

# **Sign Language: Crafting Sign Regulations That Are Effective and Meet the Law**

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# Why Revise Your Sign Regulations?

- Increase clarity about requirements and basis for making discretionary decisions.
- Ensure signage is appropriate for and enhances architectural and district character.
- Provide flexibility to allow for variations in site and building design.
- Reflect current sign technology and promote energy conservation.
- Improve coordination with other municipal requirements and regulations applicable to signage.
- Ensure consistency with applicable State and federal requirements and statutory and case law

# Legal Principles

- First Amendment principles
- Content neutrality
- Commercial vs. non-commercial speech
- Time, place and manner
- *Reed v. Town of Gilbert* implications



# Content Neutrality

- Protected speech
  - No discrimination based on message content
- Commercial speech protected since 1970s but at lower level than non-commercial
- Some content not protected (e.g. obscenity, defamation, fighting words, threats against life of president, etc.) but , flag desecration is protected.
- Equal treatment within defined class (e.g. same rules for all car dealers) considered “viewpoint neutrality”

# Commercial vs. Non-Commercial Speech

- Commercial:
  - On behalf of a company or individual for the intent of making a profit
  - Objective of convincing the audience to partake in a particular action (e.g. purchasing a specific product or service)
  - Distinguished from such commercial communications as professional speech and product safety warnings.
- Non-Commercial:
  - Public discourse expressing opinion, communicating information, reciting grievances
  - May include seeking financial support for movement whose existence and objectives are matters of public interest and concern
  - Comment on government action not private conduct

## Central Hudson Test

### *Central Hudson Gas & Electric Corp. v. Public Service Commission (447 US 557, 1980)*

- Is expression protected by 1<sup>st</sup> Amendment and neither misleading nor concerning unlawful activity?
- Is government interest substantial?
- Does regulation directly advance government interest?
- Is regulation broader than necessary to serve government interest?
- Is there “reasonable fit” between government ends and means ?

# Content-Based Exceptions Subject to Strict Scrutiny

- Must be necessary to further a *compelling* government interest (not just “significant” or “important”)
- Must be narrowly tailored to serve a “compelling” government interest that would be achieved less effectively without regulation
- Must leave alternative channels for communicating the information

# Time, Place and Manner

- OK to regulate factors such as location, free-standing or attached, lighting, fixed or changing images, placement (public/private; commercial/residential; on or off premise, number per mile, time restrictions for one-time events
- Examples:
  - Prohibition on painted wall signs (*Peterson v. Downers Grove*, 2015)
  - Rules re. size and number (*Central Hudson Gas & Electric v. Public Service Commission*, 1980)



# Metromedia “Rules”

## *Metromedia vs. San Diego (453 US 490, 1981)*

- City may ban billboards (off-site signs)
- Government may not favor commercial speech over non-commercial
- Government may not favor particular types or categories of non-commercial speech



# *Reed vs. Town of Gilbert (135 US 2218, 2015)*

- “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.”
- Regulation not narrowly tailored
  - Strict size and durational limits on temporary directional signs
  - Much less limited rules for political and ideological signs



# Design Principles for Signs

- Architectural compatibility—sign and support structure is an integral part of architectural design and signs should not conflict with building's visual order



# Design Principles for Signs

- Consistency with area character—consistent with characteristics of area or incorporates common design elements



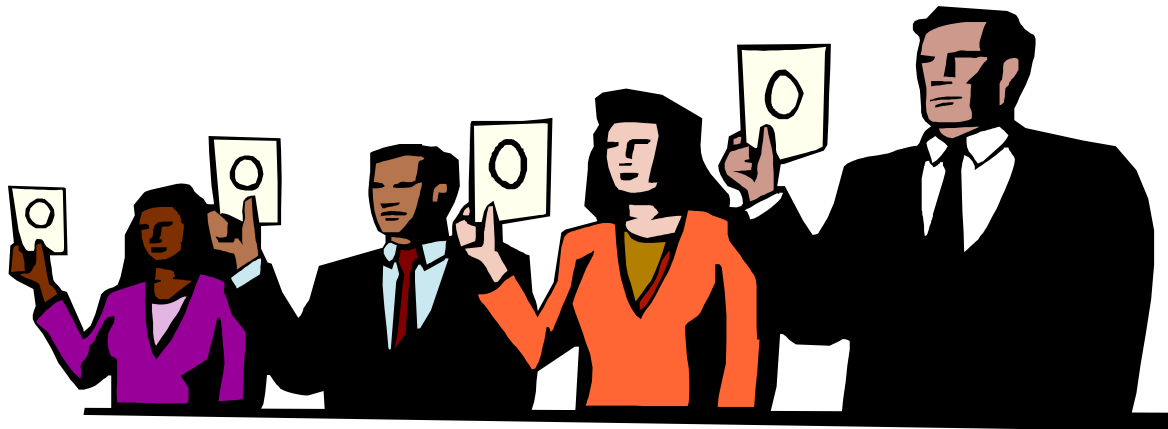
# Design Principles for Signs

- Legibility—proportions and size appropriate for location and intended viewers
- Visibility—located on building or site to be conspicuous and distinguishable from surroundings



# Purpose and Applicability

- Do purposes accurately reflect City's objectives and provide sound basis for regulation?
- Is applicability clear?
  - Private property vs. ROW
  - What is NOT a sign (e.g. murals with no specific commercial message)?



# Exempt Signs

- Distinguish:
  - signs exempt from permitting and compliance with standards (e.g. signs located within building and not visible from exterior, etc.) vs.
  - signs exempt from permit requirements (e.g. directional and information signs with no advertising, small non-illuminated identification signs, etc.) if they comply with specific standards
- Should temporary signs be exempt or subject to a separate permit process?

# Typically Prohibited Signs

- Pennants, streamers, balloons, flashing lights and other attention-getting devices
- Outdoor advertising and off-site signs (e.g. billboards)
- Signs on utility poles, traffic devices, street trees or in ROW
- Simulated traffic signs
- Reflective, fluorescent or day-glow
- Signs on vehicles for display purposes
- Roof signs
- Pole signs





# Typical Issues

- Electronic message centers vs. flashing digital images
  - Should moving image digital signs and electronic message centers be permitted in certain zones subject to restrictions?
  - Where and what requirements?
- Should roof signs be prohibited except for historic structures or when necessary to provide adequate display area?
- Should commercial mascots be permitted subject to specific restrictions or prohibited?



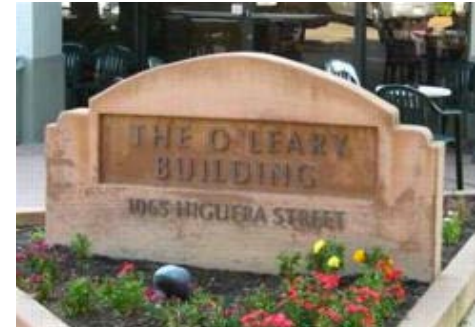
# Window Signs

- Should any display visible from exterior be deemed window sign?
- Should provisions prevent signage from obscuring all or most of window area?



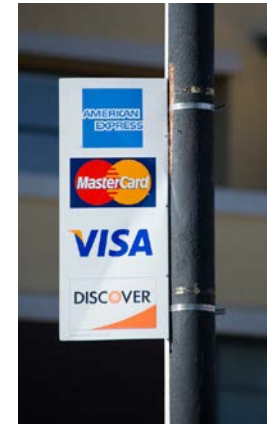
# Freestanding Sign Types

- Monument signs
- Pole signs
- Pylon signs
- Entry gateways
- Other freestanding
  - Directional
  - Informational commercial



# Typical Issues

- Should pole signs be discouraged or prohibited and replaced with specific provisions for pylon signs, as preferred alternative?
- Are specific regulations needed for freestanding “informational” commercial signs?
- Should regulations include specific provisions for entry gateways?



# Temporary Signs

- Commercial vs. non-commercial
- Regulation by location (district type) vs. message
- Permit and enforcement procedures
- Standards
  - Medium and materials
  - Duration
  - Size



# Typical Issues

- Legal issues post Reed v. Gilbert
- Temporary vs. exempt signs
- Otherwise prohibited (e.g. banners, balloons, etc.)
- Expediting review procedures
- Enforcement
- Political signs
- Real estate signs



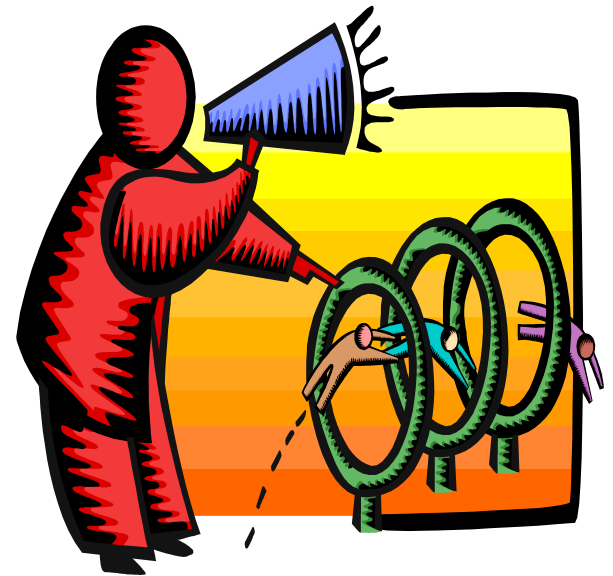
## Other Issues

- Life-style graphics—murals or commercial signage?
- Building wraps
- Mobile signs
- Sign twirlers and other commercial mascots



# Administration and Enforcement

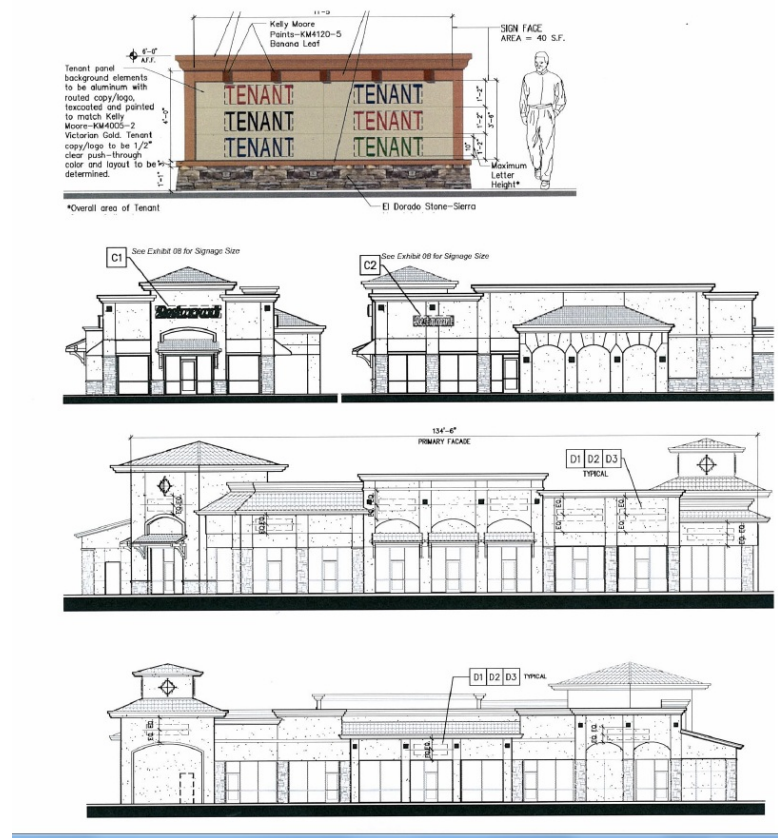
- Who decides?
- Ministerial vs. discretionary approvals
- Integration with project review process
- Exceptions—when allowed, who decides, and basis
- Enforcement





# Sign Programs

- Purpose
- Applicability
- Procedures
- Incentives
- Modification of approved program



# Design Guidelines

- Guidelines vs. standards
- Potential for abuse
- Avoiding content regulation
- Applicability
- To codify or not?



# Questions?

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