POTENTIALLY CONTENT-BASED PROVISIONS IN THE CURRENT SIGN CODE

Code Section	Topic/ Regulation Requirements	Reason for Invalidity	Possible Fix	Policy Options Analysis
SBMC 22.70.030(B)(2) **TEMPORARY WARNING SIGNS; EXEMPT SIGNS**.	"Any temporary sign warning of construction, excavation, or similar hazards so long as the hazard exists."	Under *Reed*, this is content-based. 135 S. Ct. at 2232 (noting that signs that "identify hazards and ensure safety" are content-based but could survive strict scrutiny if narrowly tailored). But, a court would likely hold that this section survives strict scrutiny because the regulation furthers the interest of public safety.	Include the purported public safety interest in the statute.	The Council has two options here. First, it can list the justification of public safety to preempt a potential legal challenge. Alternatively, it can wait until there is a legal challenge and raise the argument in court that this section serves the interest of public safety.

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Code Section	Topic/ Regulation Requirements	Reason for Invalidity	Possible Fix	Policy Options Analysis
SBMC 22.70.030(B)(3) **TEMPORARY CONSTRUCTION SIGNS; EXEMPT SIGNS.**	"One temporary construction sign, provided the sign (i) does not exceed six (6) square feet in one- and two-family residence zones and does not exceed twenty-four (24) square feet in all other zones, (ii) is used only to indicate the name of the construction project and the names and locations (city or community and state name only) of the contractors, architects, engineers, landscape designers, project or leasing agent, and financing company, (iii) is displayed during construction only, (iv) does not exceed the height limitations of a ground sign, and (v) meets all other applicable restrictions of this Chapter."	This section is content-based because it applies to signs bearing certain information/content about construction. This likely constitutes regulation based on "communicative content." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226 (2015). The information mentioned in the signs go far beyond protecting the public against the potential hazards of construction, so it could fail strict scrutiny.	This section should be eliminated or it should be altered regulate time, place, or manner.	The Council has two main options in amending this section. First, it can forbid all signs on construction sites (restricting the location). Second, it can allow signs on construction sites (that will inevitably be construction signs) but limit the timing and manner of those signs (i.e. size, color, etc).

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Code Section	Topic/ Regulation Requirements	Reason for Invalidity	Possible Fix	Policy Options Analysis
SBMC 22.70.030(B)(4) **TEMPORARY SIGNS FOR HOLIDAYS; EXEMPT SIGNS.**	"Any temporary sign relating to Fiesta, Solstice, or any official City holiday except banners, blinking lights, or signs and any related signing that require a building, electrical, or other permit. Any such decorations or displays and any related lighting must be removed within ten (10) days following the event for which they were erected."	This section is content-based because it makes an exemption for signs relating to certain holidays. Similarly, in *Reed*, the ordinance at issue imposed different restrictions on signs based on their communicative content—signs inviting people to the church were "treated differently from signs conveying other types of ideas." *Reed*, *Ariz.*, 135 S. Ct. at 2226.	Eliminate this section in its entirety or amend it into a broader time, place, or manner restriction.	The Council can either eliminate this section in its entirety, or amend it to instead constitute a time, place, or manner restriction. For example, the Council could exempt any signs, except those of the manner described, within a certain time period of Fiesta, Solstice, or an official City holiday. This way these signs would likely remain exempt, but without reference to their content. It could also make any temporary signs exempt on the weekends to make room for other types of signs, such as Church signs, that usually go up on weekends.

POTENTIALLY CONTENT-BASED PROVISIONS IN THE CURRENT SIGN CODE

Code Section	Topic/ Regulation Requirements	Reason for Invalidity	Possible Fix	Policy Options Analysis
SBMC 22.70.020(EE) **NONCOMMERCIAL SIGNS; DEFINITIONS.**	"NONCOMMERCIAL SIGN. Any sign which is intended to convey a noncommercial message of social, political, educational, religious or charitable commentary."	A definition on its own is unlikely to violate the First Amendment. But, when applied to SBMC 22.70.030(B)(6), discussed above, this definition enables content-based regulation. Please check the "Policy Options" column for a way to amend this definition to survive First Amendment analysis.	Broaden the definition.	Because regulating commercial speech likely falls outside of *Reed*, the definition of a noncommercial sign ***could survive if amended to be "any sign which conveys a noncommercial message."*** Commercial message should then be defined elsewhere as a message ***that "does no more than propose a commercial transaction," and speaks "solely to the economic interests of the speaker and its audience."*** *Am. Acad. of Pain Mgmt. v. Joseph*, 353 F.3d 1099, 1106 (9th Cir. 2004) (citing *Central Hudson*, 447 U.S at 562-63). That definition would be in line with the Ninth Circuit's definition of commercial, and it would ensure content-neutral regulation. The specific categories of "political, educational, religious or charitable commentary" must be removed completely because they are content-based.

POTENTIALLY CONTENT-BASED PROVISIONS IN THE CURRENT SIGN CODE

Code Section	Topic/ Regulation Requirements	Reason for Invalidity	Possible Fix	Policy Options Analysis
SBMC 22.70.030(B)(6) **ELECTION SIGNS; EXEMPT SIGNS.**	"An election sign shall not be displayed for more than ninety (90) days prior to the election or for more than ten (10) days following the election for which it is erected."	This section is content-based because it delineates additional restrictions for an "election sign." Because the definition, as explained below, is content-based, the utilization of that definition in this section is also content-based.	Eliminate this section in its entirety or broaden the definition/exemption for elections signs to those erected close in time to elections.	The purpose of the election sign regulation is to allow more political speech in the time period before elections. Nothing is wrong with relaxing limitations during a specific time period such as before an election, but the Council cannot dictate *what* sign content gets a benefit during that period. That said, the Council can decide that for a certain time period before an election, signs of a certain type and/or in certain locations are specially allowed. As an alternative, the Council can always eliminate this exemption in its entirety.
SBMC 22.70.020(N) **ELECTION SIGNS; DEFINITIONS.**	"ELECTION SIGN. A noncommercial sign pertaining to an election for public office or to a ballot measure to be placed before the voters in a federal, state or local election."	This definition does not violate the First Amendment on its own. But, when applied to SBMC 22.70.030(B)(6), it becomes a facially content-based regulation because it takes into consideration the sign content (elections).	Eliminate this definition in its entirety or change broaden the definition.	If the Council values keeping a version of this exemption, then it could cure any constitutional concerns by altering the definition of election signs to include *any* sign (in specified locations and of certain types/sizes) made a certain time period away from elections.

POTENTIALLY CONTENT-BASED PROVISIONS IN THE CURRENT SIGN CODE

Code Section	Topic/ Regulation Requirements	Reason for Invalidity	Possible Fix	Policy Options Analysis
SBMC 22.70.030(B)(14) **CIVIC EVENT SIGNS; EXEMPT SIGNS.**	"Any civic event sign, except a banner. Such a sign shall be removed within twenty-four (24) hours after the time of the event, shall not exceed twenty-four (24) square feet in size and may be erected for a period not to exceed five (5) days out of any thirty (30) day period. Only one (1) such sign shall be erected per lot."	This is content-based because it exempts a type of sign based on whether the content relates to civic events. *Reed*, 135 S. Ct. at 2231 (2015) (holding that event-based signs are content-based). In a similar case, the District Court for the Northern District of California applied *Reed* and invalidated a law that gave preference for "official public signs," because it gave "preference for that content." *Citizens for Free Speech, LLC v. Cty. of Alameda*, No. C14-02513 CRB, 2016 WL 3648555, at *12 (N.D. Cal. July 8, 2016). There, the court did not have to decide on whether a compelling interest existed, because "allowing the government to build any signs without any restrictions…while	Eliminate this section in its entirety or limit the definition below of civic event sign.	The Council has two options. First, it can eliminate this section in its entirety. Second, if it wants to give special protections to government-sponsored events, it could broaden the definition below in one of the two ways listed. As part of changing the definition, it should also change the term used to "civic sign" rather than "civic event sign."

		including a variety of different restrictions for different permitted signs…is the antithesis of narrow tailoring." *Id*. at *14 (internal quotation marks omitted). The definition below goes further than allowing the government special protections—it allows for extra protections by a laundry list of other entities.		
SBMC 22.70.020(I) **CIVIC EVENT SIGNS; DEFINITIONS.**	"CIVIC EVENT SIGN. A sign, other than a commercial sign, posted to advertise or provide direction to a civic event sponsored by a public agency, the City, a school, church, civic-fraternal organization or similar noncommercial organization."	This definition on its own wouldn't violate the First Amendment because it technically does not prohibit any signs or exempt any signs. However, this meaning, as applied in conjunction with SBMC 22.70.030(B)(14), is content-based and violates *Reed*. Indeed, the sign in *Reed* was a church event sign—which this definition explicitly lists. Therefore, because SBMC 22.70.030(B)(14) would	Eliminate this definition or limit it to just governmental signs.	To make the above section content-neutral, the Council could change the definition of civic event sign to be speaker-based. However, not all speaker-based regulations are content-neutral, as per *Reed*. *Reed*, 135 S. Ct. at 2230-31. Indeed, if a court thought that a speaker-based regulation established a preference for content from those speakers, it would apply strict scrutiny. *Id.* To address these concerns, the Council should change the definition to: "a sign posted by the City or a public agency." The Council should also change the term used to "civic sign"

		not survive for the reasons elaborated on above, this definition would no longer be necessary to keep in the statute.		rather than “civic event sign,” so it only has a preference for the type of speaker but not for the specific content (i.e. civic events). It could also consider listing some specific examples such as directional and traffic safety signs.

Code Section	Topic/ Regulation Requirements	Reason for Invalidity	Possible Fix	Policy Options Analysis
SBMC 22.70.030(B)(17) **FLAGS; EXEMPT SIGNS.**	"Flags flown on a temporary basis for purposes of honoring national or civic holidays which do not exceed eight (8) feet long in largest dimension. No more than two (2) flags may be flown pursuant to this exemption on a single parcel."	This section could fall under viewpoint discrimination, which is the "more blatant" and "egregious form of content discrimination." *Reed*, 135 S. Ct. at 2223. Exempting flags flown for the specific purpose of honoring holidays, while implicitly prohibiting flags that do not serve that same purpose or viewpoint, probably constitutes content-based discrimination.	Change this provision to a time, place, or manner restriction or eliminate this section in its entirety. Also, add a height restriction.	The Council has two options. First, it can convert this section from a content based regulation to a time, place, and manner regulation, change the statute to exempt "Flags flown on a temporary basis ***on*** national or civic holidays." Because the current wording is both hard to administer (figuring out the purpose behind people's flag use) and also requires a content based analysis, the City should consider making this change. Second, it can eliminate this exemption in its entirety. On a separate note, the Council should also consider adding a height restriction of 18 feet for flags in R-2 and R-3 zones, matching the height restriction of structures in those zones. SBMC 28.11.020. For all other residential zones, the Council should consider making the

				restriction 12 feet to match the height restriction for structures there. *Id.*

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Code Section	Topic/ Regulation Requirements	Reason for Invalidity	Possible Fix	Policy Options Analysis
SBMC 22.70.030(C)(21) **CHANGEABLE COPY SIGNS; PROHIBITED SIGNS.**	"Signs containing changeable copy, except theater marquee signs, business directories, church and museum signs, gas price signs and restaurant interior menu boards."	This section might be content-based. The prohibited signs listed here are not strictly commercial signs (in the legal sense), and thus this regulation is subject to strict scrutiny for treating signs differently based on their content. Please see the first memorandum for more information on the commercial/ noncommercial distinction.	Eliminate the exceptions under this provision or eliminate the section in its entirety.	It is unclear what the reasoning for this section is. But, if the Council still would like to regulate changeable copy, it has three options. First, it can eliminate the content-based exceptions to make it content neutral. In doing so, the Council can still limit the time, place, or manner of signs with changeable copy. For instance, it can exempt signs with changeable copy that are of a certain size, color, or location. Second, the Council could change the language to "signs containing changeable copy, except ***at*** theater marquees, churches, museums, gas stations, and restaurants." This way, the regulation restricts changeable copy at certain locations, rather than for certain types of signs. Third, if the Council no longer sees an issue with changeable copy, then it could eliminate this section in its entirety.