



OFFICE OF THE CITY ATTORNEY

SIGN REGULATION

History, Law and Policy



Overview

- **Overall Goals**
- **Work Plan**
- **Sign Regulation History and Law**
- **Policy Objectives of the City's Sign Regulations**



Overall Goals

- **Revise** the City's Sign Ordinance to Satisfy New First Amendment Requirements
- **Maintain** Existing City Sign Regulation Policies to the Greatest Extent Possible
- **Innovate** to Anticipate and Meet 21st Century Needs



Work Plan

- **Learn** the Law and Policy
- **Extract and Rebuild** the Policy Underpinnings for the Sign Ordinance
- **Hear** the General Public and Affected Interests
- **Draft and Report Back** on a Revised Sign Ordinance



SIGN REGULATION HISTORY AND LAW



Federal Sign Regulation

- **1956:** National Interstate and Defense Highways Act
- **1958:** Federal Aid Highway Act
 - States that agreed to use national standards to control billboards near interstate highways received $\frac{1}{2}$ of 1% of the highway construction cost as a “bonus.”
- **1965:** Highway Beautification Act
 - “to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty”



Early State and Local Sign Regulation

- Focused on Outdoor Advertising
 - **1917:** *Cusack v. Chicago*: Upheld ordinance prohibiting any billboard over 12 sf without neighborhood consent. Valid exercise of the City's police power
 - **1932:** *Packer Corp. v. Utah*: Upheld state law banning tobacco advertising billboards
- No Discussion of First Amendment Issues



Santa Barbara Sign Regulation History

- **1922:** First Santa Barbara Sign Ordinance
- **1960:** ABR began reviewing certain signs. Ultimately expanded to all permanent and temporary signs
- **1977:** HLC authorized to review El Pueblo Viejo signs for historic compliance



Santa Barbara Sign Regulation History

- **1977:** Sign sub-committee was formed to review, approve, conditionally approve or deny all signs, subject to ratification by the ABR and HLC.
- **1981:** Sign Ordinance revised and formal Sign Committee created
- **1995:** Last Major Sign Ordinance Changes



DEVELOPMENT OF MODERN SIGN LAW

The First Amendment Awakening



The First Amendment

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”



Incorporation of the Bill of Rights: The Battle over States' Rights

- **1868:** 14th Amendment -- Reconstruction
- **1925:** *Gitlow v. New York*
 - “[F]reedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and ‘liberties’ protected by the due process clause of the Fourteenth Amendment from impairment by the States.”
 - *Court upheld New York criminal anarchy law as applied to Communist manifesto advocating violent overthrow of the government.*
- **1931:** *Stromberg v. California*
 - “the conception of liberty under the due process clause of the Fourteenth Amendment embraces the right of free speech.”
 - *Court struck down California law as applied to flying red communist flag.*



First Amendment Overview

- What is “Speech?”
 - “Expression, whether oral or written or symbolized by conduct” *Clark v. Community for Creative Non-Violence* (1984) 468 U.S. 288, 293.
- Interpreted Very Broadly



First Amendment Overview

- Examples of “Speech”
 - Distributing Jehovah’s Witness literature door-to-door (*Lovell, 1938; struck down*)
 - Burning draft card to protest Vietnam war (*O’Brien, 1968; upheld*)
 - Wearing black armbands in school to protest Vietnam war (*Tinker, 1969; struck down*)
 - Hanging U.S. flag upside down with peace symbol to protest invasion of Cambodia and Kent State shootings (*Spence, 1974; struck down*)
 - Hare Krishna sales of religious literature (*Heffron, 1981; upheld*)
 - *Sleeping in parks to protest homelessness* (*Clark, 1984; upheld*)
 - *SOB’s* (*Renton, 1986; upheld*)



First Amendment Overview

“Prior Restraint” = Pre-Publication Censorship

- Any government approval or permitting process that requires pre-approval for speech and expressive conduct, like parade permits, solicitation permits, or sign permits
 - ***“The thread running through all these cases is that prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.”*** *Nebraska Press Ass’n v. Stuart* (1976) 427 U.S. 539
 - ***“Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.”*** *Bantam Books, Inc. v. Sullivan* (1963) 372 U.S. 58.



First Amendment Overview

- **Traditional Public Forum**
 - Areas where people traditionally express themselves, like parks, public streets, sidewalks
- **Designated Public Forum**
 - A forum opened by the government, like public theatres and meeting halls, that is treated like a traditional forum
- **Limited Public Forum**
 - Designated for certain kinds of speech by the government, like schools limiting access to school-related activities or City Council chambers, e.g. “A council can regulate not only the time, place, and manner of speech in a limited public forum, but also the content of speech—as long as content-based regulations are viewpoint neutral and enforced that way.”
- **Nonpublic Forum**
 - Government property traditionally not open to the free exchange of ideas, like courthouse lobby, prison, military base, or airport terminals



First Amendment Overview

- Traditionally, “Content Neutral” Regulations are Easier to Defend
- But . . .
 - Evolving Concept of “Content Neutrality”
 - **Old View:** *Look at Government Justification and Motive*
 - **New View:** *Any Reference to Content is Unacceptable*



First Amendment Overview

- **Old** “Content Neutrality” Analysis
 - “In short, the Renton ordinance is completely consistent with our definition of ‘content-neutral’ speech regulations as those that ‘are **justified** without reference to the content of the regulated speech.’”
 - “The ordinance does not contravene the fundamental principle that underlies our concern about ‘content-based’ speech regulations: that ‘government may not grant the use of a forum to people **whose views it finds acceptable**, but deny use to those wishing to express less favored or more controversial views.’” (*City of Renton v. Playtime Theatres, Inc.* (1986) 475 U.S. 41, 48-49.)



First Amendment Overview

- **New** “Content Neutrality” Analysis
 - “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. This **commonsense** meaning of the phrase “content based” requires a court to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and **others are more subtle, defining regulated speech by its function or purpose.** Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.” (Reed v. Town of Gilbert, Ariz. (2015) 135 S.Ct. 2218, 2227.)



First Amendment Overview

- **New** “Content Neutrality” Analysis
- “The Town's Sign Code is content based on its face. It defines ‘Temporary Directional Signs’ on the basis of whether a sign conveys the message of directing the public to church or some other ‘qualifying event.’ It defines ‘Political Signs’ on the basis of whether a sign's message is ‘designed to influence the outcome of an election.’ And it defines ‘Ideological Signs’ on the basis of whether a sign ‘communicat[es] a message or ideas’ that do not fit within the Code's other categories. It then subjects each of these categories to different restrictions.” *Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2227.



First Amendment Overview

- Content Neutral “Time, Place and Manner” Regulations are Permissible
- “Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions.” (*Clark v. Community for Creative Non-Violence* (1984) 468 U.S. 288, 293.)



First Amendment Overview

- Content Neutral Regulations Must Meet “Intermediate Scrutiny” Legal Test:
 - “We have often noted that restrictions of this kind are valid **provided that they are justified without reference to the content** of the regulated speech, that they are **narrowly tailored** to serve a **significant governmental interest**, and that they **leave open ample alternative channels** for communication of the information.” *(Clark v. Community for Creative Non-Violence (1984) 468 U.S. 288, 293.)*



First Amendment Overview

- Content-Based Regulations Must Meet “Strict Scrutiny” Legal Test:
 - “. . .the Government may regulate protected speech only if such regulation promotes a *compelling interest* and is the *least restrictive means* to further the articulated interest. (McCutcheon v. Federal Election Com’n (2014) 134 S.Ct. 1434, 1444.)



Comparison of Legal Tests

Content Neutral
Intermediate Scrutiny

- **Significant or Substantial** Government Interest
- **Narrowly** Tailored (substantial government interest would be achieved less effectively absent the regulation)
- Leaves Open **Ample Alternative Channels** of Communication

Content-Based
Strict Scrutiny
Presumptively Invalid

- Necessary for a **Compelling** Government Interest
- Uses the **Least Restrictive Means** to Further that Interest



Examples of Sign Regulations that are Content Neutral

- “The Town has ample content-neutral options available to resolve problems with safety and aesthetics. For example, its current Code regulates many aspects of signs that have nothing to do with a sign's message: **size, building materials, lighting, moving parts, and portability.** See, e.g., § 4.402(R). And on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner.” (Reed v. Town of Gilbert, Ariz. (2015) 135 S.Ct. 2218, 2232.)



Some Content-Based Sign Regulations May Be Defensible?

- We acknowledge that a city might reasonably view the general regulation of signs as necessary because signs “take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation.” At the same time, the presence of certain signs may be essential, both for vehicles and pedestrians, to guide traffic or to identify hazards and ensure safety. ***A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses—well might survive strict scrutiny.*** (Reed v. Town of Gilbert, Ariz. (2015) 135 S.Ct. 2218, 2232.)



1980: *Central Hudson v. PSC*

“The Constitution . . . accords a lesser protection to commercial speech than to other constitutionally guaranteed expression. The protection available for a particular commercial expression turns on the nature both of the expression and of the governmental interests served by its regulation.”



1980: *Central Hudson* Four-Part Test

1. The First Amendment protects commercial speech *only if* that speech concerns *lawful activity and is not misleading*.

A restriction on otherwise protected commercial speech is valid only if it:

2. seeks to implement a *substantial governmental interest*

3. *directly advances* that interest, and

4. *reaches no further than necessary* to accomplish the given objective.



“The Law of Billboards”

- **1981: Metromedia v. San Diego Sets Up Commercial v. Non-Commercial Paradigm Followed by Santa Barbara**
- “The extension of First Amendment protections to purely commercial speech is a relatively recent development in First Amendment jurisprudence. *Prior to 1975, purely commercial advertisements of services or goods for sale were considered to be outside the protection of the First Amendment.*”



1981: Metromedia v. San Diego

Nor can there be substantial doubt that the twin goals that the ordinance seeks to further — *traffic safety and the appearance of the city* — are substantial governmental goals.



2015: Reed v. Town of Gilbert

- Church and pastor seeking to place temporary signs announcing services filed suit claiming that town's sign ordinance, restricting size, duration, and location of temporary directional signs violated the right to free speech
- Federal Ninth Circuit Court of Appeals Upheld Town Ordinance



2015: Reed v. Town of Gilbert

- Supreme Court Reversed
 - Justice Clarence Thomas Authored Majority Opinion Joined by Chief Justice Roberts and Justices Scalia, Kennedy, Alito and Sotomayor
 - Justice Alito filed a concurring opinion, joined by Justices Kennedy and Sotomayor
 - Justice Breyer filed an opinion concurring in the judgment
 - Justice Kagan filed an opinion concurring in the judgment, joined by Justices Ginsburg and Breyer



2015: *Reed v. Town of Gilbert*

- “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. This **commonsense** meaning of the phrase “content based” requires a court to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and **others are more subtle, defining regulated speech by its function or purpose.** Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.” *(Reed v. Town of Gilbert, Ariz. (2015) 135 S.Ct. 2218, 2227.)*



2015: Reed v. Town of Gilbert

- *Reed* does not appear to address commercial speech rules under *Central Hudson* or *Metromedia*



2015: *Reed v. Town of Gilbert*

- Justice Alito's Concurring Opinion (joined by Justices Kennedy and Sotomayor) is Critical Because It Attempts to Explain What Cities Can Do ---
- "As the Court shows, the regulations at issue in this case are replete with content-based distinctions, and as a result they must satisfy strict scrutiny. ***This does not mean, however, that municipalities are powerless to enact and enforce reasonable sign regulations. I will not attempt to provide anything like a comprehensive list, but here are some rules that would not be content based:*** (Reed v. Town of Gilbert, Ariz. (2015) 135 S.Ct. 2218, 2233.)



Justice Alito's *Reed* Concurrence

1. Rules regulating the **size** of signs. These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.
2. Rules regulating the **locations** in which signs may be placed. These rules may distinguish between free-standing signs and those attached to buildings.
3. Rules distinguishing between **lighted and unlighted** signs.
4. Rules distinguishing between signs with fixed messages and **electronic signs with messages that change**.



Justice Alito's *Reed* Concurrence

5. Rules that distinguish between the placement of signs on ***private and public*** property.
6. Rules distinguishing between the placement of signs on ***commercial and residential*** property.
7. Rules distinguishing between ***on-premises and off-premises*** signs.
8. Rules restricting the total number of ***signs allowed per mile*** of roadway.



Justice Alito's *Reed* Concurrence

9. 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.
10. In addition to regulating signs put up by private actors, **government entities may also erect their own signs** consistent with the principles that allow governmental speech. They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.
 - ***Properly understood, today's decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate esthetic objectives.***



Post-*Reed* Case Law

- *Lamar Central Outdoor v. City of Los Angeles* (March 10, 2016)
 - *Reed* does not address or limit regulation of commercial off-site signs
 - Billboards can be totally banned



Post-*Reed* Case Law

- *Lone Star Security v. City of Los Angeles* (March 10, 2016)
 - State law against mobile “advertising” is not content-based because under state law advertising means any message
 - State law is narrowly tailored to serve significant government interests
 - Eliminating visual blight
 - Promoting safe and convenient traffic flow



SANTA BARBARA SIGN ORDINANCE

Structure and Policies



Santa Barbara Sign Ordinance Structure

- Definitions
- Permit Requirement (Prior Restraint)
- Exemptions from Permit Requirement
- ***Legal Issues arise in Definitions and Exemptions***



Sign Ordinance 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.
- **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.



Sign Ordinance Definitions

- **GROUND SIGN.** Any sign advertising goods manufactured, produced or sold, or services rendered on the premises upon which the sign is placed, or identifying in any fashion the premises or any owner or occupant, and which is supported by one (1) or more uprights or braces on the ground, the overall total height of which does not exceed (i) six (6) feet above grade measured at the edge of the public right-of-way, or (ii) six feet above the base of the sign structure when the grade at the public right-of-way is at least three and one-half feet lower than the grade at the base of the sign, whichever is higher. In no case shall an artificial grade be established for the sole purpose of placing a sign at more than six (6) feet above the grade at the edge of the public right-of-way.



Sign Ordinance Definitions

- **LOGO SIGN WITH COURTESY PANELS.**
Prefabricated signs bearing a brand name, registered trademark or logo with space for the name of a local business or occupant or other items of information to be applied thereto or erected thereon.
- **NONCOMMERCIAL SIGN.** Any sign which is intended to convey a noncommercial message of social, political, educational, religious or charitable commentary.



Sign Ordinance Exemptions

- Any temporary sign warning of construction, excavation, or similar hazards so long as the hazard exists.
- 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.



Sign Ordinance Exemptions

- A noncommercial sign not exceeding six (6) square feet total for each lot in residential zones and twenty-four (24) square feet total for each lot in nonresidential zones. Such a sign shall be erected only with the permission of property owner or tenant. ***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.***



Sign Ordinance Exemptions

- Any temporary sign relating to Fiesta, Solstice, or any official City holiday except banners, blinking lights, or signs and any related lighting 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.



Sign Ordinance Exemptions

- Any informational commercial signs provided the sign (i) is in a nonresidential zone, (ii) has an aggregate area (when combined with all other similar signs on the parcel) of not more than one-and-one-half (1½) square feet at each public entrance nor more than five (5) square feet total, (iii) indicates address, hours and days of operation, whether a business is open or closed, credit information, and emergency address and telephone numbers. Lettering shall not exceed two (2) inches in height except for street numbers. Neon or light-emitting diode (LED) signs with the text “open” may be erected under this exemption subject to the following conditions: (i) no more than one (1) such sign may be erected per business, ii) the letter height of any such sign shall not exceed six (6) inches and the overall height of the sign shall not exceed twelve (12) inches, and (iii) such signs are not allowed in El Pueblo Viejo, unless the sign is located inside the building and at least ten (10) feet back from any window or other opening in the façade of the building.



Sign Ordinance Exemptions

Temporary open house signs. Open house signs erected pursuant to this exemption shall contain only the address of the property where the open house is being held and the name of the real estate agent and/or real estate agency or party holding the open house. Open house signs may be single-faced or double-faced. Open house signs shall be erected and removed on the day the open house is held. Open house signs shall not be fastened or attached in any way to a building façade or architectural element.

a. On-Site Open House Signs. Pursuant to this exemption, one (1) on-site open house sign may be erected on each street frontage of the property that is for sale. Each face of an on-site open house sign shall have an area of three (3) square feet or less, and the height of the on-site open house sign, including the supporting structure, shall not exceed four (4) feet



Sign Ordinance Exemptions

b. Off-Site Open House Signs. In addition to the on-site open house sign(s) allowed pursuant to this exemption, a maximum of five (5) off-site open house signs may be erected. Each face of an off-site open house sign shall have an area of three (3) square feet or less, and the height of the off-site open house sign, including the supporting structure, shall not exceed three (3) feet. Off-site open house signs shall not be erected on private property without the permission of the property owner. In addition to complying with the requirements listed above applicable to off-site open house signs, off-site open house signs may be erected within the public right-of-way if such signs comply with all of the following standards:

- i. Signs shall not be erected in a manner which obstructs the pedestrian path of travel or which constitutes a hazard to pedestrians or vehicular traffic;
- ii. Signs shall not be placed on vehicles;
- iii. Signs shall not be placed in street medians; and
- iv. Decorative attachments (i.e., balloons, streamers, etc.) shall not be attached to any sign.



Sign Ordinance Fact Foundation

- City reputation for: 1) Natural beauty, 2) distinctive and historic architecture, and 3) historic tradition
- Signs have a strong visual impact on community character and quality
- Signs attract or repel viewing public
- Signs affect the safety of vehicular traffic
- Sign suitability or appropriateness helps set neighborhood tone
- Aesthetic impacts on scenery and physical beauty assume economic value because of tourism



Sign Ordinance Intent Foundation

- Protect and enhance historic and residential character, and economic base
- Improve traffic safety by minimizing driver distraction through size, type and location criteria



Sign Ordinance Policy Foundation

- Signs should primarily identify an establishment, organization or enterprise
- Signs must not subject citizens to excessive competition for visual attention
- Signs must harmonize with buildings, the neighborhood, and other signs in the area



Questions and Answers