measured from the highest point of the sign to the highest adjacent street grade or surface beneath the sign, whichever is less.
INFLATABLE SIGN:	A sign that is a balloon, inflatable figure or structure excluding passenger hot air balloons used for air travel.
MARQUEE SIGN:	A sign attached to or constructed on a canopy structure which is attached to and projecting horizontally beyond the wall of a building that generally is designed and constructed to provide protection from the weather.
MONUMENT SIGN:	A freestanding sign mounted directly to the ground and may be placed on a berm not exceeding two and one-half feet ($2^1/_2$') above the adjacent street grade or surface beneath the sign, whichever is less.
MURAL:	SEE CH. XX

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NONCONFORMING SIGN:	A sign which was lawfully erected and maintained prior to the adoption of this chapter and all amendments, which now fails to conform to all applicable regulations and restrictions of this chapter
PORTABLE MESSAGE CENTER:	A freestanding sign that is not permanently affixed or attached to the ground.
PROJECTING SIGN:	A sign affixed to the exterior wall of a structure and extends perpendicular to the facade of the building or structure.
ROOF SIGN:	A sign erected upon or above any portion of a roof or parapet wall of a building that is wholly or partially supported by the building.
SANDWICH BOARD SIGNS:	A movable sign that rests on the sidewalk and which is not permanently attached to the ground.
SIGN:	Any identification, description, graphics, illustration, or device that is visible from any public place and exposed to the public which directs attention to a product, service, place, activity, person, institution, business, or solicitation, designed to advertise, identify, or convey information.
SIGN AREA:	The entire area within any type of perimeter or border which encloses the outer limits of writing, representation, emblem, figure, or character. The area of the sign having no such perimeter or border is computed by enclosing the entire area with parallelograms, triangles, or circles of the smallest size sufficient to cover the entire area of

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Commented [A3]: Instead of portable message center, this language matches wording in CH. 9

Commented [A4]: Update to reflect Reed..requires reading the sign.

Commented [A5R4]: Probably fine after City of Austin

the sign and computing the area of these parallelograms, triangles, or circles. The area for double- faced or multiple-faced signs is the aggregate area of all the sign faces visible from any one direction at any one time.

TEMPORARY SIGN: A sign intended for a limited period of time under specially defined requirements.

WALL SIGN: A sign affixed in any manner to the exterior wall of a building or structure with its face parallel to the building façade, including signs affixed to awnings.

WINDOW: A sign installed inside or upon the window surgace for the purpose of viewin from outside the premises.

11-23-3: PROHIBITED SIGNS:

A. Signs that are not listed as permitted within a district are prohibited except as may be separately approved by variance granted by the Board of Adjustment.

B. No ~~blade~~ banners, pennants, flags, balloons, portable message centers, or air activated devices for the purposes of drawing attention to services or sales offered on the property may be erected, placed, or maintained.

B. Signs may not be erected in such a manner that they obstruct or create a hazard by blocking the clear view of vehicular, bicycle, or pedestrian traffic as set forth in section 7-3-7 of this code; or where they may obstruct the view of any traffic control device. No sign or its illumination may interfere with traffic safety or simulate emergency services.

Commented [A6]: More narrowly defining the size and duration of a temporary sign with the "30-day 6SF" is potentially more content neutral than having a temporary sign category.

Commented [A7]: Would have to read the content given the definition of "sign." How to distinguish from "art" or "murals" without reading the sign?

Commented [A8R7]: Likely need a separate chapter for murals/art that legislates them through the process of their creation (ie Portland).

Commented [A9]: Is this problematic?

C. Signs may not be placed on or extend into any public rights-of-way, nor be affixed to any post, tree, or pole located in any public right-of-way or upon any city owned property, including signs held by a person, except for signs placed by authorized agents of the city or except as permitted by Title 7, Chapter 13 of this code. Signs on vehicles parked on public rights-of-way for the express purpose of displaying signage is prohibited.

D. No sign may be constructed or erected that resembles any official marker erected by the city, state, or any governmental agency, or that by reason of position, shape, or color would conflict with the proper functioning of any traffic sign or signal.

E. Signs that are flashed or projected on walls or other structures by means of a slide projector, laser, or other device are prohibited.

11-23-4: EXEMPT SIGNS: The following signs are allowed by right in all zoning districts without a permit, but must adhere to the specific size restrictions in this chapter.

A. House numbers and street names, for purposes of identifying the property for emergency services and mail delivery.

B. Legal notices that are required by law posted by a lawful officer or agent.

C. Signs required by state, federal, or local law to designate accessible parking and accessible routes of travel.

Ord. No. _____

11-23-5: REGULATIONS FOR SPECIFICIED DISTRICTS: In addition to the above regulations relating to prohibited and permit exempt signs the regulations govern the specific sign standards for each zoning district within the city. Any type of sign that is not specifically listed in this section as permitted is prohibited.

A. R-1, R-2, and R-3 Districts:

1. Each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership in the R-1, R-2, and R-3 zoning districts may have one freestanding sign that may be placed and maintained on the property indefinitely and without a permit. The freestanding sign may be a maximum of _____ feet tall and not larger than ____ square feet/inches in sign area. The freestanding sign may not be permanently affixed or attached to the ground.

2. In addition to the one permit exempt freestanding sign, each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership may have up to _____ temporary freestanding signs without a permit. These temporary freestanding signs cannot be placed or maintained on the property for more than ____ days each calendar year and may not be permanently affixed or attached to the property in any way. Each individual temporary frees maye maximum of up _____inches/feet tall and not larger than ____ square feet/inches in individual sign area.

3. _____ wall or window sign up to ___ in sign area may be maintained on the property.

B. R-4, R-O, and B-1 Districts:

1. For residential uses:

a. Each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership in the R-1, R-2, and R-3 zoning districts may have one freestanding sign that may be placed and maintained on the property indefinitely and without a permit. The freestanding sign may be a maximum of _____ feet tall and not larger than ____ square feet/inches in sign area. The freestanding sign may not be permanently affixed or attached to the ground.

Commented [A10]: Is this necessary considering #2 below?

Commented [A11]: Allowing for on-going temporary signage for purposes of changing political messages/campaigns/elections, etc…But can specify the period allowed, number of signs, and size…for any message.No permit required.

Commented [A12]: Allows office and limited retail uses.

Commented [A13]: Need to distinguish between commercial and residential in RO/R-4 since both types of uses are allowed.

Commented [A14R13]: Possibly more content neutral to limit per dwelling-unit or business.

b. In addition to the one permit exempt freestanding sign, each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership may have up to _____ temporary freestanding signs without a permit. These temporary freestanding signs cannot be placed or maintained on the property for more than ____ consecutive or total days each calendar year and may not be permanently affixed or attached to the property in any way. Each individual temporary freestanding sign may be a maximum of up to_____inches/feet tall and not larger than ____ square feet/inches in individual sign area.

Commented [A15]: Allowing for on-going temporary signage for purposes of changing political messages/campaigns/elections, etc…

c. _____ wall or window sign up to ___ in sign area may be maintained on the property.

2. For non-residential uses:

a. Each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership may have ____ freestanding sign/signs that may be placed and maintained on the property indefinitely after obtaining a sign permit from the city. Freestanding sign/signs may be a maximum of _____ feet tall and not larger than ____ square feet/inches in sign area.

b. In addition to the permit approved freestanding sign/signs, each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership may have up to _____ temporary permit exempt freestanding signs without a permit. These temporary freestanding signs cannot be placed or maintained on the property for more than ____ consecutive or total days each calendar year and may not be permanently affixed or attached to the property in any way. Each individual temporary freestanding sign maybe maximum of up _____inches/feet tall and not larger than ____ square feet/inches in individual sign area.

c. _____ wall and/or _____window/awning/marquee sign up to ___ in sign area may be maintained and displayed on the property.

C. B-2 District:

Ord. No. _____

1. One freestanding sign no more than thirty four feet (34') in overall height and one hundred and fifty (150) square feet per lot, tract, or parcel that is affixed or attached to the ground.

2. In addition to the permit approved freestanding sign, each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership may have up to _____ temporary permit exempt freestanding signs without a permit. These temporary freestanding signs cannot be placed or maintained on the property for more than ____ consecutive or total days each calendar year and may not be permanently affixed or attached to the property in any way. Each individual temporary freestanding sign maybe maximum of up _____inches/feet tall and not larger than ____ square feet/inches in individual sign area.

Commented [A16]: Blade banners, pennants, and the like…?

3. Wall, awning, or marquee signs up to thirty percent (30%) of the building facade to which they are attached or two hundred (200) square feet in aggregate sign area, whichever is less.

4. Signs on windows may not exceed twenty five percent (25%) of the total window area. If the sign on a window exceeds that limitation, the sign is considered a wall sign and subject to the wall sign limitation above.

5. One projecting sign that is no more than forty (40) square feet in size.

6. One roof sign that is no more than one hundred fifty (150) square feet in size.

7. One electronic message displays subject to the specific size and luminance regulations in this chapter. No electronic message display sign may be erected or maintained closer than one hundred feet (100') from any OSR, R-1, R-2, R-3, R-4, R-O, or Airport zoning districts unless the sign is constructed and oriented in such a manner that the sign cannot be seen from said districts.

8. Directional signs that do not exceed six (6) square feet in area and four feet (4') in height. Logo identification on directional signs may not be more than twenty five percent (25%) of the sign area. If the logo identification is more than 25% then the sign is not a directional sign and is considered a freestanding sign.

E. B-3 District:

1. A wall, awning, or marquee signs up to thirty percent (30%) of the building facade to which they are attached or two hundred (200) square feet in aggregate sign area, whichever is less.

2. Sandwich board sign that is no taller than ___ feet and ___ in area is permitted on the adjacent public right-of-way subject to encroachment permit approval pursuant to Title 7, Chapter 13 of this code.

3. Signs on windows may not exceed twenty five percent (25%) of the total window area. If the sign on a window exceeds that limitation, the sign is considered a wall sign and subject to the wall sign limitation above.

4. One projecting sign that is no more than forty (40) square feet in size.

F. M-I and CLM Districts:

1. 1. One freestanding sign no more than thirty four feet (34') in overall height and three hundred (300) square feet per lot, tract, or parcel that is affixed or attached to the ground.

2. In addition to the permit approved freestanding sign/signs, each lot, tract, or parcel, or group of lots, tracts, or parcels held in common ownership may have up to _____ temporary permit exempt freestanding signs without a permit. These temporary freestanding signs cannot be placed or maintained on the property for more than ____ consecutive or total days each calendar year

and may not be permanently affixed or attached to the property in any way. Each individual temporary freestanding sign maybe maximum of up _____inches/feet tall and not larger than ____ square feet/inches in individual sign area.

3. Wall, awning, or marquee signs up to thirty percent (30%) of the building facade to which they are attached or three hundred and ten (300) square feet in aggregate sign area, whichever is less.

3. Signs lettered on the exterior or interior of a window may not exceed twenty five percent (25%) of the window on which they are lettered or a maximum of four (4) square feet, whichever is more. If the sign on a window exceeds those limitations, the sign is considered a wall sign and subject to the wall sign limitation above.

4. One roof sign that is no more than three hundred (300) square feet in aggregate sign area.

5. One projecting sign that is no more than two hundred (200) square feet in aggregate sign area.

6. One electronic message display subject to the specific size and luminance regulations in this chapter. No electronic message display sign may be erected or maintained closer than one hundred feet (100') from any OSR, R-1, R-2, R-3, R-4, R-O, or Airport zoning districts unless the sign is constructed and oriented in such a manner that the sign cannot be seen from said districts.

7. Directional signs that do not exceed six (6) square feet in area and four feet (4’) in height. Logo identification on directional signs may not be more than twenty five percent (25%) of the sign area. If the logo identification is more than 25%, then the sign is not a directional sign and is considered a freestanding sign.

G. PLI District:

1. Freestanding, wall, awning, or marquee signs whose aggregate sign area may not exceed more than one hundred (100) square feet per per lot, tract, or parcel that is held in common ownership. Freestanding signs may not exceed eighteen feet (18') in overall height.

2. Signs lettered on the exterior or interior of a window may not exceed twenty five percent (25%) of the window on which it is lettered or a maximum of four (4) square feet, whichever is more. If the sign on a window exceeds those limitations, the sign is considered a wall sign and subject to the wall sign limitation above.

3. One electronic message display subject to the specific size and luminance regulations in this chapter. No electronic message display sign may be erected or maintained closer than one hundred feet (100') from any OSR, R-1, R-2, R-3, R-4, R-O, or Airport zoning districts unless the sign is constructed and oriented in such a manner that the sign cannot be seen from said districts.

4. Directional signs that do not exceed than six (6) square feet in area and four feet (4') in height. Logo identification on directional signs may not be more than twenty five percent (25%) of the sign area. If the logo identification is more than 25%, then the sign is not a directional sign and is considered a freestanding sign.

H. Airport District:

1. One freestanding sign no more than twenty four feet (24') in overall height and one hundred (100) square feet of sign area per lot, tract, or parcel that is held in common ownership.

2. Wall, awning, or marquee signs up to thirty percent (30%) of the building facade to which they are attached or two hundred and ten (200) square feet in aggregate sign area, whichever is less.

3. Signs lettered on the exterior or interior of a window may not exceed twenty five percent (25%) of the window on which it is lettered or a maximum of four (4) square feet, whichever is more. If the sign on a window exceeds those limitations, the sign is considered a wall sign and subject to the wall sign limitation above.

6. One roof sign that is no more than three hundred (300) square feet in aggregate sign area.

7. One electronic message display subject to the specific size and luminance regulations in this chapter. No electronic message display sign may be erected or maintained closer than one hundred feet (100') from any OSR, R-1, R-2, R-3, R-4, R-O, or Airport zoning districts unless the sign is constructed and oriented in such a manner that the sign cannot be seen from said districts.

8. Directional signs that are no larger than six (6) square feet in area and four feet (4') in height. Logo identification on directional signs may not be more than twenty five percent (25%) of the sign area. If the logo identification is more than 25%, then the sign is not a directional sign and is considered a freestanding sign.

9. All signs must be installed and designed in accordance with the rules regulations promulgated by the United States federal aviation administration.

11-23-6: GENERAL SIGN STANDARDS:

A. Wall signs may not project more than eighteen inches (18") from the wall and may not extend more than six inches (6") above the parapet, eaves, or facade of the building upon which they are located.

B. A roof sign must appear to be free of any extra bracing, angle iron, guywires, cables, etc. The supports must be an architectural feature and integral part of the building. Supporting columns of round, square, or shaped steel members may be erected if the required bracing that is visible to the public is minimized or covered. The roof sign height may not exceed eight feet (8') measured from the lowest point of attachment to the roof nor exceed the allowable height of a structure for the underlying zoning.

C. Projecting signs may not extend more than ten feet (10') measured at a right angle between the outer extremity of the sign and the wall or structure to which it is attached. The sign must appear to be free of any extra bracing, angle iron, guy wires, cables, etc., and sign supports must appear to be an architectural feature and integral part of the building. A projecting sign may not extend more than six inches (6") above the parapet, eave, or facade of the building to which it is attached.

D. Signs that are permitted to be lighted may only be lighted in such a manner that the light therefrom may shine only on the sign or on the property on which it is located and may not shine onto any other property, in any direction, except by indirect reflection. No lighting arrangement is permitted which, by reason of brilliance or reflected light, is a detriment to surrounding properties or prevents the reasonable enjoyment of residential uses.

E. Electronic message display luminance must have ambient light monitors and automatic controls so that the electronic message display does not exceed 7650 nits between sunrise and sunset and 1350 nits between sunset and sunrise. Electronic message displays may not exceed fifty percent (50%) of the total allowable sign area allowed in the district or a maximum of seventy-five (75) square feet, whichever is less, and must be computed as part of the sign's total area.

11-23-7: NONCONFORMING SIGNS: Nonconforming signs are permitted to remain, subject to the following exceptions and restrictions:

A. The abandonment of a nonconforming sign terminates the right to maintain such sign.

B. A nonconforming sign may be continuously maintained or repaired in its original form with materials compatible with the existing construction until damaged or destroyed from any cause in excess of seventy percent (70%) of replacement costs or until the sign becomes substandard structurally, materially, or electrically from obsolescence or other cause, so as to pose a hazard or endangerment to the public, and is not promptly repaired as ordered by the sign administrator.

C. When a nonconforming sign is replaced or relocated, a sign permit must be obtained and the sign must then comply with this chapter.

D. A nonconforming sign may be altered only when the proposed alterations bring the sign fully into conformance with the restrictions for the district in which the sign is located.

E. A nonconforming sign shall cease to be used when the business, activity or use on, or to which the property is put, is enlarged in excess of fifty percent (50%) of either the original lot area or the building area lot coverage in place at the time the sign was installed.

G. Billboard signs must be removed after ten (10) years of the effective date of this ordinance.

11-23-8: REMOVAL OF SIGNS: The city may remove unauthorized signs from public rights-of-way and city property without notice to the owner. The city shall make all reasonable efforts to ascertain the owner of the sign and inform the owner where the signs can be retrieved.

FIRST PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, THIS ___ DAY OF _____, 2016.

Ord. No. _____

_____
ATTEST: **MAYOR**

_____
CITY CLERK

FINALLY PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, THIS _____ DAY OF _____, 2016.

_____
ATTEST: **MAYOR**

_____
CITY CLERK

Table 1: Sign Types Permitted:

For DT and TR zoning districts, see Ch. 9 of this Title.

See Table 2 for the permitted face types by zone.

Zone → / Type ↓	OSR	R-U	R-1/ R-2	R-3	R-4/ R-O	B-1	B-2	B-3	CLM	M-I	PLI	Airport	Supplemental Requirements
30-DAY 6SF SIGN:	MAX 3 per year per dwelling unit or business	MAX 3 per year per dwelling unit or business	MAX 3 per year per dwelling unit or business	MAX 3 per year per dwelling unit or business	MAX 3 per year per dwelling unit or business	MAX 3 per year per dwelling unit or business Permitted only in windows and as part of allowed window signage	MAX 3 per year per dwelling unit or business Permitted only in windows and as part of allowed window signage	MAX 3 per year per dwelling unit or business Permitted only in windows and as part of allowed window signage	MAX 3 per year per dwelling unit or business Permitted only in windows and as part of allowed window signage	MAX 3 per year per dwelling unit or business	MAX 3 per year per dwelling unit or business	MAX 3 per year per dwelling unit or business	
COMMON SIGN:	NP	1 per frontage Max Height: 5’ Max Area: 6sf	1 per frontage Max Height: 5’ Max Area: 6sf	1 per frontage Max Height: 5’ Max Area: 6sf	1 per frontage Max Height: 5’ Max Area: 6sf	1 per frontage Max Height: 25’ Max Area: 75sf	1 per frontage Max Height: 34’ Max Area: 150sf	NP	1 per frontage Max Height: 34’ Max Area: 150sf	1 per frontage Max Height: 25’ Max Area: 75sf	1 per lot, tract, or parcel held in common ownership Max Height: 18’ Max Area: 100sf	1 per lot, tract, or parcel held in common ownership Max Height: 24’ Max Area: 100sf	Common signs must be used when applicable in place of freestanding sign requirements.

DIRECTIONAL SIGN:	Max Height: 4’ Max Area: 6sf	Max Height: 4’ Max Area: 6sf	Max Height: 4’ Max Area: 6sf	Max Height: 4’ Max Area: 6sf	Max Height: 4’ Max Area: 6sf	Max Height: 4’ Max Area: 6sf	Max Height: 4’ Max Area: 6sf	Max Height: 4’ Max Area: 6sf	Max Height: 4’ Max Area: 6sf	Max Height: 4’ Max Area: 6sf	Max Height: 4’ Max Area: 6sf	Max Height: 4’ Max Area: 6sf	
FREESTANDING SIGN:	NP	Total #: 1 Max Height: 5’ Max Area: 12sf	Total #: 1 Max Height: 6’ Max Area: 12sf	Total #: 1 Max Height: 6’ Max Area: 12sf	Total #: 1 Max Height: 5’ Max Area: 12sf	Total #: 1 Max Height: 25’ Max Area: 75sf	Total #: 1 Max Height: 34’ Max Area: 75sf Plus 1 monument sign per additional frontage	NP	Total #: 1 Max Height: 34’ Max Area: 150sf Plus 1 monument sign per additional frontage	Total #: 1 Max Height: 34’ Max Area: 150sf Plus 1 monument sign per additional frontage	Total #: 1 Max Height: 6’ Max Area: 12sf	Total #: 1 Max Height: 6’ Max Area: 12sf	
INFLATABLE SIGN:	NP	NP	PERMITTED WHERE THE PROPERTY OWNER HAS NOT GIVEN OR RECEIVED COMPENSATION FOR THE DISPLAY	PERMITTED WHERE THE PROPERTY OWNER HAS NOT GIVEN OR RECEIVED COMPENSATION FOR THE DISPLAY	NP	NP	NP	NP	NP	NP	NP	NP	

MARQUEE, AWNING AND/OR CANOPY SIGN:	NP	NP	NP	NP	NP	30% of the building facade to which they are attached.	30% of the building facade to which they are attached.	30% of the building facade to which they are attached.	30% of the building facade to which they are attached.	NP	30% of the building facade to which they are attached.	30% of the building facade to which they are attached.	Square footage to be aggregated with wall signage and not exceed total allowed.
PORTABLE MESSAGE CENTER (SANDWICH BOARD SIGN):	NP	NP	NP	NP	NP	Total #: 1 Max Area: 12sf	NP	Total #: 1 Max Area: 12sf	NP	NP	NP	NP	Signs must be located on premises or on the sidewalk immediately adjacent and removed from location at the close of business. May not impede travelers on the sidewalk.
PROJECTING SIGN:	NP	NP	NP	NP	1 per business Max Area: 6sf	1 per business Max Area: 6sf	1 per business Max Area: 40sf.	1 per business Max Area: 40sf.	1 per business Max Area: 40sf.	1 per business Max Area: 40sf.	NP	1 per business Max Area: 40sf.	
ROOF SIGN:	NP	NP	NP	NP	NP	NP	1 per building and total area aggregated	NP	1 per building and total area aggregated	1 per building and total area aggregated	NP	NP	A roof sign must appear to be free of any extra bracing,

							with wall signage		with wall signage	with wall signage			angle iron, guywires, cables, etc. The supports must be an architectural feature and integral part of the building. Supporting columns of round, square, or shaped steel members may be erected if the required bracing that is visible to the public is minimized or covered. The roof sign height may not exceed eight feet (8') measured from the lowest point of attachment to the roof nor exceed the allowable

													height of a structure for the underlying zoning.
WALL SIGN:	1 wall or window sign up to 6sf.	1 wall or window sign up to 12sf.	1 wall or window sign up to 6sf.	1 wall or window sign up to 6sf.	1 wall or window sign up to 12sf.	wall signage up to 30% or 200sf per façade, whichever is less.	wall signage up to 30% or 200sf per façade whichever is less.	wall signage up to 30% or 200sf per façade whichever is less.	wall signage up to 30% or 300sf per façade whichever is less.	Aggregate wall signage up to 30% or 300sf per façade whichever is less.	Aggregate wall signage up to 100sf.	wall or window signage up to 30% or 200sf per façade whichever is less.	Wall signs must be affixed in a permanent manner to the outside of a building and be of rigid construction
WINDOW SIGN:	1 window sign up to 6sf. Signs may not occupy more than 40% of the window.	1 window sign up to 12sf. Signs may not occupy more than 40% of the window.	1 window sign up to 6sf. Signs may not occupy more than 40% of the window.	1 window sign up to 6sf. Signs may not occupy more than 40% of the window.	1 window sign up to 12sf. Signs may not occupy more than 40% of the window.	To be aggregated with and not to exceed the requirement of wall signage. Signs may not occupy more than 25% of the window.	To be aggregated with and not to exceed the requirement of wall signage. Signs may not occupy more than 25% of the window.	To be aggregated with and not to exceed the requirement of wall signage. Signs may not occupy more than 25% of the window.	To be aggregated with and not to exceed the requirement of wall signage. Signs may not occupy more than 25% of the window.	To be aggregated with and not to exceed the requirement of wall signage. Signs may not occupy more than 25% of the window.	To be aggregated with and not to exceed the requirement of wall signage. Signs may not occupy more than 25% of the window, and no individual letter may exceed 4sf.	To be aggregated with and not to exceed the requirement of wall signage. Signs may not occupy more than 25% of the window.	

Display Face Type:

Zone → / Type ↓	OSR	R-U	R-1/ R-2	R-3	R-4/ R-O	B-1	B-2	B-3	CLM	M-I	PLI	Airport	Supplemental Requirements
ELECTRONIC MESSAGE DISPLAY FACE:	NP	NP	NP	NP	NP	NP	P	NP	P	P	NP	P	
EXTERNALLY ILLUMINATED W/ DOWNWARD FACING LIGHTS	P	P	P	P	P	P	P	P	P	P	P	P	
HALO LIT:	NP	P	NP	NP	P	P	P	P	P	P	P	P	
INTERNALLY ILLUMINATED	NP	NP	NP	NP	NP	P	P	NP	P	P	NP	P	
NON-ILLUMINATED AND PERMANENT IN NATURE	P	P	P	P	P	P	P	P	P	P	P	P	
READER BOARD (MANUAL CHANGE):	P	NP	NP	NP	NP	NP	P	NP	P	P	NP	P	

SECTION:

11-23-1: INTENT:

This chapter is intended to provide standards for the erection, design and placement of all signs and sign structures not located within a building. Design standards are established by this chapter in order to achieve the proper relationship of signs to their environment, enhance the outward appearance of the community as a whole, secure pedestrian and vehicular safety and preserve the historic aspects of the city. (Ord. 2813, 10-20-1997)

11-23-2: DEFINITIONS:

For purposes of this chapter, the following definitions are applicable:

ABANDONED SIGN: A sign which no longer correctly advertises a bona fide business, lessor, owner, product or activity conducted, or product available on the premises where the sign is displayed or elsewhere.

ALTERATION OF SIGN: The moving or modification, in any manner, of a sign including, but not limited to, changes to the sign structure, height, size or area, shape or foundation, but excluding the exchange, replacement or repainting of the sign faces of cabinet type signs where there are no changes to the original cabinet.

ANIMATED SIGN: A sign or display manifesting either kinetic or illusionary motion occasioned by natural, manual, mechanical, electrical, or other means.

AREA OF SIGN: The area of a sign face computed by means of the smallest square, circle, rectangle, triangle, or combination thereof that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed.

It does not include any supporting framework, bracing, or backdrop which is clearly incidental to the display and which does not contain any commercial and/or phonetic message.

AWNING SIGN: A sign that is affixed to a roof like structure; generally composed of a skeletal frame covered in a fabric or other skin type material typically open on the bottom side, which extends along and/or projects beyond the wall of the building and which is generally designed and constructed to provide protection from the weather.

BANNER: A horizontally displayed sign of lightweight plastic, fabric or other material, whether or not it contains a message of any kind, suspended from or between brackets, ropes, wires or similar means of support.

BEACON: Any light source with one or more beams directed into the atmosphere or directed at one or more points not on the same lot as the light source; also, any light with one or more beams that rotate or move.

BENCH SIGN: A sign painted upon or affixed as an integral part of a bench which is located upon public property including sidewalks, surfaced boulevards or on immediately adjacent private property by an entity other than the municipality that generally advertises a use other than that present on the adjoining property.

BILLBOARD SIGN: A sign larger than two hundred fifty (250) square feet in area which is designed to advertise products, services, or businesses not located on the premises on which the sign is located. A sign shall not be considered a "billboard" unless the sign is designed with a surface on which temporary poster panels or painted bulletin panels are mounted for the purpose of conveying a visual advertising message.

BUILDING FACADE: That portion of any exterior elevation of a building extending from grade to the top of the parapet wall or eaves for the entire width of the building elevation or that portion comprising the exterior elevation of one business located in a multiple tenant structure.

BUILDING FRONTAGE: A side of a building which faces a public right of way or provides off street parking or provides a customer entrance, or any side of a lot or parcel which borders on a public right of way.

BUILDING GRAPHICS: A mosaic, mural, painting, graphic art technique or combination or grouping thereof applied or implanted directly onto a building wall or fence.

BUILDING (PRINCIPAL): A single building or group of buildings designed and constructed to function as an integral unit which may have more than one use (such as, but not limited to, a shopping center complex) and excluding storage buildings, garages, and other structures "accessory" to such uses.

CANOPY SIGN: A sign affixed to or a part of an open, permanent, roof like accessory structure, which is not attached or a part of a principal building, that is generally designed and constructed to provide protection from the weather.

CHANGEABLE COPY SIGN: A sign whose informational content is intended to function as if it were static, but which may be changed or altered by manual, electric, electro-mechanical or electronic means

so as not to create a traffic hazard or visual distraction. (Excludes manual reader board as separately defined and time/temperature displays.)

COMMON SIGN: A freestanding sign intended to be shared by all tenants or businesses within a single building or group of buildings, such as, but not limited to, a planned unit shopping center, shopping center, strip mall or condominium commercial development.

CONSTRUCTION SIGN: A sign identifying a project and/or the architect, engineer, contractor(s) or suppliers involved in the construction on the property on which the sign is located.

COPY: The graphic content of a sign surface in either permanent or removable letter, pictographic, symbolic or alphabetic form.

DIRECTIONAL SIGN: An on premises, permanently erected and incidental sign designed to guide or direct pedestrian or vehicular traffic.

DOUBLE FACED SIGN: A sign with two (2) faces separated by an angle greater than sixty degrees (60°).

ERECTED: Attached, installed, altered, built, constructed or reconstructed, enlarged or moved, and inclusive of the painting of walls and signs, or the relocation, placement or alteration of individual sign letters (excluding manual reader board copy) or cabinets.

FESTOONS: A string of ribbons, tinsel, small flags or pinwheels.

FLAG: A fabric device containing distinctive colors, patterns or symbols used as a symbol of a government or political subdivision.

FREESTANDING SIGN: A sign supported by one or more poles, posts, or other structures or supports that are permanently affixed to, or anchored in, the ground and that are independent from any building or other form of structural support.

GHOST SIGN: A sign, painted upon the facade of a building, that is in excess of fifty (50) years old and which generally advertises an extinct business.

HEIGHT OF SIGN: The vertical distance measured from the highest point of the sign to the adjacent street grade or surface beneath the sign, whichever is less.

ILLUMINATED SIGN: A sign with which a source of light is used to make the message readable, including signs that are either internally or externally lighted and signs that may be reflecting, glowing or radiating by virtue of another light source.

INFLATABLE SIGN: A sign that is a balloon, inflatable figure or structure excluding passenger hot air balloons used for air travel.

LEADING EDGE: The portion of a sign that approaches the closest in any direction to the adjacent property line or right of way line.

MARQUEE SIGN: A sign attached to or constructed on a marquee or other similar permanent roof like structure which is attached to and projecting horizontally beyond the wall of a building that generally is designed and constructed to provide protection from the weather.

MONUMENT SIGN: A freestanding sign mounted directly to the ground with a maximum height not to exceed six feet (6'). A monument sign may be placed on a berm not exceeding two and one-half feet ($2^1/_2$') above the adjacent street grade or surface beneath the sign, whichever is less.

MULTIPLE FACED SIGN: A sign containing three (3) or more faces, not necessarily in a back to back configuration.

NONCOMMERCIAL SIGN: A sign that expresses an idea, an aim, an aspiration, a purpose, or a viewpoint, whether based upon political, religious, moral or philosophical beliefs, and which does not advertise or promote for sale or purchase a commodity, product, service, activity, place or thing.

NONCONFORMING SIGN: A sign which was lawfully erected and maintained prior to the adoption of this chapter and all amendments, which now fails to conform to all applicable regulations and restrictions of this chapter.

OFF PREMISES SIGN: A sign, other than a billboard, which does not advertise the use of the property on which it is located.

ON PREMISES SIGN: A sign which carries advertisements strictly incidental to a lawful use of the premises on which it is located, including signs or sign devices indicating: the business transacted, services rendered, goods sold or produced on the premises; the name of the business or the name of the person, firm or corporation occupying the premises.

PENNANT: A vertically displayed sign of any lightweight plastic, fabric or other material, whether or not containing a message of any kind, suspended from or between brackets, ropes, wires or similar means of support.

PERMIT (SIGN): A form of written record giving permission to any applicant for the erection of a sign, generally issued by the building department.

POINT OF PURCHASE SIGN: The advertising of a retail item accompanying its display, where the exterior display on a lot of items for sale is permitted within the zone.

PORTABLE SIGN: A sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; A- or T-frame signs, inflatable signs, umbrellas used as advertising; and signs attached to or painted on vehicles parked and visible from the public right of way, unless the vehicle is used in the normal day to day operations of the business occurring on the premises.

PROJECTING SIGN: A sign affixed to the exterior wall or structure and which extends perpendicular to the facade of the building or structure.

READER BOARD (MANUAL): A sign containing a message for public display that is manually altered periodically but not more frequently than daily.

ROOF SIGN: A sign which is erected upon or above any portion of a roof or parapet wall of a building and which is wholly or partially supported by the building.

SEASONAL/SPECIAL SIGN: A sign and/or decoration intended to celebrate commonly recognized historic and/or religious holidays, announce personal noncommercial events such as births, birthdays, weddings, anniversaries and graduations.

SIDEWALK SIGN: A movable sign that rests on the sidewalk and which is not permanently attached to the ground.

SIGN: Any identification, description, building graphics, illustration or device, illuminated or nonilluminated, which is visible from any public place or is located on private property and exposed to the public which directs attention to a product, service, place, activity, person, institution, business or solicitation, including any permanently installed or display merchandise; or any emblem, painting, banner, permanent placard or temporary sign designed to advertise, identify or convey information, with the exception of window displays and flags of a government or political subdivision. Signs shall also include all sign support structures either wholly or partially aboveground. The word "sign" shall mean any electrically illuminated physical structure except marquees, the principal purpose of which is to advertise a business, product or service, which is attached to the exterior of a building or to land.

SIGN ADMINISTRATOR: That person responsible for the administration and enforcement of the provisions contained within this chapter.

SIGN CONTRACTOR: A person who fabricates, installs, erects or otherwise maintains signs.

SIGN ELECTRICIAN: An appropriately licensed and qualified electrician who installs, repairs, connects, or disconnects the electrical wiring for a sign.

SIGN ERECTOR: A person who installs, erects, alters or removes a sign but does not include persons who change the posters on a billboard or who change the lettering on signs where such change can be accomplished without altering the structure or wiring of the sign.

SIGN STRUCTURE: A structure which supports, has supported, or is capable of supporting a sign, including any decorative cover.

TEMPORARY SIGN: A sign intended for a limited period of time under specially defined requirements.

TIME AND TEMPERATURE SIGN: A sign containing illuminated numerals flashing or otherwise displayed alternately to show only the time and temperature for public service information.

UNDER MARQUEE OR AWNING SIGN: A lighted or unlighted display attached to the underside of a marquee or awning that extends over public or private sidewalks or rights of way.

WALL SIGN: A sign affixed in any manner to the exterior wall of a building or structure with its face parallel to the building facade and which does not project more than eighteen inches (18") from the wall and which does not extend more than six inches (6") above the parapet, eaves or facade of the building on which it is located.

WINDOW SIGN: A sign installed inside or upon the window surface for the purpose of viewing from outside the premises. (Ord. 2813, 10-20-1997; amd. Ord. 2978, 10-6-2003; Ord. 2991, 4-19-2004)

11-23-3: ADMINISTRATION AND ENFORCEMENT:

The sign administrator for the city shall be the director of the building and safety department or the administrator's designees. It shall be the administrator's responsibility to review, approve and process applications for and issue sign permits; to conduct public hearings to resolve requests received for variances to the general sign regulations before the board of adjustment; to enter any premises, building or structure in the city following the presentation of proper credentials for the purpose of inspection of a sign and its structural and/or electrical connections to ensure compliance with applicable codes and ordinances; and to enforce and carry out all provisions of this code. (Ord. 2813, 10-20-1997)

11-23-4: APPLICATION FOR PERMITS/VARIANCES:

Application for a permit for the erection or alteration of a sign or to request a variance by the board of adjustment from a specific sign criterion as set forth in chapter 5 of this title shall be made upon the forms provided by the administrator.

A. Applications must be completely filled out to be considered valid. Failure to provide the information requested on the form is grounds for rejection of the application as incomplete. Any reason for rejection of an application for a sign permit shall be noted on the application and returned to the applicant. The reasons for denial of a variance request following proper hearing shall be noted on the board of adjustment's order and decision form and a copy sent to applicant.

B. For a sign that is not permitted by this chapter to be placed in the downtown Helena business improvement district (BID) the BID board of trustees shall first review whether the sign is appropriate for placement in the district, using the criteria of whether the sign placement contributes to the goals and objectives of the district. After conducting this review, the BID board of trustees may request the sign administrator to make a recommendation to the board of adjustment to grant a variance and approve the sign request. (Ord. 2813, 10-20-1997)

11-23-5: PERMIT/APPLICATION FEES:

Each application for a sign permit shall be accompanied by the appropriate fee based upon the sign's valuation and as determined from the current building permit fee schedule adopted by the building department. Each application for a variance shall be accompanied by the fee established for that process by city resolution. No sign as described or limited by the provisions of this chapter shall be erected or otherwise installed or altered without first having obtained a permit. In the event that erection of a sign, later found to be acceptable, occurs on a property prior to approval and permitting by the administrator, the specified permit fee shall be doubled as provided for in the building permit fee schedule. (Ord. 2813, 10-20-1997)

11-23-6: VIOLATIONS:

When a sign is erected illegally without proper review, approval or permit, or when, in the opinion of the administrator, a violation of the general sign regulations exists, the administrator shall identify and attempt to notify the alleged violator in writing of the need to correct or remove said violation within ten (10) days, or make appeal of the administrator's determination in writing to the city manager within that same period. Any pending enforcement action will be held in abeyance during this period, and if an appeal is received, until such appeal is resolved. (Ord. 2813, 10-20-1997)

11-23-7: REMOVAL OF SIGNS:

Signs placed within the jurisdiction may be removed for the following reasons:

A. The administrator may cause the removal of an illegal sign for failure to comply with a written order of removal. The sign owner shall be responsible for all costs incurred by the city in connection with the removal and demolition of the sign.

B. Signs found to be structurally, materially or electrically defective or in any way found to be a hazard or an endangerment to the public shall be ordered repaired or removed by the owner within a time frame not to exceed a maximum of thirty (30) days, as established by the administrator based upon the degree of hazard presented by the sign.

C. Upon inspection, if the administrator finds that a sign is abandoned by reason of a change of occupancy or vacation of the building or use, it shall be removed within ninety (90) days by the sign owner. Failure to remove shall subject the sign owner to the responsibility for all costs incurred in removal or demolition of the sign by the jurisdiction.

D. The administrator, in case of an emergency when a dangerous or defective sign poses an immediate hazard, may cause the removal of the sign without the standard notice. Following removal of the sign, the administrator shall make available to the owner a statement of the work performed and a copy of the costs of the removal for payment.

E. In the case of removal of a sign by the jurisdiction, if the costs for removal are not paid by the owner of the sign within thirty (30) days of receipt of notice of those costs and attempt to serve notice of those costs, the amount specified shall become an assessment or lien against the property.

F. Signs described in subsection 11-23-9B4 of this chapter erected on public property or rights of way without prior approval shall be subject to immediate removal where and when possible by city personnel without obligation to notify the owner of said sign. (Ord. 2813, 10-20-1997)

11-23-8: GENERAL PROVISIONS:

A. Nothing in this chapter shall be interpreted as prohibiting or excluding such signs as are required by law, including legal notices and advertisements posted by a lawful officer or agent.

B. No sign shall be constructed which resembles any official marker erected by the city, state or any governmental agency, or which by reason of position, shape or color would conflict with the proper functioning of any traffic sign or signal.

C. All signs shall be maintained by the owner and kept in good repair and appearance. The surface of the ground under and about any sign shall be kept clear of weeds, rubbish and flammable waste materials.

D. All signs shall have a minimum vertical clearance of eight feet (8') where there is pedestrian traffic beneath them and all signs shall have a minimum vertical clearance of fourteen feet (14') where they extend over any vehicular driveway or parking area.

E. Signs shall be installed so that there is a minimum of two feet (2') between any portion of the sign and the adjacent property or street right of way line; or to the curb line in the case of projecting signs. In the case of a projecting sign, an encroachment contract documenting the extent of intrusion of the sign

into the right of way must be completed and filed by the sign permit applicant with the Lewis and Clark County clerk and recorder's office following review and approval of the sign encroachment by the city.

F. Projecting signs shall not extend more than ten feet (10') measured at a right angle between the outer extremity of the sign and the wall or structure to which it is attached or as limited by subsection E of this section. The sign shall appear to be free of any extra bracing, angle iron, guy wires, cables, etc., and sign supports shall appear to be an architectural feature and integral part of the building. A projecting sign shall not extend more than six inches (6") above the parapet, eave or facade of the building to which it is attached.

G. A roof sign shall appear to be free of any extra bracing, angle iron, guywires, cables, etc. The supports shall appear to be an architectural feature and integral part of the building. Supporting columns of round, square, or shaped steel members may be erected if the required bracing that is visible to the public is minimized or covered. The sign height shall not exceed eight feet (8') measured from the lowest point of attachment to the roof nor exceed the allowable height of a structure for the underlying zoning.

H. The area of wall signs shall not exceed thirty percent (30%) of the building facade or elevation upon which they are placed. In no case shall the number of signs comprising the sign area, or the sign area itself, exceed individually or in aggregate, the number of signs or area permitted for the underlying zoning in which they are located unless having first obtained approval from the board of adjustment or through other appropriate administrative action.

I. Illuminated signs shall be illuminated in such a manner that the light therefrom shall shine only on the sign or on the property on which it is located and shall not shine onto any other property, in any direction, except by indirect reflection. No lighting arrangement shall be permitted which, by reason of brilliance or reflected light, is a detriment to surrounding properties or prevents the reasonable enjoyment of residential uses or interferes with traffic safety.

J. Directional signs shall be limited to no larger than six (6) square feet in area and to no more than four feet (4') in height. Logo identification shall be limited to not more than twenty five percent (25%) of the sign area.

K. The area for double faced or multiple faced signs shall be the aggregate area of all the sign faces visible from any one direction at any one time.

L. No animated sign may revolve at a rate exceeding eight (8) revolutions per minute, nor may any changeable copy sign alter or interrupt the presentation of its message more than eight (8) times in one minute.

M. Signs constructed on awnings or marquees conforming to the projection limitations of subsection E of this section shall not extend beyond the main structure of the awning or marquee. Awning signs shall not exceed in size, on either the side or on the front of the marquee, a rectangle three feet (3') high by ninety percent (90%) of the length of such side or front, or the allowable marquee sign area for the district, whichever is less. (Ord. 2813, 10-20-1997)

11-23-9: SPECIAL PROVISIONS:

A. Exempt Signs: The specific types of signs, as described and limited herein, shall be exempt from the permit and review provisions of this chapter but shall adhere to the area restrictions as may be specified by type of sign or district:

1. House numbers, resident's name, street names, and signs less than four (4) square feet in area warning against trespass or danger. (Ord. 2991, 4-19-2004)

2. Home occupation signs subject to chapter 26 of this title, or window signs, unlighted, not exceeding two (2) square feet.

3. Memorial signs or tablets erected by authorized historical agencies at recognized historical buildings or sites, and the names of buildings and date of erection when cut into a masonry surface or when constructed of bronze or other noncombustible letters affixed flat against the wall of such building.

4. Special occasion lawn signs not exceeding twenty (20) square feet in area and seven feet (7') in overall height, constructed into creative and artistic shapes, such as clowns and animals, used to announce personal, noncommercial events such as a new baby, birthday, wedding or anniversary. Said signs shall be unlighted, securely erected on the property for not more than three (3) days with not more than one such sign permitted on any one property at any one time. Such signs shall not be installed in the sight distance triangle as defined in section 7-3-7 of this code.

5. Window signs in districts where the aggregate area does not exceed twenty five percent (25%) of the total window area. Such signs are subject to the provisions of subsection 11-23-8H of this chapter. If the aggregate area of the sign exceeds twenty five percent (25%) of the total window area, the signs shall be allowed subject to subsection 11-23-8H of this chapter and the time limitations of subsection C7 of this section.

6. Signs lettered on the exterior or interior of a window in a building in the R-O, B-1, B-2, B-3, CLM, M-I, PLI or airport district, which serve solely to designate the name or the name and professional occupation of the person or persons residing, or having an office in said building, provided that such sign does not exceed twenty five percent (25%) of the window on which it is lettered, but does not exceed a maximum of four (4) square feet.

7. Nameplates, when affixed flat against the wall of a building and serving solely to designate the name or the name and professional occupation of the person(s) residing or having an office in said building, provided that the area of such a nameplate does not exceed four (4) square feet in the R-O, B-1, B-2, B-3, CLM, M-I, PLI and airport districts or two (2) square feet in a residential district.

8. The sign administrator, following consultation with and receipt of approval of an "application for exemption" from the city engineer, may issue special permits upon such conditions as may be reasonably determined by the city engineer for the display on or over public property of temporary signs for a duration not exceeding thirty (30) days or such lesser periods as may be specified in the application. No such permit shall be issued unless the city engineer finds that the city is effectively held harmless for any act or omission of the applicant. The city engineer may give an approval for exemption for a longer duration of display on public property, not to exceed ninety (90) days, for civic fundraising projects or similarly extended events.

9. "Entrance" and "exit" directional signs devoid of any logo identification designed to clarify movements of primarily vehicular traffic and which do not exceed six (6) square feet and four feet (4') in height.

10. Signs occurring on awnings erected by the sign contractor and subject to a building permit shall not require a separate sign permit. Awning signage shall be subject to the provisions of subsection 11-23-8M of this chapter.

11. A ghost sign may be rehabilitated or preserved to maintain its character. (Ord. 2813, 10-20-1997)

12. Noncommercial signs.

13. Temporary signs that:

a. Advertise real estate for sale or lease and subdivisions;

b. Advertise community, civic, or other public interest oriented activities sponsored by religious, civic, charitable or fraternal organizations; and

c. Provide information on construction projects occurring on the property. (Ord. 2991, 4-19-2004)

B. Prohibited Signs And Locations: Those signs not listed as permitted within a district shall be considered as prohibited (except as may be separately approved by variance issued by the board of adjustment). The following types of signs or effects as defined in this chapter are expressly prohibited: beacons, bench signs, festoons, inflatable signs, off premises signs, portable signs and sidewalk signs. Prohibited signs shall also include, but not necessarily be limited to, the following:

1. No animated or changeable copy signs shall be erected or maintained in the OSR, R-1, R-2, R-3, R-4, R-O, NC, B-1, B-3, urban renewal or airport districts.

2. No animated or changeable copy sign shall be erected or maintained closer than one hundred feet (100') from any residential district, or from the urban renewal or airport district, unless the sign is constructed in such a manner that the sign cannot be seen from said districts.

3. No sign shall be erected near the intersection of any street, alley or other traveled way, including driveway entrances, in such a manner that obstructs or creates a hazard by prohibiting clear view of both vehicular and pedestrian traffic as set forth in section 7-3-7 of this code; or where it may obstruct the view of any traffic control device, or where, by reason of color, lighting or animation may confuse anyone looking at a traffic control device.

4. No sign shall be affixed upon a post, tree, or pole in a public street or alley right of way or on other public property, except for signs placed by authorized agents of the city or signs permitted under subsection A8 of this section.

5. Notwithstanding any other provision of this chapter, no sign shall be erected or maintained upon any tower, spire, chimney, machinery, penthouse, cupola, water tank, water tower, radio aerial or television antenna.

6. Signs which are flashed or projected on walls or other structures by means of a slide projector or other device are prohibited.

7. No sign shall be erected in such a manner that any portion of the sign or its supports are attached to, or will interfere with, the free use of any fire escape, exit or standpipe, or obstruct any required stairway door, ventilator or window.

C. Temporary Signs: Temporary signs are subject to all requirements of this chapter and include only the following:

1. In the OSR, R-1, R-2, R-3, R-4, R-O and NC zoning districts, one real estate sign for a lot or aggregation of lots under a single ownership being offered for sale or lease and the sign:

a. Is not more than six (6) square feet in area;

b. Is six feet (6') or less in height; and

c. Is removed within five (5) days following the finalization of the transaction on the property.

2. In all zoning districts except OSR, R-1, R-2, R-3, R-4, R-O and NC zoning districts, one real estate sign for a lot or aggregation of lots under a single ownership being offered for sale or lease and the sign:

a. Is not more than thirty two (32) square feet in area;

b. Is eight feet (8') or less in height; and

c. Is removed within five (5) days following the finalization of the transaction on the property.

3. One sign to identify a major subdivision development with six (6) or more lots for sale in residential, R-O, OSR and NC zoning districts that:

a. Is not more than thirty two (32) square feet in area;

b. Is six feet (6') or less in height; and

c. Is in lieu of the developer putting individual real estate signs on each lot.

4. One sign to identify a major subdivision development with six (6) or more lots for sale in all zoning districts other than residential, R-O, OSR and NC zoning districts that:

a. Is not more than thirty two (32) square feet in area;

b. Is eight feet (8') or less in height; and

c. Is in lieu of the developer putting individual real estate signs on each lot.

5. One construction sign per property in residential, OSR and NC zoning districts and the R-O zoning district when the project is residential, and that:

a. Is not more than twelve (12) square feet in area;

b. Is six feet (6') or less in height; and

c. Is only used for the term of the project and removed prior to final occupancy.

6. One construction sign per property in the commercial and industrial zoning districts and the R-O zoning district when the project is commercial, and that:

a. Is not more than thirty two (32) square feet in area;

b. Is eight feet (8') or less in height; and

c. Is only used for the term of the project and removed prior to final occupancy. (Ord. 2991, 4-19-2004)

7. Banners, pennants or window signs may be used as temporary supplemental signage by a licensed business in connection with a specific major commercial sales event such as, but not limited to, grand opening, closeout sales, going out of business sales or truckload sales provided they are securely mounted flat on or against the building wall or window. The use of said signs shall not exceed a maximum of thirty (30) days at any one time nor occur on more than three (3) separate occasions within any calendar year. As a supplement to the existing wall signage allowance the window signs shall not cause the aggregate wall signage to exceed by a factor of one and twenty five hundredths (1.25) the allowable wall sign area as the same is calculated for the business. (Ord. 2813, 10-20-1997)

8. Signs that are noncommercial or advertise community, civic, or other public interest oriented activities sponsored by religious, civic, charitable or fraternal organizations and that:

a. Are not more than five (5) square feet in area;

b. Are thirty inches (30") or less in height; and

c. Are removed within five (5) days following the conclusion of the event or activity to which they relate. (Ord. 2991, 4-19-2004)

D. Billboard Signs:

1. Billboard signs shall not be established at a location having principal frontage on a street within five hundred feet (500') of any property which is used for a public park, public school, church, courthouse, city hall or public museum having principal frontage on the same street.

2. No billboard signs shall be established closer to the street than the building setback line, if such a line exists. If none exists, the billboard sign shall maintain a minimum setback of two feet (2') from all street and/or property lines.

3. All billboard signs shall be constructed in accordance with the city's building and electrical codes.

E. Billboard Sign Uses For Specified Zones:

1. Billboard signs shall be permitted in the interstate highway corridor as defined by Montana law. All billboard sign faces in the interstate highway corridor must read to the interstate highway. Billboard signs are permitted on properties zoned B-2, CLM and M-I as follows:

a. Billboard signs located within the interstate corridor shall have a maximum size of six hundred (600) square feet in area, including border and trim but excluding base or apron, supports, and other structural members.

b. Billboard signs may not exceed forty eight feet (48') in length.

c. The maximum height of billboard signs, including the sign face, shall be thirty feet (30').

d. Minimum distance between billboard signs shall be five hundred feet (500').

2. Billboard signs shall be permitted in B-2, CLM and M-I districts as follows:

a. Billboard signs shall be a maximum of three hundred (300) square feet in area, including border and trim but excluding base or apron, supports, and other structural members.

b. Billboard signs may not exceed twenty four feet (24') in length.

c. The maximum height of billboard signs, including the sign face, is thirty feet (30').

d. Minimum distance between billboard signs shall be five hundred feet (500').

e. All new billboard signs constructed outside the interstate corridor shall be self-supporting structures erected upon or permanently attached to concrete foundations. Billboard signs shall be erected using single pole construction.

F. Nonconforming Signs: Nonconforming signs will be permitted to remain subject to the following exceptions and restrictions:

1. The abandonment of a nonconforming sign shall terminate the right to maintain such sign. Removal shall be subject to the provisions of section 11-23-7 of this chapter.

2. A nonconforming sign may be continuously maintained or repaired in its original form with compatible materials to the existing construction until damaged or destroyed from any cause in excess of seventy percent (70%) of replacement costs or until the sign becomes substandard structurally, materially or electrically from obsolescence or other cause and is not promptly repaired as ordered by the sign administrator, so as to pose a hazard or endangerment to the public. Removal shall be subject to the provisions of section 11-23-7 of this chapter.

3. A nonconforming sign may be altered only when the proposed alterations bring the sign fully into conformance with the restrictions for the district in which the sign is located.

4. A nonconforming sign shall cease to be used when the business, activity or use on, or to which the property is put, is enlarged in excess of fifty percent (50%) of either the original lot area or the building area lot coverage in place at the time the sign was installed.

5. A sign which projects into the right of way beyond the curb line is hereby declared to be a traffic hazard and public nuisance. Such signs shall be reconstructed. (Ord. 2813, 10-20-1997)

11-23-10: SIGN USES FOR SPECIFIED DISTRICTS:

The following regulations shall apply to all signs erected or maintained in the districts as listed below. The signs shall be subject to the general and special provisions as listed in this chapter. Refer to subsection B of this chapter for prohibited signs and locations.

OSR, R-1 and R-2 districts:

A. One sign, unlighted, six feet (6') or less in overall height, and whose sign area does not exceed six (6) square feet of sign area per lot or aggregated lots.

B. Directional signs as referenced in subsection 11-23-8J of this chapter.

C. Temporary signs as referenced in subsection 11-23-9C of this chapter.

R-3, R-4 and NC districts:

A. One sign, unlighted, six feet (6') or less in overall height, and whose sign area does not exceed six (6) square feet of sign area per lot or aggregated lots.

B. Wall, awning, monument and/or marquee signs, lighted or unlighted, with the total aggregate square footage of all signs not to exceed forty (40) square feet, are permitted for each apartment structure (if a single building) or residential complex (if multiple buildings). Such sign may advertise only the name and address of the building or complex it identifies.

C. Directional signs as referenced in subsection 11-23-8J of this chapter.

D. Temporary signs as referenced in subsection 11-23-9C of this chapter.

R-O, R-U, and PLI districts:

A. Only freestanding, awning, wall, or marquee signs conforming to subsection 11-23-8M of this chapter, lighted or unlighted, are permitted. Each principal building will be permitted an aggregate sign area not to exceed forty (40) square feet in the R-O and R-U districts and one hundred (100) square feet in the PLI district. Freestanding signs shall not exceed eighteen feet (18') in height. Signs in these districts may advertise only the name, address and services offered by professionals and services allowed.

B. Directional signs as referenced in subsection 11-23-8J of this chapter.

C. Temporary signs as provided for in subsection 11-23-9C of this chapter.

B-1 district:

A. One freestanding sign is permitted for each principal building located in this district. The sign shall not exceed thirty two (32) square feet in area and twenty four feet (24') in height.

B. Notwithstanding any other provisions of this title, freestanding signs may be placed in the required front yards in the B-1 district, provided that the leading edges of said signs and their supporting members conform to subsection 11-23-8E of this chapter.

C. One wall sign is permitted for each business located in this district and shall include any signs affixed to awnings as set out in subsection 11-23-9A10 of this chapter. The area of the wall sign shall not exceed thirty percent (30%) of the building facade to which it is attached or one hundred (100) square feet, whichever is less.

D. Where a business has a major entrance on more than one elevation of the building, such secondary building frontage may contain a wall sign of the same limitations as prescribed for the primary building frontage.

E. Where a business has a secondary building frontage, but does not have a main entrance on that frontage, such frontage may contain a wall sign not exceeding twenty (20) square feet in area.

F. One under marquee sign, not exceeding ten (10) square feet in area, is permitted for each business entrance.

G. Directional signs as referenced in subsection 11-23-8J of this chapter.

H. Temporary signs as referenced in subsection 11-23-9C of this chapter.

B-2 district:

A. Each principal building may have either a single freestanding sign or a single projecting sign and a single roof sign, if such signs are designed to be viewed from different directions. Total area of a freestanding sign shall not exceed one hundred fifty (150) square feet. Height of a freestanding sign shall not exceed thirty four feet (34'). Total area of a roof sign shall not exceed one hundred fifty (150) square feet. Height of a roof sign shall not exceed that set forth in subsection 11-23-8G of this chapter.

B. Projecting signs are permitted pursuant to subsection A of this section if they are in compliance with those requirements listed in subsection 11-23-8D through F of this chapter and do not exceed forty (40) square feet.

C. Notwithstanding other provisions of this title, freestanding signs may be placed in the required front yard, provided that the leading edges of said signs and their supporting members conform to subsection 11-23-8E of this chapter.

D. Each business is permitted awning, wall, and/or marquee signs conforming to subsection 11-23-8M of this chapter. The total aggregate area of such signs shall not exceed thirty percent (30%) of the building facade or that portion occupied by the business, to which they are applied or two hundred (200) square feet, whichever is less.

E. Animated or changeable copy signs are permitted if they comply with the area and height requirements for signs in this district and with the provisions of subsections 11-23-8L and 11-23-9B2 and B3 of this chapter.

F. One under marquee sign is permitted for each business entrance and shall not exceed ten (10) square feet.

G. Directional signs as referenced in subsection 11-23-8J of this chapter.

H. Temporary signs as referenced in subsection 11-23-9C of this chapter.

B-3 district:

A. Freestanding or monument signs are not permitted in this district unless a conditional use permit (CUP) has been obtained for the same in accordance with the provisions of chapter 3 of this title. Such signs may be animated or changeable copy if so approved, subject to the limitations of subsections 11-23-8L and 11-23-9B2 and B3 of this chapter.

B. Each principal building in this district shall be permitted awning or wall signage not to exceed thirty percent (30%) of the building facade to which it is applied or two hundred (200) square feet, whichever is less.

C. Marquee signs are permitted pursuant to subsection 11-23-8M of this chapter, but shall not exceed fifty (50) square feet in area.

D. One under marquee sign is permitted for each business entrance and shall not exceed ten (10) square feet.

E. Projecting signs are permitted if they are in compliance with those requirements listed under subsections 11-23-8D through F of this chapter, and do not exceed forty (40) square feet in total area.

F. One on premises roof sign is permitted for each principal building and shall not exceed two hundred (200) square feet in area.

G. Directional signs as referenced in subsection 11-23-8J of this chapter.

H. Temporary signs as referenced in subsection 11-23-9C of this chapter.

DT and TR Districts: all signs in the Downtown District and Transitional Residential District are regulated as provided by Chapter 9 of this title.

CLM and M-I districts:

A. Each principal building may have either a single freestanding sign or a single projecting sign, and a single roof sign, if such signs are designed to be viewed from different directions. Total area of a freestanding sign shall not exceed three hundred (300) square feet. Height of a freestanding sign shall not exceed thirty five feet (35'). Total area of a roof sign shall not exceed three hundred (300) square feet. Height of a roof sign shall not exceed that set forth in subsection 11-23-8G of this chapter.

B. Projecting signs are permitted pursuant to subsection A of this section if they are in compliance with the requirements listed in subsections 11-23-8D through F of this chapter and do not exceed two hundred (200) square feet.

C. Notwithstanding other provisions of this title, freestanding signs may be placed in the required front yard provided that the leading edges of said signs and their supporting members conform to subsection 11-23-8E of this chapter.

D. Each business is permitted wall signage which shall include any signs affixed to awnings as set out in subsection 11-23-9A10 of this chapter. The total aggregate area for such signs shall not exceed thirty percent (30%) of the building facade, or that portion occupied by the business, to which they are applied or three hundred (300) square feet, whichever is less.

E. All signs permitted in these districts may be animated or changeable copy signs provided they comply with all other applicable provisions of this chapter as set forth in subsections 11-23-8L and 11-23-9B2 and B3 of this chapter.

F. One under marquee sign is permitted for each business entrance and shall not exceed ten (10) square feet.

G. Directional signs as referenced in subsection 11-23-8J of this chapter.

H. Temporary signs as referenced in subsection 11-23-9C of this chapter.

UR districts:

A. All signs in these districts shall be regulated as provided for in this title, except that animated and changeable copy signs and roof signs are not permitted.

Airport district:

A. No sign permitted in this district shall obscure vision from the control tower to any part of the airfield.

B. Each principal building may have a single freestanding or monument sign which shall not exceed one hundred (100) square feet and twenty four feet (24') in height.

C. One wall sign is permitted for each business or principal building located in this district and shall include any signs affixed to awnings as set out in subsection 11-23-9A10 of this chapter. The area of the wall sign shall not exceed thirty percent (30%) of the building facade to which it is applied or a maximum of two hundred (200) square feet, whichever is less.

D. Where a business has a major entrance or more than one elevation of the building, such secondary frontage may contain a wall sign of the same limitations as prescribed for the primary frontage.

E. Where a business has a secondary frontage, but does not have a main entrance to the secondary frontage, such frontage may contain a wall sign not to exceed twenty (20) square feet in area.

F. One under marquee sign is permitted for each business entrance and shall not exceed ten (10) square feet in area.

G. Directional signs as referenced in subsection 11-23-8J of this chapter.

H. Temporary signs as referenced in subsection 11-23-9C of this chapter. (Ord. 2813, 10-20-1997; amd. Ord. 2991, 4-19-2004; amd. Ord. 3097, 4-7-2008; amd. Ord. 3222, 9-26-2016; amd. Ord. 3223, 9-26-2016; amd. Ord. 3261, 6-24-2019)

11-23-11: SIGNS FOR SPECIFIC USES:

A. Planned Unit Developments: All sign design, square footage and placement issues shall be addressed in the overall development approval as provided for under the conditional use permit process in chapter 3 of this title.

B. Planned Unit Shopping Centers: Planned unit shopping centers are limited to a single, common sign except as otherwise allowed in subsections B1 and B2 of this section. The area of the sign must not exceed one hundred fifty (150) square feet.

1. Centers having multiple street frontages or consisting of separately platted parcels may request additional signs if of a monument style. Monument signs shall be limited to a maximum area of fifty (50) square feet and a height of six feet (6').

2. In no case shall a planned unit shopping center be permitted more than three (3) freestanding signs with no more than one sign on any street front.

3. Freestanding signs shall be set back from a point two feet (2') inside the street front property line(s) beginning at a height of six feet (6') above grade so as not to encroach either above or forward of

an imaginary line drawn up and inward at a sixty degree (60°) angle from that point. Height shall be limited by the underlying zoning.

4. Wall signs are permitted only on the facades of businesses having an exterior customer entrance. Such signs shall not exceed two (2) square feet of sign area for each linear foot of width of the facade that the business occupies up to a maximum of eight percent (8%). (Ord. 2813, 10-20-1997)

Title 4 Original Art Murals

(Title added by Ordinance 182962, effective July 31, 2009.)

Chapter 4.10 Purpose

4.10.010 Purpose of This Title.

The purpose of this Title and the policy of the City of Portland is to permit and encourage original art murals on a content-neutral basis on certain terms and conditions. Original art murals comprise a unique medium of expression which serves the public interest. Original art murals have purposes distinct from signs and confer different benefits. Such purposes and benefits include: improved aesthetics; avenues for original artistic expression; public access to original works of art; community participation in the creation of original works of art; community building through the presence of and identification with original works of art; and a reduction in the incidence of graffiti and other crime. Murals can increase community identity and foster a sense of place and enclosure if they are located at heights and scales visible to pedestrians, are retained for longer periods of time and include a neighborhood process for discussion.

Chapter 4.11 Where These Regulations Apply

(Chapter added by Ordinance 189656, effective September 20, 2019.)

4.11.010 Where These Regulations Apply.

The regulations of this title apply to all Original Art Murals installed on sites within the City of Portland. It does not apply to installations that are in the right-of-way, unless the installation is part of a building or structure that extends from the site over a right-of-way.

Chapter 4.12 Definitions

4.12.010 General.

Words used in this Title have their normal dictionary meaning unless they are listed in Section 4.12.020 or unless this Title specifically refers to another Title. Words listed in Section 4.12.020 have the specific meaning stated or referenced unless the context clearly indicates another meaning.

4.12.020 Definitions.

(Amended by Ordinance 189656, effective September 20, 2019.)

A. Alteration. Any change to the Permitted Original Art Mural, including but not limited to any change to the image(s), materials, colors or size of the Permitted Original Art Mural. "Alteration" does not include naturally occurring changes to the Permitted Original Art Mural caused by exposure to the elements or the passage of time. Minor changes to the Permitted Original Art Mural which result from the maintenance or repair of the Permitted Original Art Mural shall not constitute "alteration" of the Permitted Original Art Mural within the meaning of this Title. This can include slight and unintended deviations from the original image, colors or materials that occur

when the Permitted Original Art Mural is repaired due to the passage of time, or as a result of vandalism such as graffiti.

B. Changing Image Mural. A mural that, through the use of moving structural elements, flashing or sequential lights, lighting elements, or other automated method, results in movement, the appearance of movement or change of mural image or message. Changing image murals do not include otherwise static murals where illumination is turned off and back on not more than once every 24 hours.

C. Compensation. The exchange of something of value. It includes, without limitation, money, securities, real property interest, barter of goods or services, promise of future payment, or forbearance of debt. "Compensation" does not include:

1. goodwill; or

2. an exchange of value that a property owner (or leaseholder with a right to possession of the wall upon which the mural is to be placed) provides to an artist, muralist or other entity where the compensation is only for the creation and/or maintenance of the mural on behalf of the property owner or leaseholder, and the property owner or leaseholder fully controls the content of the mural.

D. Conservation District. A collection of individual resources that is of historic or cultural significance at the local or neighborhood level, as identified through an inventory and designation process and mapped as such in Title 33, Planning and Zoning.

E. Conservation Landmark. A structure, site, tree, landscape, or other object that is of historic or cultural interest at the local or neighborhood level, as identified through an inventory and designation process and mapped as such in Title 33, Planning and Zoning.

F. Design Overlay Zones. These are areas where design and neighborhood character are of special concern. They are identified by having a "d" (Design Overlay) designation on the City's official Zoning Maps, as regulated by Title 33, Planning and Zoning.

G. Grade Plane. A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet (1,829 mm) from the building, between the building and a point 6 feet (1,829 mm) from the building. This definition is adopted from the Oregon Structural Specialty Code.

H. Historic District. A collection of individual resources that is of historic or cultural significance at the local, state, or national level, as identified through an inventory and designation process and mapped as such in Title 33, Planning and Zoning.

I. Historic Landmark. A structure, site, tree, landscape, or other object that is of historic or cultural significance, as identified through a historic landmark designation process and mapped as such on the City's inventory of Historic Landmarks. Historic Landmarks are regulated by Title 33, Planning and Zoning.

J. Original Art Mural. A hand-produced work of visual art which is tiled or painted by hand directly upon, or affixed directly to an exterior wall of a building or structure. Original Art Mural does not include:

1. mechanically produced or computer generated prints or images, including but not limited to digitally printed vinyl;

2. murals containing electrical or mechanical components; or

3. changing image murals.

K. Permitted Original Art Mural. An Original Art Mural for which a permit has been issued by the City of Portland pursuant to this Title.

L. Public Right-of-Way. An area that allows for the passage of people or goods, that has been dedicated or deeded to the public for public use. Public Rights-of-Way include passageways such as freeways, pedestrian connections, alleys, and all streets.

Chapter 4.20 Allowed and Prohibited Original Art Murals

4.20.010 Allowed Original Art Murals.

(Amended by Ordinances 185915 and 189656, effective September 20, 2019.)

Original Art Murals that meet all of the following criteria and which are not prohibited will be allowed upon satisfaction of the applicable permit requirements:

A. No part of the mural shall exceed 30 feet in height measured from the grade plane.

B. The mural shall remain in place, without alterations, for a period of 2 years, except in limited circumstances to be specified in the Bureau of Development Services Administrative Rules. The applicant shall certify in the permit application that the applicant agrees to maintain the mural in place for a period of 2 years without alteration.

C. The mural shall not extend more than 6 inches from the plane of the surface upon which it is tiled or painted or to which it is affixed.

D. In Design Overlay Zones, the mural shall meet all of the additional, objective Design Standards for Original Art Murals, as established in the Bureau of Development Services Administrative Rules.

E. In the Historic Resource Overlay Zone, murals may be allowed on buildings or structures that have been identified as non-contributing structures within Historic and Conservation Districts. These murals shall meet all of the additional, objective Design Standards for Original Art Murals, as established in the Bureau of Development Services Administrative Rules.

4.20.020 Prohibited Murals.

(Amended by Ordinance 189656, effective September 20, 2019.)

The following are prohibited:

A. Murals on sites developed with residential buildings with fewer than five dwelling units on the site.

B. Murals on sites with historic or conservation landmarks.

C. Murals on sites containing buildings that have been identified as contributing structures to a historic or conservation district.

D. Murals for which compensation is given or received for the display of the mural or for the right to place the mural on another's property. The applicant shall certify in the permit application that no compensation will be given or received for the display of the mural or the right to place the mural on the property.

E. Murals which would result in a property becoming out of compliance with the provisions of Title 33, Planning and Zoning, or land use conditions of approval for the development on which the mural is to be located.

F. Murals on stormwater facilities.

4.20.030 Relationship of Permitted Original Art Mural to other Regulations.

The exemption of PCC Subsection 32.12.020 J. applies only to Original Art Murals for which a permit has been obtained under this Title and any adopted Administrative Rules. Issuance of an Original Art Mural Permit does not exempt the permittee from complying with any other applicable requirements of the Portland City Code, including but not limited to Titles 24 and 33.

4.20.040 Exceptions to this Title.

Exceptions to the regulations of this Title are prohibited.

Chapter 4.30 Neighborhood Involvement Process

4.30.010 Establishment of Neighborhood Involvement Process for Permits.

The Bureau of Development Services shall adopt through Administrative Rule a community involvement process requiring an applicant for an Original Art Mural permit to provide notice of and to hold a community meeting on the mural proposal at which interested members of the public may review and comment upon the proposed mural. No Original Art Mural permit shall be issued until the applicant certifies that he or she has completed the required Neighborhood Involvement Process. This is a process requirement only and in no event will an Original Art Mural permit be granted or denied based upon the content of the mural.

Chapter 4.40 Administrative Rules

4.40.010 Administrative Rules to Be Adopted

The Bureau of Development Services is authorized and directed to adopt and administer Administrative Rules implementing this Title, and setting forth the substantive and procedural requirements and fees for an Original Art Mural Permit. Such fees shall in no event exceed the actual costs of administration.

Chapter 4.50 Violations and Enforcement

4.50.010 Violations.

It is unlawful to violate any provision of this Title, any Administrative Rules adopted by the Bureau of Development Services pursuant to this Title, or any representations made or conditions or criteria agreed to in an Original Art Mural permit application. This applies to any applicant for an Original Art Mural permit, to the proprietor of a use or development on which a permitted Original Art Mural is located, or to the owner of the land on which the permitted Original Art Mural is located. For the ease of reference in this Title, all of these persons are referred to by the term "operator."

4.50.020 Notice of Violations.

The Bureau of Development Services must give written notice of any violation to the operator. Failure of the operator to receive the notice of the violation does not invalidate any enforcement actions taken by the City.

4.50.030 Responsibility for Enforcement.

The regulations of this Title, and the conditions of Original Art Mural permit approvals, shall be enforced by the Director of the Bureau of Development Services pursuant to Chapter 3.30 and Title 22 of the City Code.

7A.7. SIGN DESIGN OPTIONS

7A.7.1. MASTER SIGN PROGRAM - PERMANENT SIGNS

A. **Purpose**

The purpose of this section is to respond to special permanent sign needs of a premise as well as provide flexibility, encourage development in accordance with adopted plans and policies, and promote superior sign design to implement the purpose of this article.

B. **Applicability**

The master sign program includes all exterior permanent signs at a premise and provides a process where the provisions of Article 7A may be varied subject to the standards and findings listed below. Billboard signs may not be proposed as part of the Master Sign Program.

C. A master sign program may be submitted before, after, or concurrently with a rezoning, special exception, planned area development , development package or site plan . Signs regulated by the program require individual permits prior to construction. A sign may be ground or wall mounted or designed into and constructed as part of an integrated architectural feature of a building . In a case where the sign has mixed elements of ground or wall mounted or architectural integration into the building , the zoning administrator will determine what are the most applicable standards.

D. **Decision**

The Sign Design Review Committee shall review design options and make a recommendation to the planning and development services director for a final decision. The director's decision may be to approve, approve with conditions, or deny the application. The director shall base the decision on compliance with the purpose statement, findings, and applicable design standards.

1. An applicant may appeal the director's decision first to the Board of Adjustment in accordance with Section 3.10.2 and may then appeal to the Mayor and Council in accordance with Section 3.9.2 (*Mayor and Council Appeal Procedure*).

2. An applicant may apply for an amendment to an approved Master Sign Program in accordance with the standards set forth in this Article 7A.7.

E. **Design Standards**

1. **All Signs**

a. Illumination shall reduce light trespass and offer protection to dark skies in compliance with the City's outdoor lighting standards.

b. A sign with lists of categories, tenants or organizations, or similar listed items within panels or separately mounted sign copy , shall have a unifying and proportional outlining background color behind the copy, i.e. words, names, numbers or symbols using a specific logo or federally registered trademark colors.

c. For a sign with lists, the sign panels and/or the separately mounted sign copy , i.e., sign copy mounted without panels on a structure or wall , shall be mounted or placed so as to be reasonably proportional in size.

2. **Ground-Mounted Signs**

a. **Sign Copy**

(1) Signs shall contain legible sign copy . A sign intended to be seen from a right of way shall contain no more than sixteen items of information. An equivalent alternative is an eight panel sign .

(2) Sign copy shall be applied to the sign structure in the following manner: Panels of the same size with a unifying background color as noted in Section 7A.7.1.E.1.b. Proportional letters, numbers or logos as noted in Section 7A.7.1.E.1.c. Up to fifty (50) percent of the panels may be larger than other panels or names.

b. **Sign Height**

(1) The sign height and sign structure setback for a freestanding sign should be at a height and distance from the right-of-way to be easily detectable and give a vehicle a reasonable time to adjust to traffic conditions.

(2) The sign height shall be compatible with the surrounding height profile of the buildings , freestanding signs , and structures on the property and in the surrounding area. The sign structure shall not obstruct significant scenic views from the right of way .

(3) The height of the sign copy shall be set so as not to be obstructed by landscaping or a parked vehicle.

c. **Sign Design Elements**

(1) **Structural Components**

(i) A freestanding sign should be comprised of a design such as two or more components unified by similar materials. A sign blending wall and ground mounted components may use Section 7A.7.1.F *Best Practice Option*.

(ii) The design of the components shall use the architectural style of the development being identified. Features to be used in designing the components include colors, materials, textures and shapes of the development's architecture. The bottom component shall be designed with a monument-style base or similar wide-base design.

(2) **Wayfinding and Identification**

(i) Freestanding signs shall provide high quality wayfinding and identification with a common and unifying design theme.

(ii) Ground-mounted wayfinding signs that are 20 square feet or less in sign area are not required to have three components but are required to be coordinated in architectural style, colors, materials, and textures with the other larger signs .

(3) **Visual Environment**

In all cases, to protect the unique visual environment of Tucson, all flexible standards or use of design guidelines in Section 7A.7.1.F *Best Practice Option*, must address a consistent and compatible treatment of the height profile of the buildings and signs in the surrounding area, preserving scenic vistas and vegetation, and dark skies compatible sign illumination.

(4) **Landscaping**

Ground-mounted signs shall be incorporated into existing or proposed landscaping at the site. The materials shall consist of non-obstructing live and/or inert landscaping materials .

d. **Freeway Signs**

A freeway sign that is part of the master sign program shall, in addition to the standards of the master sign program, be constructed in accordance with the Article 7A freeway sign standards and adhere to the items of information legibility standard noted in this section.

3. **Wall -Mounted Signs**

a. Wall -mounted signs intended to be viewed from the right of way or that exceed twelve square feet in sign area shall be designed to be proportional to the building frontage of the tenant space.

b. If the sign is intended to provide wayfinding it shall be located at key identification points.

c. Sign copy may include the font, logo, symbol and color of the business but shall be constructed or mounted to be consistent with the master sign program.

d. For all wall -mounted signs , an organized, proportional appearance is required among the signs of a building or tenant space. Disorganized sizes and color arrangements in the signs ' appearance on a specific building or tenant space are to be avoided.

4. **Integrated Architecture Sign**

a. Signs that are not classified as either wall or ground mounted shall be constructed in a manner to abide by the overall design context of the architecture of the building and be consistent with the design standards used to develop the master sign program.

F. **Best Practice Option**

A variation from the design standards must show a best practice is being used as an alternative. A best practice may be based on one of the following sources:

1. An already approved permanent sign , master sign program within the City;

2. An award-winning sign design from a national or state sign organization;

3. A document, book, or example endorsed by the American Planning Association, American Sign Association or American Institute of Architects or similar organizations, and approved by the PDSD Director ;

4. A design guideline based in technical standards including, the Manual on Uniform Traffic Control Devices (MUTCD), the American Association of State Highway and Transportation Officials' Guide for the Development of Bicycle Facilities (AASHTO), the National Association of City Transportation Officials' Urban Bikeway Design Guide (NACTO), United States Sign Council Model On-Premise Sign Code, Street Graphics and the Law, the Scenic America recommended handbook for on-premise signs or a similar document recommended by the Design Professional and approved by the PDSD Director ; and,

5. A master sign program, sign design, or document recommended by the Design Professional as being appropriate for the surrounding context of the affected City streetscape.

G. **Findings**

1. The decision shall show the sign program's compliance with the following findings applicable to the site :

a. Meets the purpose of Article 7A, Section 7A.7.A, the master sign program's purpose, and Section 7A.7.1.E, the master sign program's design standards;

b. Creates a clear connection with the shapes, textures, colors and materials used in the appearance of the buildings of the premise ;

c. Creates proportional sizes of signs placed on or integrated into a building's architecture;

d. Improves the legibility of signs ;

e. Enhances driver reaction time to the signs ;

f. Creates an organized wayfinding and identification, or messaging program;

g. Protects significant scenic views;

h. Promotes a well-organized visual environment through appropriate sizes, number, setbacks , and spacing; and,

i. Represents a best practice of the design of dark sky sign illumination.

(Am. Ord. 11803, 12/8/2020)

7A.7.2. MASTER SIGN PROGRAM - PORTABLE SIGNS

A. **Purpose**

1. The purpose is to respond to special portable sign needs of a business, organization or user that has either a special need or has historically required a larger amount of portable signage than permitted by Article 7A, *Sign Standards*.

2. In exchange for greater flexibility with dimensions and the amount of signs , the master sign program for portable signs must show that clutter management is achieved by ensuring a coordinated design appearance and using the least amount of signage needed to achieve message display, identification, and wayfinding objectives.

B. **Applicability**

1. The master sign program for portable signs allows a design option for all portable signs and applies to all portable signs intended to be viewed from the right of way . The program provides a process where the provisions of Article 7A may be varied subject to the standards and findings listed below. It applies to on-site signs that are intended to be viewed from the right-of-way . If off-site signs are used they must be approved and coordinated with the Department of Transportation.

C. **Design Standards**

1. The number of signs shall be located and spaced or grouped together to reduce a disorganized appearance at the front of a development .

2. Spacing, sign area, height and setback shall be adjusted to ensure a legible and well-organized appearance along the right of way . Grouping of signs of different sizes may be used if the visual impact is to improve the overall appearance of an affected street frontage .

3. Materials should be similar for all or most signs to reduce the likelihood of a disorganized appearance along the street frontage .

4. In no case may a sign exceed in sign area or sign height a sign that has been used in previous standards within the City.

5. The program may include signs with sign areas exceeding 32 square feet with multiple messages to reduce the overall number of portable signs along the public right of way .

6. Items of information per sign shall not exceed sixteen items of information or six equal size panels or similar arrangement.

D. The Decision, Findings, and Best Practices of the Master Sign Program for Permanent Signs applies to the Master Sign Program for Portable Signs .

E. **Additional Findings Master Sign Program - Portable Signs**

1. Promotes a well-organized visual environment through appropriate sizes, number, setbacks , and spacing;

2. Legibility is required of all signs ; and,

3. Signs are coordinated in materials, color, and design.

7A.7.3. SINGULAR SIGN DESIGN OPTION

A. The purpose of this section is to implement Section 7A.7.1.A *Purpose*, by promoting a harmonious relationship between buildings , signs , and streetscapes through improved legibility and sight lines for moving vehicles and encouraging best design practices by reducing a disorganized and confusing visual environment along the City's streetscapes. Billboard signs may not be proposed as part of the Singular Sign Design Option.

B. The section applies to a new sign or modification or replacement of an existing sign .

C. The proposed design option for an individual ground-mounted or wall -mounted signs and signs integrated into the architecture of the building shall follow the decision making, review process, design standards, findings for permanent signs in Section 7A.7.1 *Master Sign Program - Permanent Signs*.

D. A sign with lists of categories, tenants or organizations or similar listed items within panels or separately mounted sign copy , shall have a unifying and proportional outlining background color behind the copy, i.e. words, names, numbers or symbols using a specific logo or federally registered trademark colors.

E. For a sign with lists, the sign panels and/or the separately mounted sign copy , i.e., sign copy mounted without panels on a structure or wall , shall be mounted or placed so as to be reasonably proportional in size.

7A.7.4. NOTIFICATION

A. Notification for Sign Design Option shall be in accordance with PDSD departmental policy.

(Ord. 11508, 12/5/2017)