Writing Sign Regulations after Reed v. Town of Gilbert

Reed recap
The First Amendment Framework
Message control
Permitting
Language
Code drafting issues

Roadmap

Use v. Sign Regulations

<table>
<thead>
<tr>
<th>Constitutional Issues</th>
<th>Use Regulation</th>
<th>Sign Regulation</th>
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</thead>
<tbody>
<tr>
<td>Due process, equal protection, takings (property rights)</td>
<td>First Amendment (free speech) and the others</td>
<td></td>
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</table>

Government Interest
- Laissez-faire
- Substantial / Compelling

Nexus
- Rational basis
- Intermediate "with bite" / strict

Scope
- Reasonable (regulator's choice)
- Directly advance / no further that necessary
- Narrowly tailored

Scully
- Disparate
- Intermediate / Strict
Does message have regulatory impact?
Motive, justification, purpose (rational)
Viewpoint neutral

Test for Content Based Regulations

Does message have regulatory impact?
Motive, justification, purpose (rational)
Viewpoint neutral

Content

Strict Scrutiny

Compelling Interest

Narrowly Tailored

Time Place Manner

What can we regulate?

Majority
- Size
- Materials
- Lighting
- Moving parts
- Portability
- Public property (ban)

Concurring
- Locations
- Freestanding v. Attached
- Lighting
- Fixed v. changeable electronic signs
- Public property (distinction)
- Commercial v. residential
- On-premises v. Off-premises
- Total number of signs allowed per frontage or area
- Time restrictions on advertising a one-time event
- Governmental signs

Unanswered questions –
- Commercial speech
- On v. Off-Premises

Warning signs
- marking hazards on private property
- signs directing traffic
- street numbers associated with private houses
First Amendment Framework

- Language
- Process
- Censorship

Prior Restraints
- Sign permits
- Conditional / special-use permits
- Design review
- Waiver / modification
- Variances

Permitting
- Can require sign permits
- Legal requirements:
  - Review occur within a reasonable time
  - Adequate standards
  - Time limits in regulations?
    - Not required if regulations content neutral
Findings

- Legislative findings
  - Supporting justifications
  - Purpose statements
  - Illustrations/graphics

- "Presumption of validity" but
- Deference to reasonably plausible and common sense legislative judgments

Substitution Clause

- Non-Commercial $\rightarrow$ Commercial
- Non-Commercial $\rightarrow$ Non-Commercial
**Adequate Standards**

**Inadequate**
- Vague
  - Sign cannot "be detrimental to the aesthetic quality of the neighborhood."
- Overbroad
  - "Planning Director, in its sole discretion, may require dimensional lettering."

**Adequate**
- Objective
  - "Monument signs shall have change letters. Internal illumination is prohibited."
- Ministerial
  - "The Planning Director shall issue the permit if the sign complies with all applicable setback, dimensional, and lighting standards."

**Sign categories - Structural**

- **Detached**
  - Pole
  - Monument
  - Bracket

- **Attached**
  - Rooftop
  - Canopy / Awning / Marquee
  - Projecting
  - Suspended
  - Wall
  - Window / door

- **Temporary**
  - Readerboards
  - Portable Signs
  - Balloons
  - Banners
  - Posts / Panels
  - Vehicles

**Sign categories - Design**

- Animation
- Moving
- Flashing
- Lighting - internal
- Lighting - external
- Lighting - halo
- Balloons
- Banners
- Supergraphics
- Digital
- Lettering
Sign Categories - Functional

- Advertising / Commercial
- Directional
- Government Flags
- Identification / Nameplates
- Real Estate
- Temporary
- Political / Opinion / Election
- Time & temperature

Table consolidates information about:
- Where signs are permitted
- Whether permits are required
- Size and location
- Whether and how signs may be illuminated, where changeable copy is allowed, etc.

10 things to remember about Reed:

1. This case is not about temporary signs. It’s about content.
2. Topic or message = content
3. There are 2 ways you get into trouble: (1) exemptions (2) categories
4. Identify temporary signs by structure type and uniform event triggers
5. Identify all signs (permanent or temporary) by structure or design (structure, design, location)
6. Distinctions between on- and off-site signs are probably sufficient
7. So far, intermediate scrutiny for distinctions between commercial signs is intact.
8. It doesn’t help sign industry.
9. Use allocation-based systems that allow the property owner to allocate messages.
10. Remember other First Amendment caselaw requirements (overbreadth, vagueness, secondary effects [i.e., adult uses])