

# Updating Your Sign Code to Comply with *Reed v. Gilbert*

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# Time Flies....

- Reed v. Town of Gilbert was decided June 18, 2015
  - That's a one year and eight months ago...
- We talked about the *Reed* case at the PAW Boot Camp here in Lacey just about one year ago.
  - No cities had taken steps to amend their sign codes at that time, but most all were aware of the need.
- What steps has your city taken to amend its sign code?
  - If you haven't amended your sign code, do you enforce your sign code?

# Quick Refresher on *Reed v. Town of Gilbert*

# Town of Gilbert's Sign Code Provisions

The Town of Gilbert's comprehensive sign code prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including three relevant to this case.

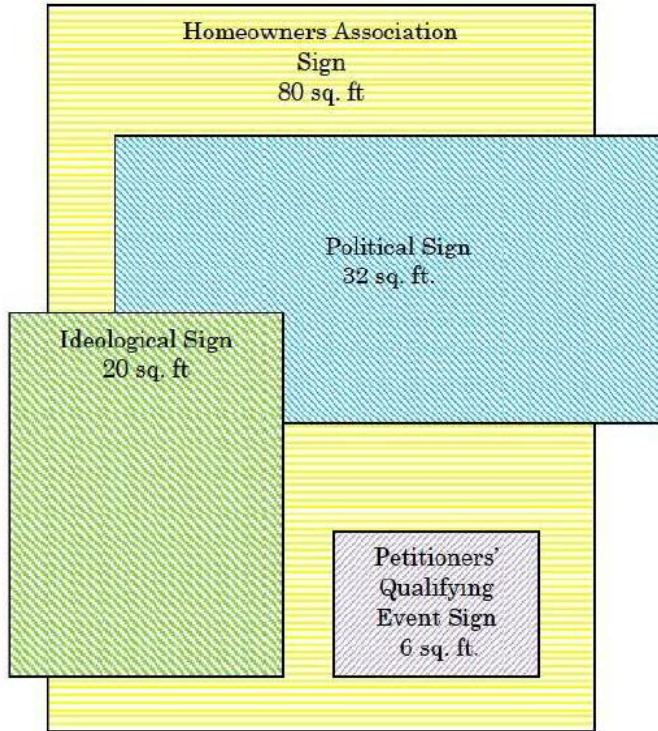
***"Ideological Signs,"*** defined as signs "communicating a message or ideas" that do not fit in any other Sign Code category, may be up to 20 square feet and have no placement or time restrictions.

***"Political Signs,"*** defined as signs "designed to influence the outcome of an election," may be up to 32 square feet and may only be displayed during an election season.

***"Temporary Directional Signs,"*** defined as signs directing the public to a church or other "qualifying event," have even greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the "qualifying event" and 1 hour after.

# Town of Gilbert's sign regulations

## SIZE

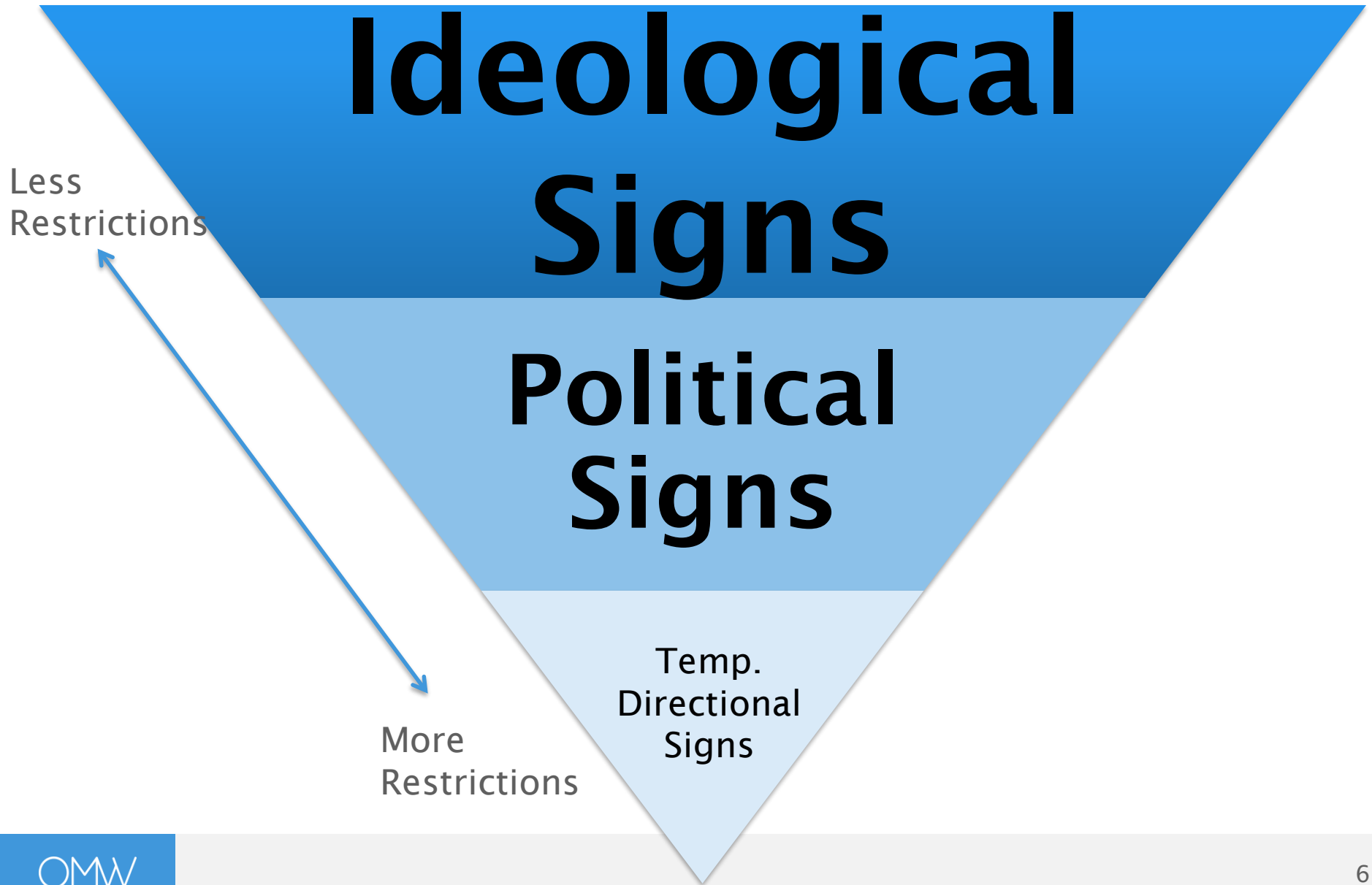


## DURATION

| 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             |

Graphic available at [www.adfmedia.org](http://www.adfmedia.org)

# Hierarchy of Outdoor Signs



# Good News Community Church

- Small Church with no permanent meeting location.
- Uses 15-20 temporary signs in order to inform the community where the current week's service will be held.
- The signs typically displayed the Church's name, along with the time and location of the upcoming service.
- Church members would post the signs early in the day on Saturday and then remove them around midday on Sunday.



# Citations

The Church was cited two times for violations of the sign code.

- First, the Church exceeded the time limits for displaying its temporary directional signs.
- Second, the Church again exceeded time limits and also failed to include the date of the event on the signs.



# Gilbert's Sign Code is Content Based on its Face

In Gilbert, in order to understand the restrictions that apply to any given sign, you must look to the communicative content of the sign. Only when you look to the content of the sign will you know if it is a Temporary Directional Sign, a Political Sign, or an Ideological Sign.

On its face, the sign code is a content based regulation of speech.

Content-based laws are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve a compelling government interest.

This is strict scrutiny.

Cannot avoid strict scrutiny even with a benign motive, content-neutral justification, or lack of animus to the ideas contained in the regulated speech.

# Strict Scrutiny v. Intermediate Scrutiny

Time, place, and manner restrictions must withstand intermediate scrutiny.

These restrictions must:

- Be content neutral
  - Immediately takes restrictions like those in *Gilbert* to strict scrutiny.
- Be narrowly tailored
- Serve a significant governmental interest
- Leave open ample alternative channels for communication

# Gilbert's Claimed Governmental Interests in Adopting the Sign Code Regulations

- Court held that temporary directional signs are no greater an eyesore than the other types of signs
- The City is without justification to allow unlimited proliferation of larger ideological signs while strictly limited the number, size, and duration of smaller directional signs.

## *Traffic Safety*

- Gilbert offered no reason to believe that directional signs pose a greater threat to safety than do ideological or political signs.

Consequently, Gilbert failed to meet its burden to prove that its sign code is narrowly tailored to further a compelling government interest.

*Failed the strict scrutiny test. Therefore, the sign code provisions were an unconstitutional restriction on speech in violation of the First Amendment.*

# The Rule Now

If, when regulating speech, the regulation is split into categories which require you to look to the content of the sign, and those categories are treated differently, that regulation is content based on its face and must withstand strict scrutiny.

## Next Steps

Because strict scrutiny is normally fatal, many sign codes may need to be rewritten to remove content based provisions. Your City Attorney can work with City staff to try and find ways to accomplish the same goals while removing the offending provisions.

# Things to consider when re-writing a *Reed* compliant sign code

- What should the revision process look like?
- What topics will be included in the revision?
- Who should be included in the revision process? Who has a voice?
- What will the end product look like?
- Possible Areas for Regulation.

# What should the revision process look like?

The exact process that you should take when revising your sign code will largely depend upon the dynamic of your city.

- Larger cities, cities with active residents, cities with political participation, etc. will likely require a more robust process.
  - This could include more opportunities for public comment and engagement.
    - Some cities have created committees consisting of diverse stakeholders in order to gather and synthesize public input throughout the process.
      - Sign industry
      - Downtown business association
      - Religious institutions
      - Realtors
      - Political organizations
      - Large businesses imbedded in the city
        - Auto dealerships
        - Tech companies
        - Malls or big boxes
    - Importantly, this starts before any code changes are made.
    - It is the collection of opinions, not necessarily a consensus building exercise.
  - Smaller cities that do not have the same level of engagement may be able to get by with limited direct involvement from the public, though should always have appropriate public comment opportunities down the line.
  - The timeline for the revision process can stretch out longer than a policy maker may expect.

# What topics will be included in the revision?

The Road Decision is certainly driving most sign code amendments right now, but does your sign code have other issues that can/should be addressed given this opportunity to revise?

- **Enforcement** – does your city have the resources to enforce the current code? Will it have the resources to enforce the next code? If not, that could be a key area to consider during the revision process.
  - When does most non-compliance occur? Does the enforcement in place match the non-compliance?
- **Applications** – does your city have an application process?
  - Generally, less understanding equals less compliance.
- **Penalties** – Are they fair?
- **Comprehension/Simplification** -- Do applicants and staff understand the code? Is there anything that could be clarified? Terms, restrictions, diagrams, process, etc.?



# Who should be included in the revision process? Who has a voice?

There are a wide range of people that interact with the sign code that should be consulted in the revision process.

First and foremost the **Mayor/Manager** and the **Council** should be involved and provide input from the beginning.

Next, **planning staff** should drive the revision process so that the code is tight and clear from a planning perspective.

The **city attorney** should be involved to ensure legal compliance.

**Code enforcement officers** should also be involved because they are the ones that enforce the code and understand the implementation of the code.

Finally, the **advisory committees** discussed before as well as the **general public**.

# What will the end product look like?

It is important to set expectations early! In all likelihood, the sign code will look and feel different to everyone when the revision process is done. Going in with a blank slate will aide the process along rather than having people continually trying to fit the new code into the confines of the old code.

The structure of the end product will largely be defined by a few initial questions that policy makers need to answer right away.

- How strict does the city want the code to be?
- How should temporary signs be treated?
- Should the revision address commercial signs as well?
- How can you divide up the city for regulations? Zones, streets, etc.?

# Possible Areas for Regulation

Some areas that are still open for regulation are:

- Size of the sign
  - Physical sign type (A-frame, banner, monument, etc.)
  - Set backs
  - Zone based restrictions
  - Height or overhang
  - Lighted v. non-lighted
  - Moving signs
  - Materials
  - Window coverage
  - Architectural consistency
  - Historical design
- BUT, be sure you have a good reason for any regulation. Just because it isn't content based, and therefore doesn't need to meet strict scrutiny, doesn't mean you can toss in any regulation. Still want support for what you include.

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