

A **WeMAR** White Paper



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## WEMAR SIGN ORDINANCE

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## Background

On June 18, 2015 Reed v. Town of Gilbert, Arizona was decided at the U. S. Supreme Court in favor of the Plaintiffs, Pastor Reed and his Church. The Town of Gilbert, Arizona had a sign code which exempted 23 categories of signs from the sign permit requirement. Three of those categories were at issue: "Ideological Signs", "Political Signs" and "Temporary Directional Signs". The town sign code delineated size, placement and duration of sign postings depending on the type of event the sign advertised.

Pastor Reed and his Church did not have a permanent facility and each week posted temporary signs at various locations about town informing the public as to time and location of the next Sunday service. The signs were posted Saturday morning for the Sunday services. The town cited the church for violation of various sign regulations issuing both fines and confiscating signs. The Church sued the town claiming the code abridged their freedom of speech. The court held the sign code provisions were content based, even though they appeared initially to be content neutral (strict scrutiny).

The court cited the 2011 case of Sorrell v. IMS Health in which it was established that courts are required to consider if a regulation draws distinctions based on the message whether or not the law defines regulated speech by subject matter, function or purpose.

Although the town's code appeared content neutral, it subjected each category to different restrictions depending on the messaging. The town's sign code restrictions did not survive strict scrutiny because the Town did not demonstrate a compelling government interest.

The court made clear governments can make effective sign laws so long as they are even handed and content neutral. Ordinances

narrowly tailored to protect the safety of pedestrians, drivers, and passengers as well as hazard signs, signs directing traffic, and signs marking private property were some of the examples given.

Justice Alito offered more specific examples of sign rules that would meet the strict scrutiny standard:

- Rules regarding size of signs as long as the rules are content neutral
- Rules regarding sign location. May include regulating free standing signs versus signs attached to a building
- Rules regarding lit and unlit signs
- Rules regarding fixed message signs versus electronic or moving signs
- Rules regarding private and public property sign placement
- Rules regarding signs on commercial versus residential property
- Rules regarding on-premises and off-premises signs
- Rules regulating the total number of signs allowed per mile of roadway
- Rules imposing time restrictions on signs advertising one-time events
- Government signs promoting safety, directional signs, historic markers, and scenic spots are examples of allowed signs.

## **Position Statement**

WeMAR recognizes the need for government entities to regulate some signage for both aesthetic and public safety reasons; however, we prefer regulations that are simple and few. To that end we have included a general outline of instances in which a government might find sign regulation necessary in order to promote personal property rights, commerce, safety and provide general information the public is entitled to.

WeMAR members use signs in various ways: Temporary signs may be used to denote special events, open houses and to provide directions for one-time events. Real Estate licensees use signs in advertising their businesses and in promoting their clients' interests. Additionally, signs are used in order to meet State and Federal laws and regulations.

WeMAR members use signs in commercial and residential areas. The types and sizes of signs used are varied depending on the area and purpose of the sign. WeMAR believes licensees and their clients should be left to decide the best type, size and placement of signs in order to achieve the advertising, exchange and sale of property so long as that sign does not infringe on another's property or right to free speech.

Signage is necessary to the real estate business and all business in order to promote commerce for the economic betterment of the community.

The following outline may be used in drafting a sign ordinance, developing policy, evaluating policy or determining a position in regards to a specific policy.

## **Sign Ordinance Outline**

### **Categories of Signs:**

- Government owned and operated buildings, roads and venues
- Public Health and Safety
- Commercial
- Residential

### **Government owned and operated buildings, property, roads and venues**

Because the public has a need to recognize and know the property, buildings, roads and venues their government owns, maintains and manages, it is important the public can easily identify these.

### **Government owned buildings and venues**

- Signage on building – size, materials, location
- Lighting of signs on the property
- Monument signs – size, materials, location
- Office and parking lot signage – size, materials
- Informational signage to public – size, materials, locations

### **Government owned roads**

- Traffic directional signs – necessity, size, materials, location, lit or unlit
- Speed limit signs - necessity, size, materials, location, lit or unlit
- Restricted access signs - necessity, size, materials, location, lit or unlit
- Identify hazards - necessity, size, materials, location, lit or unlit

- Pedestrian crossings/access - necessity, size, materials, location, lit or unlit
- Bike lanes - necessity, size, materials, location, lit or unlit
- Public transit - necessity, size, materials, location, lit or unlit
- Traffic lights - necessity, size, materials, location, lit or unlit
- Street name, block and direction - necessity, size, materials, location, lit or unlit
- Lighting of signs - necessity, size, materials, location
- Sign indicating location of government owned facility - size, materials, location, lighting

### **Public right of ways**

- Temporary signs for public event notification located at government facility – necessity, size, materials lit or unlit, time period before, during and after event sign may be posted
- Privately placed temporary event signs - size, materials lit or unlit, time period before, during and after event sign may be posted
- Permanent signs to identify public or private landmark buildings/locations - necessity, size, materials lit or unlit
- Number of temporary signs per mile – total or per event
- Length of time temporary signs may be posted – before, during and after event.
- Example: 24 hours prior to event, 24 hours after event
- Obstruction of pedestrian, vehicular or other traffic
- Obstruct view of motorists

### **Public Health and Safety**

Because the public health and safety is a government concern, it is important to identify private and public facilities the public will need to readily identify.

- Police stations
- Fire Stations

- Public and privately owned hospitals
- Public and privately owned emergency rooms/trauma units
- Government buildings
- Court buildings
- Public owned educational facilities
- Facility lighting on building
- Monument signs
- Road way signs showing access to facility
- Lighting of signs
- Public noticing of events
- Public noticing of zoning and use changes
- Public noticing of public of critical or emergency events

#### **Commercial**

Property used in trade or business and not located in a residential neighborhood.

#### **Signage on building and property**

- Lit/unlit – brightness, type of light
- Size
- Type
- Monument – size, materials, lit or unlit, location
- Fixed/moving/flashing signs – size, materials
- Location and traffic signage
- Freestanding signs – size, materials, location, lit or unlit

#### **Message signs off premises**

- Fixed (billboard, freestanding, bench, etc.)
- Moving (person held, vehicle mounted)
- Lit or unlit
- Size and location

#### **Residential**

Property used as a residence and not located in a commercial district.

- Signage attached to property – size, type, and purpose (example: Address)
- Lighting of signs
- Temporary signage on property – size, materials, good repair