

# Sign Code Work Group Meeting #1

July 14, 2017

City Hall Conference Room 3B

# Project Scope

- Current Planning Recommendations
  - 9 total changes
- Respond to the City Council's moratorium
- Amend the code to be sign-content neutral
  - Reed v. Town of Gilbert (2015)

# Current Planning Recommendations

1. [SMC 17C.240.140\(E & G\) – Sign Face Area](#)
2. [SMC 17C.240.230 - Table 17C.240-2](#)
3. [SMC 17C.240.240 \(G\)\(2\)– Grand Opening Displays](#)
4. SMC 17C.240.240 (H)– Directional Signs
5. SMC 17C.240.240 (J) - Electronic Message Center Signs – Table 17C.240-4
6. SMC 17C.240.240 (D)– Signs Attached to Buildings or Structures
7. [SMC 17C.240.250 – Off Premise Signs - This section also addresses the issues identified in the moratorium.](#)
8. SMC 17C.240.250 – Off Premise Signs
9. [SMC 17C.240.290 – Bonus Allowance for Outstanding Design](#)

# Current Planning Recommendations for Reference

# Current Planning Changes

- [SMC 17C.240.140 \(E & G\)](#) – Sign Face Area
- Current Planning recommendation
  - Include to each by example or wording that you only count the verbiage on a painted mural or backed artwork without a cabinet.
- [SMC 17C.240.230](#)  
[Standards in the Commercial and Industrial Zones](#)  
[- Table 17C.240-2](#)
- Current Planning recommendation
  - Capitalize the I after the period in 35 ft. of the height of a pole sign in the GC and other zones

# Current Planning Recommendations That May Need Attention

# SMC 17C.240.240 (G)(2)– Grand Opening Displays

- [SMC 17C.240.240 \(G\)\(2\)](#)
- Current Planning recommendation
  - Assign a size to these like Special Event Signs (20 sq. ft.)

# SMC 17C.240.240 (H)– Directional Signs

- [SMC 17C.240.240 \(H\)](#)
- Current Planning recommendation
  - Include a footnote stating that if the directional sign has a logo of the business on it they will be counted as a freestanding sign.
  - Update definition in [17A.020.040](#) “D” Definitions



# SMC 17C.240.240 (J)– Electronic Message Center Signs

- [Table 17C.240-4](#)
- Current Planning recommendation
  - Include a footnote stating that if the brightness or speed of an EMC sign is questioned, an independent lighting firm must be hired to determine if the sign is in compliance and paid for by the property owner if not in compliance or the complainant if within the allowances listed in the SMC.

# Current Planning Changes That Will Need Attention

# SMC 17C.240.240 (D)– Signs Attached to Buildings or Structures

- [Table 17C.240-2](#)
- [SMC 17C.240.240 \(D\)](#) – Rooftop Signs
- Current Planning recommendation
  - Rooftop signs are not clearly defined other than as “Pitched Roof”.
    - Section 17A.020.180 “R” Definitions
      - Roof Top Sign - A sign on a roof that has a pitch of less than one-to-four.
    - Section 17A.020.160 “P” Definitions
      - Pitched Roof Sign - A sign attached to a roof with a pitch of one-to-four or greater and placed parallel to the building wall.
  - The only zones that allow rooftop signs are the HI, LI, Downtown, & GC zones.
  - Also need to address how high above a rooftop they can go by either a determined height limit or by the zone height limit itself.

# SMC 17C.240.290 - Bonus Allowance for Outstanding Design

- [Section 17C.240.290](#)
- Current Planning recommendation
  - Develop more concrete approval criteria
- Consider [Centers and Corridor Design Standards](#)
  - Pg. 30

# SMC 17C.240.250 – Off Premises Signs

- [SMC 17C.240.250](#)
- Current Planning recommendation
  - Allow hospitals that don't front principal arterials, such as Holy Family, to erect one freestanding directional sign on the closest principal arterial, be it private property or right of way. Size limited to 50 sq. ft. and not an EMC.

# SMC 17C.240.250 – Off Premise Signs

- [SMC 17C.240.250 \(B\)\(2\)](#) – Public Works Exception
- Current Planning recommendation
  - Clarify that the same roadway is just that, not that another street in a corridor situation like Ruby and Division can be used instead.
  - Add that if relocated on the same roadway that they be placed in the same zoning category.
  - Add that when relocating these that they don't interfere with traffic signaling, clear vision areas, etc.

**City Council Moratorium  
Emergency Ordinance C35490**

# City Council Moratorium

- The City's Comprehensive Plan and current sign code prohibit the installation of new off-premise signs (aka billboards).
- SMC 17C.240.250 allows for legally existing billboards to relocate if their removal is necessitated by a governmental public works project.
- With the construction of the North Spokane Corridor there have been relocation applications for billboards that will be removed for the construction of the freeway.
- Many of these relocations have been within the historic Hillyard Business District; an area zoned "center and corridor" and designed for pedestrians.



# City Council Moratorium

- On April 10, 2017 the City Council unanimously adopted Emergency Ordinance C35490 imposing an immediate moratorium on the relocations of off-premise signs into areas of Spokane having a center and corridor zoning designation.
- On May 22, 2017 the City Council held a public hearing on this issue, adopted findings of fact supporting the need for an emergency declaration and extended the moratorium for six months.
- This moratorium will expire on November 22, 2017.

# City Council Moratorium

- SMC 17C.240.250 (B)(2) – Public Works Exception  
An existing off-premises sign that is allowed to remain in conformance with [SMC 17C.240.250\(B\)](#) shall be allowed to be relocated if necessitated for the accomplishment of a governmental public works project. This relocation of these off-premises signs for public works projects shall be subject to the limitations in subsections (a) through (e) below:
  - No increase in square footage of outdoor advertising display copy shall be permitted. These signs shall be replaced at the same size they existed at immediately prior to relocation.
  - No additional outdoor advertising faces shall be added.
  - No increase in height of the existing outdoor advertising display shall be permitted except where needed to provide for minimum height clearance (from the ground to the bottom of the off-premises signs) to comply with roadway safety.
  - **The outdoor advertising display shall be relocated along the same roadway it was removed from in the geographical vicinity and shall comply with the Scenic Vistas Act of 1971 (chapter 47.42 RCW and chapter 468-66 WAC) if located along a state highway.**
  - The relocation of the outdoor advertising shall be subject to all current City of Spokane rules, regulations, and procedures relating to the regulation and control of off-premises signs.

# Content Neutrality and Reed v. Town of Gilbert

# Reed v. Town of Gilbert

- Supreme Court case decided in 2015.
  - Provided new guidance on sign code regulations
  - Will require most jurisdictions nationwide to update their sign codes or risk a constitutional challenge
  - Focused on content neutrality and non-commercial speech

# Reed v. Town of Gilbert

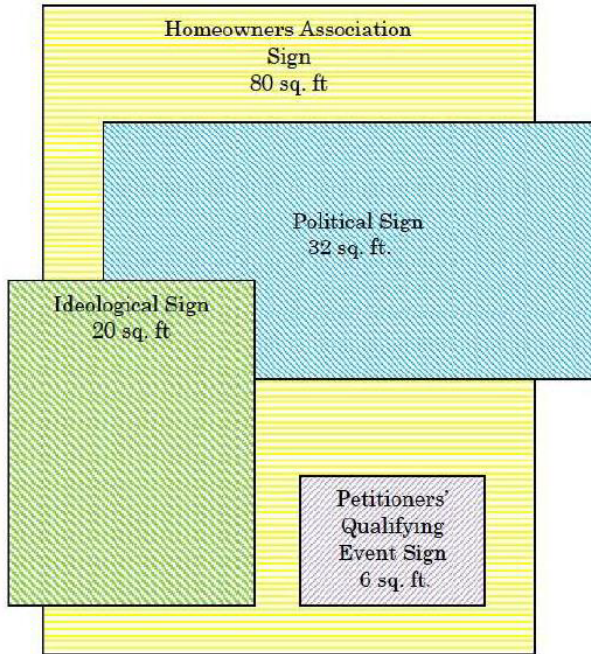
- A local church had no permanent location
- Displayed temporary directional signs throughout town to notify people where services were being held
- Cited twice for violating the town's sign code
  - Once for exceeding the time limits for displaying temporary directional signs
  - Another for exceeding time limits as well as failing to include the date of the event on the sign

# Reed v. Town of Gilbert

- The Town of Gilbert's sign code prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including three relevant to this case.
  - Ideological
    - Up to 20 ft.<sup>2</sup>
    - No time limits
  - Political
    - 16-32 ft.<sup>2</sup> based on zoning
    - 60 days before an election and remain 15 days after
  - Temporary directional
    - No larger than 6 ft<sup>2</sup>
    - Placed 12 hours before an event and removed within 1 hour
- Code's purpose statement cited traffic safety and aesthetics as reasons for the regulations

# Reed v. Town of Gilbert

## SIZE



## DURATION

Display Time Before	Sign Content	Display Time After
← Unlimited	<b>Ideological</b>	Unlimited →
← 4 ½ Months	<b>Election</b>	15 Days →
← 30 Days	<b>HOA Event</b>	48 hrs →
16 hrs ←	<b>Real Estate Sale</b>	→ 36 hrs
12 hrs ←	<b>Religious Event</b>	→ 1 hr



# Reed v. Town of Gilbert

- In 2008, Pastor Clyde Reed and the church filed suit in Federal District Court
  - District Court found in favor of Town of Gilbert
    - Content neutral and reasonable in light of gov't interest
  - 9<sup>th</sup> Circuit Court of Appeals agreed
- The Supreme Court decided unanimously in favor of the church, stating the sign code was content based and violated the First Amendment
- No compelling reason why certain signs treated differently based on impacts to traffic safety and aesthetics



# Majority Opinion

- Written by Justice Thomas, joined by Roberts, Scalia, Kennedy, Alito, and Sotomayor
- If a sign code makes any distinction based on the message of the speech the sign code is content based.
- Regulations of speech must be facially content neutral and content neutral in their purpose. First determine if code is neutral on it's face, then whether the law is neutral in its justification.

# Concurring Opinions

- Written by Breyer, concurring in judgement
- Written by Kagan, joined by Ginsburg and Breyer
  - Critical of absolute rule regarding content neutrality
  - Regulations of content cannot and should not always trigger strict scrutiny
  - Felt intermediate scrutiny was more appropriate

# Concurring Opinions

- Written by Alito, joined by Kennedy and Sotomayor
- Provided non-exhaustive list of regulations that should be considered content neutral

# Alito's Concurring Opinion

- Rules regulating the size of signs.
- Rules regulating the locations in which signs may be placed. These rules may distinguish between free-standing signs and those attached to buildings.
- Rules distinguishing between lighted and unlighted signs.
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
- Rules that distinguish between the placement of signs on private and public property.
- Rules distinguishing between the placement of signs on commercial and residential property.
- Rules distinguishing between on-premises and off-premises signs.
- Rules restricting the total number of signs allowed per mile of roadway.
- Rules imposing time restrictions on signs advertising a one-time event. Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed.

# The First Amendment

- Prohibits laws abridging freedom of speech
  - Courts have not taken a literal approach and have allowed very limited restrictions in very limited circumstances
  - They have developed several tests for determining when a government regulation of speech has gone too far
  - Restrictions that are content based trigger the highest level of scrutiny
  - Restrictions that are content neutral are afforded a lower level of scrutiny

# Content Neutrality

- Content Neutral Tests

- Government purpose

- In *Ward v. Rock Against Racism* (1989) The Supreme Court stated "The principal inquiry in determining content neutrality, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys. The government's purpose is the controlling consideration."

- Need to read

- In *Police Department of Chicago v. Mosley* (1972) they said "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."

# Content Neutrality

- Content Neutral Regulations
  - Time, place and manner
  - Subject to intermediate scrutiny
- Regulations that differ based on the content of the message
  - Subject to strict scrutiny

# Content Neutrality

- Strict vs. Intermediate Scrutiny
  - Strict Scrutiny
    - Must be justified by a *compelling* government interest
    - Must use the least restrictive means to achieve that interest
    - Government bears the burden of proof
  - Intermediate Scrutiny
    - Must be justified by a *substantial* government interest
    - Must be narrowly tailored to achieve that interest
    - Must leave open ample alternative avenues of communication



# Lessons Learned from Reed

- Sign regulations cannot be based on the content of the message
  - If you need to read a sign to know how it is regulated then it is content based
- Content neutral regulations must be justified by a substantial government interest
  - It is important to have strong, compelling, purpose statement
  - Regulations must be consistent and further stated purpose

# City of Spokane Temporary Signs

- Currently has 10 categories of temporary signs, 8 do not require a permit
- All have different regulations, some have sub categories with varying regulations
  - Construction Signs
  - Grand Opening Displays
  - Special Event
  - Balloon Signs
  - Real Estate Signs
  - Political Campaign
  - **Community Banners**
  - **Sandwich Board Signs**
  - Garage Sale
  - Seasonal Sales

# Project Schedule

<u>Meeting</u>	<u>Topic</u>	<u>Details</u>
1	Introductions Project Scope Background	July 14 8:30-10:00 am 3B
2	Review Mtg. 1 Purpose/Intent Statements Exemptions Prohibitions	July 28 7:30-9:00 am 3B
3	Review Mtg. 2 Off Premise Signs Relevant Current Planning Changes Bonus for Outstanding Design	August 8 7:30-9:00 am 3B
4	Review Mtg. 3 Temporary Signs Definitions	August 24 4:00-5:30 pm 3B
5	Review Mtg. 4 Recommendations Final Wrap Up	August 31 4:00-5:00 3B

Any Questions?