

APAC3★21: Cross-Chapter Collaborative *Reed: Changes You Still Need To Make!*

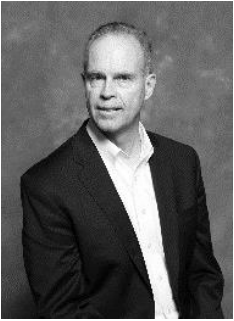
November 3, 2021

VITAL SIGNS, VIBRANT COMMUNITIES.



INTERNATIONAL SIGN ASSOCIATION

James Carpentier AICP



- Director of State & Local Government Affairs with the International Sign Association
- 25 + years experience as a planner in the public and private sectors
- 10 + years experience working with sign regulation throughout the country
- Author and speaker on sign matters at national and regional venues



Legal Disclaimer

- This presentation is not:
 - Legal advice
 - The final word on today's topics
 - A political opinion
- Before taking any actions on the information contained in this presentation, you should review this material with internal and/or external counsel.
- Statements of fact and opinion expressed are those of the speakers individually and, unless expressly stated to the contrary, are not necessarily the opinion or position of the International Sign Association or its members.



A Decade of Working with Planners

- 1) AICP CM provider since 2011
- 2) Webinars through APA Consortium and APA Chapter Divisions
 - *Pandemic webinars in April and May 2020
- 3) Presentations at APA National Planning Conferences
- 4) Presentations at State and Regional APA Chapter Conferences
 - *In-person AZ/Western APA, GA/TN APA, TX APA C3 in 2021
- 5) *Planning for Sign Code Success™* workshops

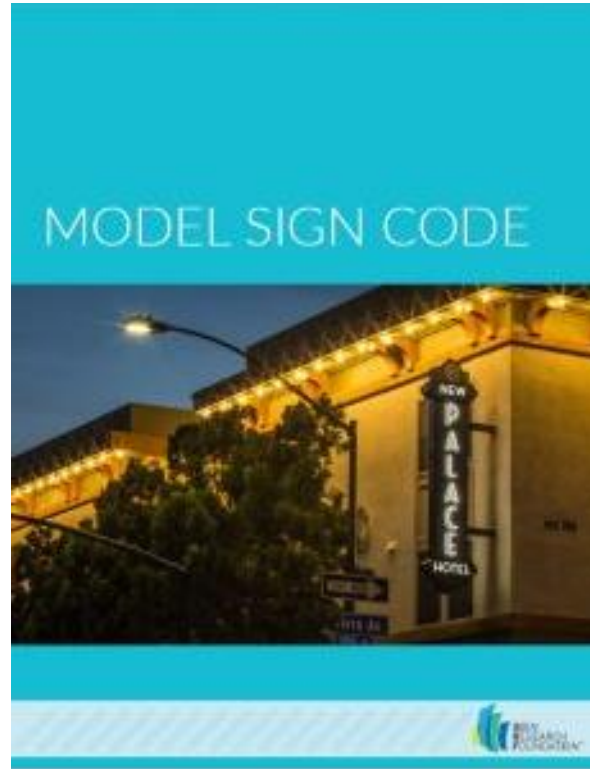


A Decade of Working with Planners

90 webinars, sessions and workshops

7,400+ planners and local officials

Resources



www.signresearch.org

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November 3, 2021

VITAL SIGNS, VIBRANT COMMUNITIES.

Todd Messenger
Fairfield and Woods, PC



INTERNATIONAL SIGN ASSOCIATION

Todd Messenger, JD, MPA



- Director at Fairfield and Woods, P.C., Denver, Colorado
 - Focus on regulatory reform, development entitlements, and First Amendment issues
- Author of:
 - 7 award-winning plans and codes in 5 states
 - Nearly a dozen Colorado sign code rewrites since 2015



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Mark White

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INTERNATIONAL SIGN ASSOCIATION

Administration and Enforcement

“Business Sign”



“Monument Sign”



Read the sign

**Structure, location, size, materials,
design**

What Can We Regulate?

Majority

- Size
- Materials
- Lighting
- Moving parts
- Portability
- Public property (ban)

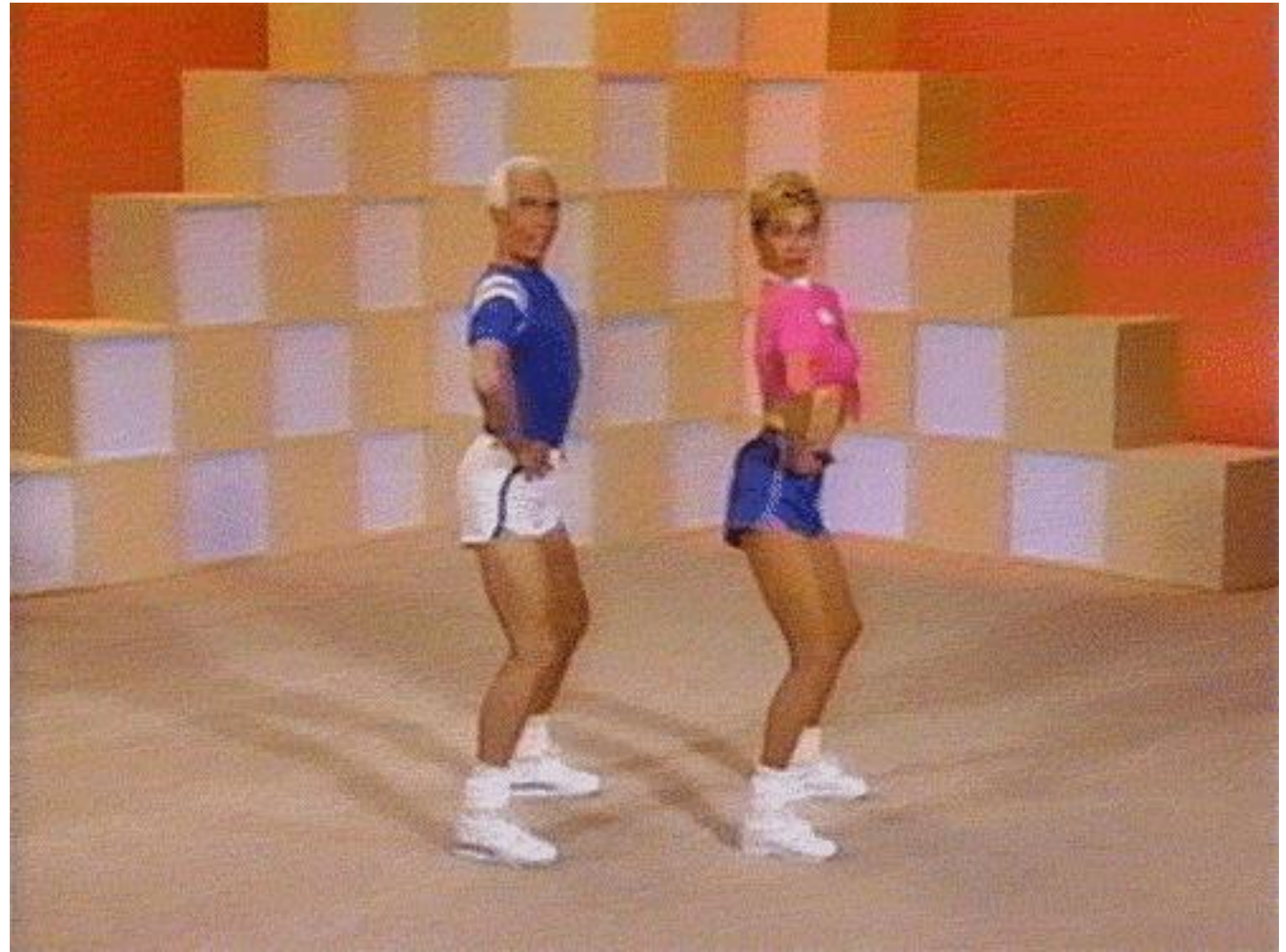


Concurring

- Locations
- Freestanding v. Attached
- Lighting
- Fixed v. changeable electronic signs
- Public property (distinction)
- Commercial v. residential
- On-premises v. Off-premises
- Total number of signs allowed per frontage or area
- Time restrictions on advertising a one-time event
- Governmental signs

Reed: Changes You Still Need To
Make!

EXERCISE



Exemption	Content?	Compelling?	Narrowly Tailored?
Government signs			
National flags (Adjutant General standards)			
Warning signs			
Murals, statues, paintings, designs, & decorative features if no names of occupants, drawings of the business' products, identification, trademark, logo, etc.			
Holiday, seasonal, commemorative or special event decorations or signs (11/15 – 1/10)			
Political campaign signs			



Exemption	Content?	Compelling?	Narrowly Tailored?
Government signs	Y	N	N
National flags (Adjutant General standards)			N
Warning signs	Y	N	
Murals, statues, paintings, designs, & decorative features if no names of occupants, drawings of the business' products, identification, trademark, logo, etc.	Y		N
Holiday, seasonal, commemorative or special event decorations or signs (11/15 – 1/10)	Y	N	
Political campaign signs	Y		N



Geft Outdoor LLC v. Consolidated City of Indianapolis (S.D. Ind. 2016)

Sign Ordinance amended per *Reed*

On- v. Off-premise distinction	👍	Same	👍
Noncommercial opinion signs (<i>number, area, height, setback, no time limits</i>)*	👎	Folded into “yard sign”	👍
Digital component (<i>C / I only, 40% limit, 15 second hold, not on off-premise</i>)	👍	Same	👍



Yard Sign: Freestanding sign, accessory to the primary use of land that is located in the yard of a lot, for temporary purposes only. Examples include signs posted by a real estate professional, land developer, builder, home improvement company, garage sale advertising, and signs expressing an opinion. A yard sign may be a maximum of six (6) square feet in size.

* No substitution clause

Central Radio v. City of Norfolk (4th Cir. 2016)



Reagan Nat'l Advertising v. City of Austin, 972 F.3d 696 (5th Cir. 2020)



Eat Here

A rectangular sign with a white background and a thin black border. The words "Eat Here" are written in a blue, sans-serif font. The text has a subtle reflection effect below it.

Eat There

A rectangular sign with a white background and a thin black border. The words "Eat There" are written in a blue, sans-serif font. A large, semi-transparent red "X" is superimposed over the text. The text has a subtle reflection effect below it.

Wag More Dogs v. Arlington County (4th Cir. 2012)





Morris v. New Orleans, 399 F.Supp.3d 624 (E.D. La. 2019)

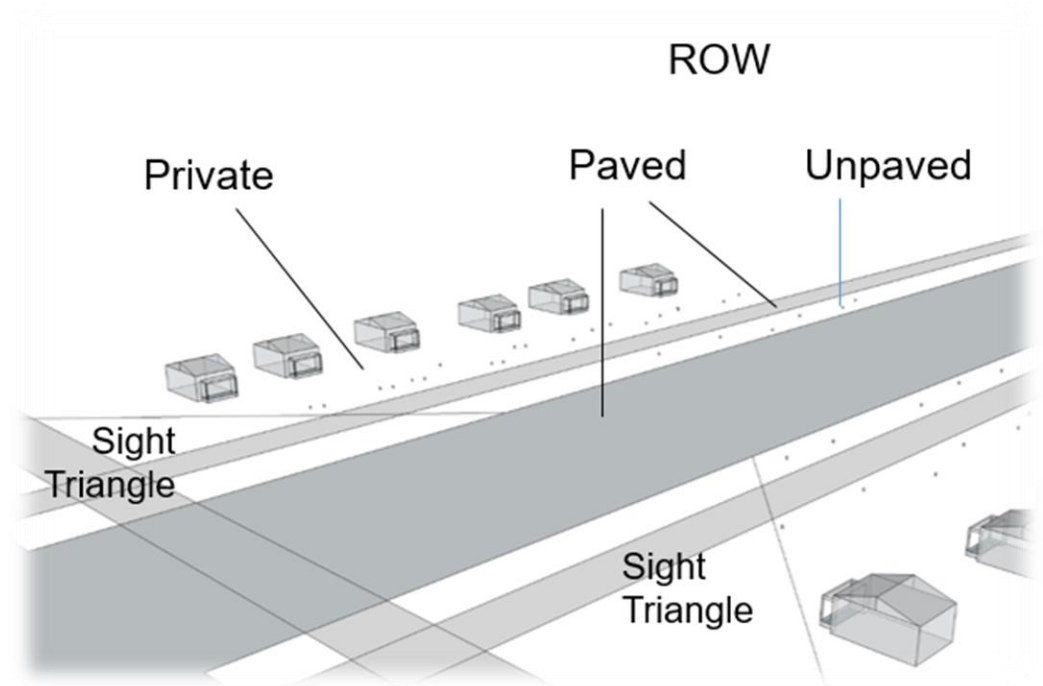
Kersten v. City of Mandan, 389 F.Supp.3d 640 (D.N.D. 2019)

The Lonesome Dove has mural trouble



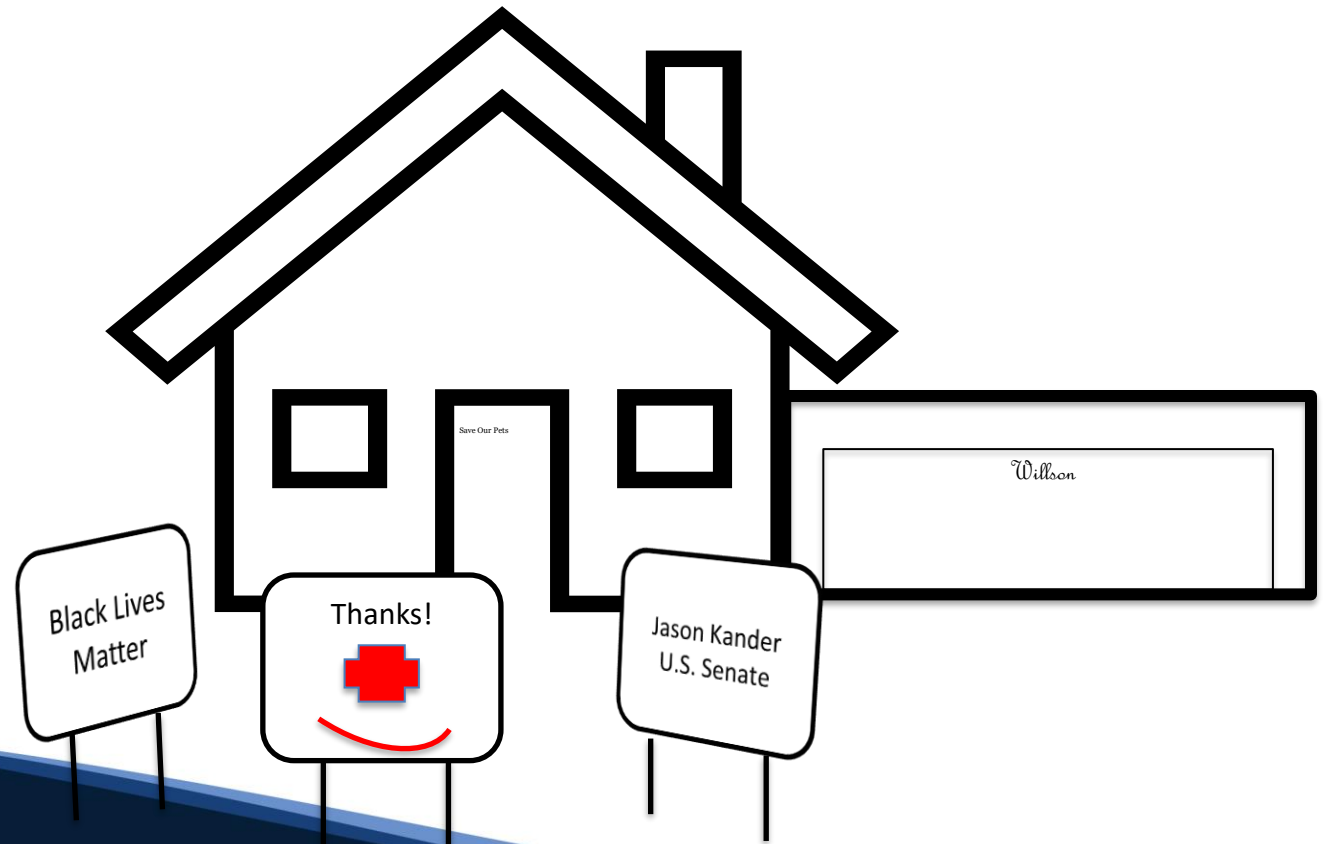
What About Other Rogue State Laws?

- Political sign exemptions?
- Public and nonconforming signs exempt by state law not content based (*Signs for Jesus v. Town of Pembroke* (D.N.H. 2017))
- Ignore (*Watkins v. City of Arlington* (N.D. Tex. 2015))



Willson v. City of Bel-Nor, Mo., 924 F.3d 995 (8th Cir. 2019)

- 1 stake-mounted, freestanding yard sign with 2 back-to-back sign faces
- 1 flag (government or institution, “not a sign”)
- No:
 - Wall signs
 - Window signs
 - Garage-mounted signs
 - Illumination
- Held:
 - Overbroad
 - Content-Based
 - Aesthetics + traffic safety
≠ compelling



Burns v. Town of Palm Beach (11th Cir. 2021)



Burns v. Town of Palm Beach (11th Cir. 2021)

- Expressive conduct? (*Texas v. Johnson*, 491 U.S. 397 (1989))
 - 1 intent to convey a particularized message - **assumed**
 - 2 great likelihood that the message would be understood by those who view it (*reasonable person + some sort of message*)



10 Things to Remember About *Reed*:

1. This case is not about **temporary** signs. It's about **content**.
2. **Topic** or **message** = content
3. There are 2 ways you get into trouble: (1) **exemptions** (2) **categories**
4. Identify **temporary** signs by **structure** type and **uniform event** triggers.
5. Identify all signs (permanent or temporary) by **structure** or **design** (structure, design, location)
6. Distinctions between **on-** and **off-site** signs are **probably** sufficient (now **questionable**)
7. So far, **intermediate** scrutiny for distinctions between **commercial** signs is **crumbling**.
8. It **doesn't help sign** industry.
9. Use **allocation** based systems that allow the property owner to allocate messages.
10. Remember **other First Amendment** caselaw requirements (overbreadth, vagueness, secondary effects [i.e., adult uses])



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Thanks - Questions?



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VITAL SIGNS, VIBRANT COMMUNITIES.

Roger E. Eastman, AICP
Lisa Wise Consulting, Inc.



INTERNATIONAL SIGN ASSOCIATION

Roger Eastman, AICP



- Director, Lisa Wise Consulting, Inc.
 - Planning, coding and economics firm in San Luis Obispo, CA
- 30 years (and counting) of zoning experience - conventional zoning codes and form-based codes
- 25 years in Arizona local government
- Former Board member FBCI
- Former Board member, Arizona Chapter of the American Planning Association



Overview

- Temporary Signs in General
- Content-neutral sign code distinctions
 - More or less regulation?
- Political Signs
 - Arizona: ARS 16-1019
- Throughout - General pointers, ideas, and strategies



Introductory Thoughts

- The Reed case did not perfectly define “**content-neutral**” sign regulations.
- Still gray areas regarding certain basic distinctions:
 - On-premise versus off-premise signs
 - Commercial speech versus noncommercial speech.
- Communities are taking individual approaches based on their own risk assessment, typically based on recent regional court cases.

These as *Sign Types* are no Longer Acceptable ...

- Political signs
- Real estate signs
- Temporary construction signs
- Temporary advertising signs
- Grand opening signs
- Recreational Event Directory Signs
- “Temporary Directional Signs for a Qualifying Event”



But These *Sign Types* are ...

- Sidewalk sign (A-frame or Upright sign)
- Feather or vertical banner sign
- Tube or wind sign
- Wall banner sign
- Window sign
- Yard sign



Organizational Principles – Most Conservative Approach

- Only wall banners require a Temporary Sign Permit
- Only wall banners have a time limit; typically, 30 – 60 days
- All other temporary signs/portable signs
 - No permit
 - No time limit or tie to open business hours
 - Not in public right-of-way or public property
 - Not in sight-visibility triangle



An Organizational Approach

- General to All Zones
 - Placement rules
 - X-ref to sign standards
 - Prohibited elements
 - Design and construction
- Residential Zones
- Commercial/Industrial Zones or “All Other Zones”

- A. **Purpose.** The Council finds that the proliferation of temporary signs is a distraction to the traveling public and creates aesthetic blight and litter that threatens the public's health, safety, and welfare. In addition to the purpose provisions of Section 7.10.010 (Purpose and Intent), these regulations ensure that temporary signs do not create a distraction to the traveling public by eliminating the aesthetic blight and litter caused by temporary signs.
- B. **General to All.** Temporary signs are allowed only in compliance with the provisions of this Section.
1. **Permits.** No temporary banner sign may be displayed without first obtaining a temporary use permit in compliance with Chapter 9.70 (Temporary Use Permits) and as described in Section 7.10.040 (Permit Requirements – Temporary Banner Signs).
 2. **Not Included in Permanent Sign Allowances.** The area of all temporary signs, except for the area of temporary window signs (see Section 7.30.040.C.2), is not counted toward the maximum total sign area established in Section 7.30.020.A (Signs Attached to Buildings) and Section 7.30.030 (Permanent Freestanding Sign Standards).
 3. **General Time, Place, and Manner Restrictions.**
 - a. *Time Restrictions.* There is no limitation on the length of time that a temporary sign may be displayed. However, the maximum display time for a banner is thirty days per twelve month period.
 - b. *Location Restrictions.* No signs shall be placed on property owned by the City or on which the City has an easement or a right-of-way. No signs shall be placed on vacant or unimproved property that is not being used for any purpose. Temporary signs must be placed in compliance with Subsection 7.10.050.A (Location Restrictions).
 - c. *Prohibited Elements.* Temporary signs must comply with the provisions of Section 7.10.050.B (Display Restrictions).
 - d. *Design and Construction.* Temporary signs must be of sufficient weight and durability to withstand wind gusts, storms, etc. and must be professionally crafted.

An Organizational Approach

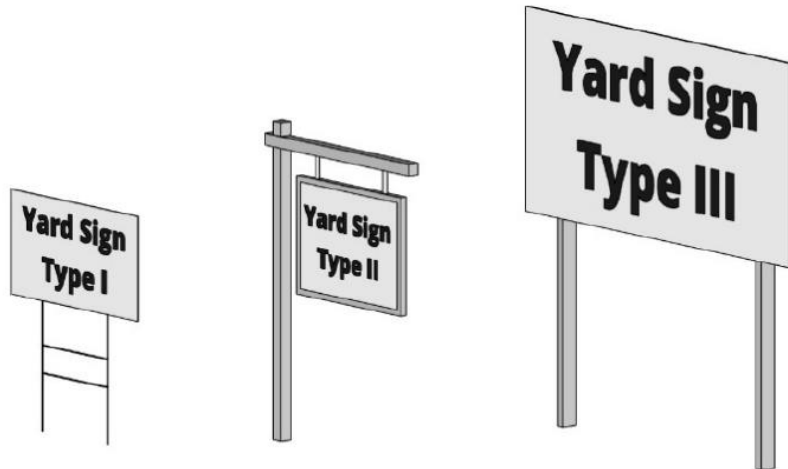
Table 7.30.040.A: Standards for Temporary Signs – Outside of Downtown Area

Standard	Requirements
<i>“ft” = Feet; “lf” = Linear Feet; and “sf” = Square Feet</i>	
Residential Zones	
Total Area of all Temporary Signs at Any One Time	Max. 16 sf per lot parcel
Sign Height	Max. 6 ft
Number of Signs	Unlimited except that the total sign area must not exceed 16 sf
All Other Zones	
Total Area of all Temporary Signs at Any One Time	Max. 32 sf per lot parcel
Sign Height	Max. 6 ft
Number of Signs	Unlimited except that the sign area of all temporary signs (excludes the area of banner signs) must not exceed 32 sf per business, Exception: Multi-tenant shopping centers or offices – Max. 2 temporary banner signs per 300 linear feet of property frontage not to exceed 50 sf combined.

An Organizational Approach

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Not to scale

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Table 7.20.040.A: Standards for Temporary Signs – Downtown Area

Sign Type	Standard			Requirements
"ft" = Feet; "lf" = Linear Feet; and "sf" = Square Feet				
All Sign Types	Total Area of all Temporary Signs at Any One Time			Max. 32 sf per lot parcel Exception: In the T5 General and T5 Main Street Transect Zones, max. 12 sf per business.
	Number of Signs			Unlimited; except that the sign area of all temporary signs (excludes the area of banner signs) must not exceed 32 sf per business.
Temporary Sign Type ¹	Height (Max.)	Width (Max.)	Area (Max.)	
A-Frame or Upright Sign	3 ft	2 ft	5 ft	If advertising a business, only permitted during regular business hours. May be placed within the public right-of-way with approval of an Encroachment Permit. May be adjacent to the businesses provided access remains open and unimpaired for handicap accessibility..
Banner Sign	-	-	32 ft	Must be mounted only on a building wall or fascia or as approved by the Director. Wall banners must not be supported on poles or posts. Max. Mounting Height: 25 feet to top of banner. Display limitation: Refer to Section 7.20.040.B.3..
Window Sign	-	-	See End Note ²	Max. Mounting Height: Placed no higher than first story windows. Inside mounting required. Included in the total sign area for all window signs.
Yard Sign Type I	4 ft	2 ft	3 sf	Installation Requirements: Installed securely in the ground.
Yard Sign Type II	6 ft	2 ft	4 sf	Installation Requirements: Installed securely in the ground.
Yard Sign Type III	6 ft	8 ft	32 sf	Installation Requirements: Installed securely in the ground.

End Notes:

¹ Other temporary sign types may be allowed (e.g., fuel pump topper signs or wraps around waste receptacles) provided the max. area limitation for all temporary signs is not exceeded.

Some Oddball Issues

- Include/exclude (?) other temporary sign types in the area limitation:
 - Fuel pump topper signs
 - Wraps around trash receptacles
 - Balloon bobbbers
 - Other sign types (review by Director)



Temporary Model Home Complex/Active Residential Subdivision Signs

Temporary model home complex/active residential subdivision signs. Temporary model home complex/active residential subdivision signs in all residential zones must comply with the standards provided in Table 4-80.070.G (Standards for Temporary Model Home Complex/Active Residential Subdivision Signs in All Residential Sign Districts).

Table 4-80.070.G: Standards for Temporary Model Home Complex/Active Residential Subdivision Signs in All Residential Zones

Sign Type	Maximum Number of Signs	Additional Standards
Feather Banner	1 per lot or dwelling. 1 per boundary street frontage of the model home complex/active residential subdivision.	See Table 4-80.070.F
Yard Sign Type I	1 per lot or dwelling. 1 per boundary street frontage of the model home complex/active residential subdivision.	
Yard Sign Type II	1 per lot or dwelling.	
Yard Sign Type III	1 per boundary street frontage of the model home complex/active residential subdivision.	

Additional Standards for Temporary Model Home Complex/Active Residential Subdivision Signs:

1. All temporary model home complex/active residential subdivision signs must be removed upon the conversion of the model home(s) to a residential use and shall be removed upon the close of escrow of the last lot in the subdivision or upon cessation of use, whichever comes first.
2. One non-illuminated wall sign is allowed, maximum 4 square feet placed on the elevation of a model home facing the street.
3. One window sign is allowed, max. 3 square feet or 1 additional Yard Sign Type I.



Temporary Signs – A Less Conservative Approach

6.14. Temporary Signs

A. Standards Applicable to Temporary Signs

Design standards related to color, font styles, and items of information are not applicable for temporary signs.

(1) Sign Area

Sign area shall include the entire sign, including background and text.

(2) Sign Location

Signs shall be located so as not to create a hazard for pedestrian or vehicular traffic.

(3) Sign Installation

Temporary signs shall be installed in such a way that ensures they do not create a safety hazard.

(4) Sign Illumination

Illumination of temporary signs is prohibited.

Temporary Signs – A Less Conservative Approach

B. Standards Applicable to Specific Temporary Sign Types

The following regulations shall apply to the specific temporary signs as indicated and subject to the issuance of a temporary sign permit.

(1) Temporary Signs, Residential Districts

- a. Up to four temporary signs may be placed either on the owner's property or off site for the purpose of directing the public when the property owner is opening the property to the public for a residential or nonprofit activity (e.g., real estate open house, garage/yard sale, estate sale), subject to the following:
 - 1. Maximum of one sign may be located on site.
 - 2. Maximum of three signs may be located off site, with no more than one sign per turning movement.
 - 3. Signs may be displayed a maximum of 12 times per year.
- b. Signs may be displayed between the hours of 7:00 am and 8:00 pm.
- c. Signs shall not exceed three square feet in area and three feet in height.
- d. Signs shall not be illuminated.

Temporary Signs – A Less Conservative Approach

T. Temporary Signs on Properties Offered for Sale, Lease, or Rent

Temporary signs on properties offered for sale, lease, or rent, are permitted on site as follows:

(1) All Residential Zones

One sign per property is permitted. Signs must be nonilluminated, constructed of durable materials, placed only on the property for sale, rent, or lease, be no more than six feet in height, and be no larger than six square feet in area.

(2) All Commercial and Nonresidential Zones

One sign per street frontage is permitted. Signs must be nonilluminated, constructed of durable materials, placed only on the property for sale, rent, or lease, be no more than six feet in height, and be no larger than 12 square feet in area.

(3) All signs shall be removed within 15 days from the date of sale, lease or rental.



Temporary Signs – A Less Conservative Approach

L. Political Signs

- (1) The City encourages political signs to be placed in a way that limits the negative aesthetic effects of numerous large political signs throughout the City and serves to fulfill the City's vision of enhancing its natural beauty.
- (2) Political signs are permitted in compliance with A.R.S. §16-1019.

M. Residential Nameplates, Street Address or Combination

One nameplate sign showing the name of the occupant of a residence; the occupant's profession, occupation, and/or title; and/or the address of the dwelling is allowed. The sign shall contain no advertising copy and shall not exceed two square feet in area.

2. The following signs, except as provided elsewhere in this title, are exempt from the provisions of this Chapter:
 - a. Any sign, posting, notice or similar signs placed, installed, or required by law by a city, county, or a federal or state governmental agency in carrying out its responsibility to protect the public health, safety, and welfare, including the following:
 - i. Numerals and letters identifying an address from the street to facilitate emergency response and compliant with City requirements;

Political Signs – ARS 16-1019

C. Notwithstanding any other statute, ordinance or regulation, **a city, town or county of this state shall not remove, alter, deface or cover any political sign** if the following conditions are met:

1. The sign is placed in a public right-of-way that is owned or controlled by that jurisdiction.
2. The sign supports or opposes a candidate for public office, or it supports or opposes a ballot measure
3. Etc.



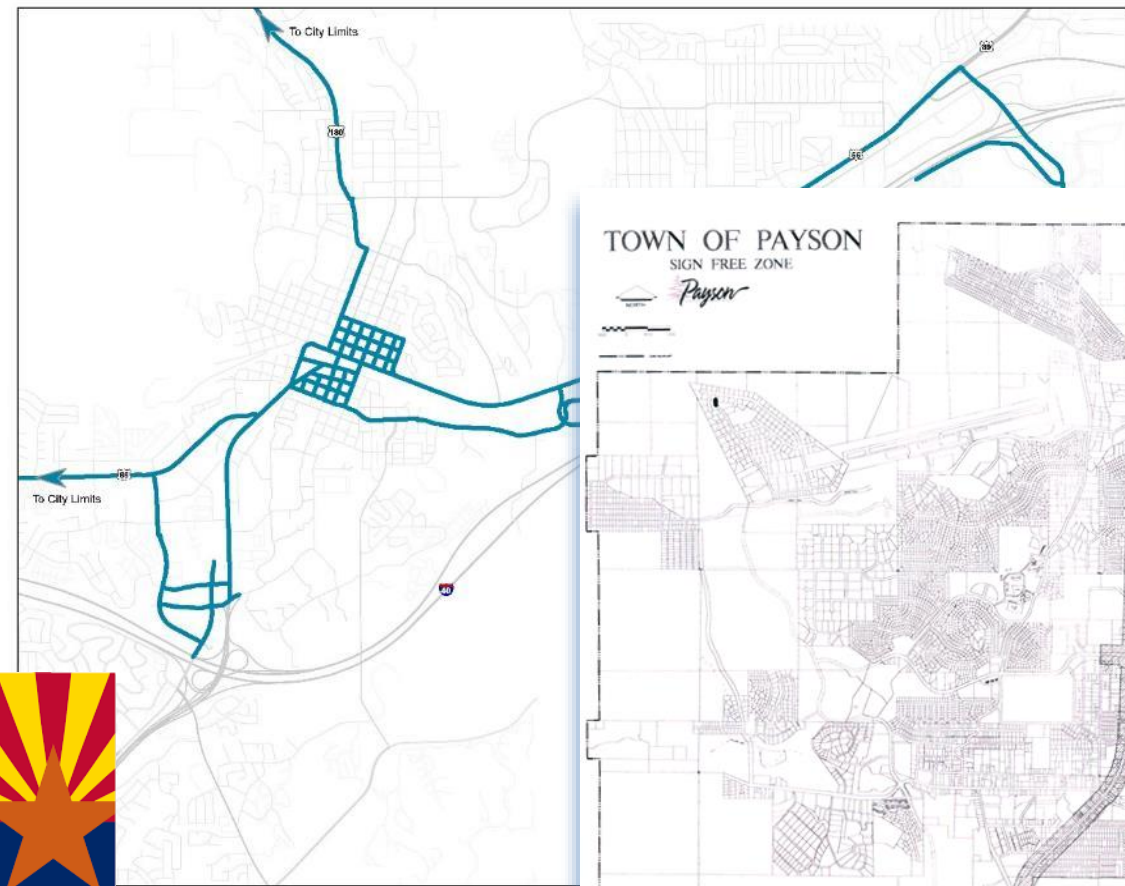
Political Signs – ARS 16-1019

F. Subsection C of this section does not apply to **commercial tourism, commercial resort and hotel sign free zones** as those zones are designated by municipalities.

- Total area of the zones no larger than 3 sq. miles
- Each zone identified as a specific contiguous area based on a predominance of commercial tourism, resort and hotel uses
- Within the zone the placement of political signs will detract from the scenic and aesthetic appeal
- Not more than 2 zones.



Political Signs – ARS 16-1019

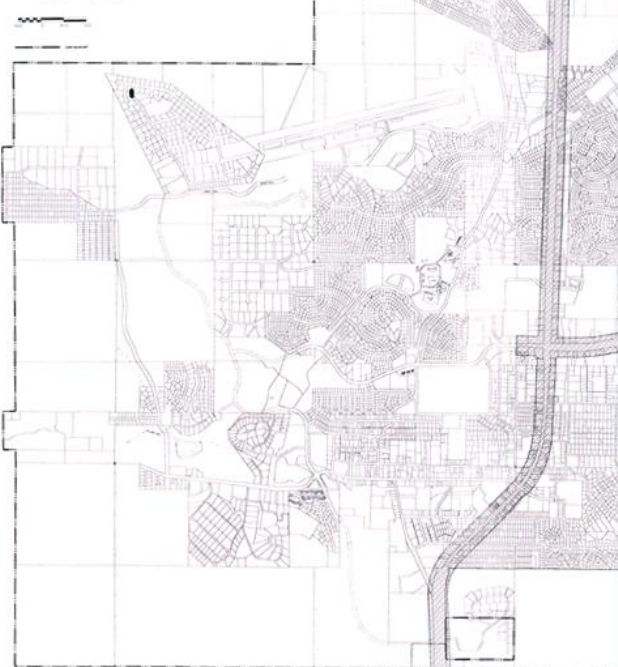


Section 10-90.40.010:
Flagstaff Sign Free
Zone Map

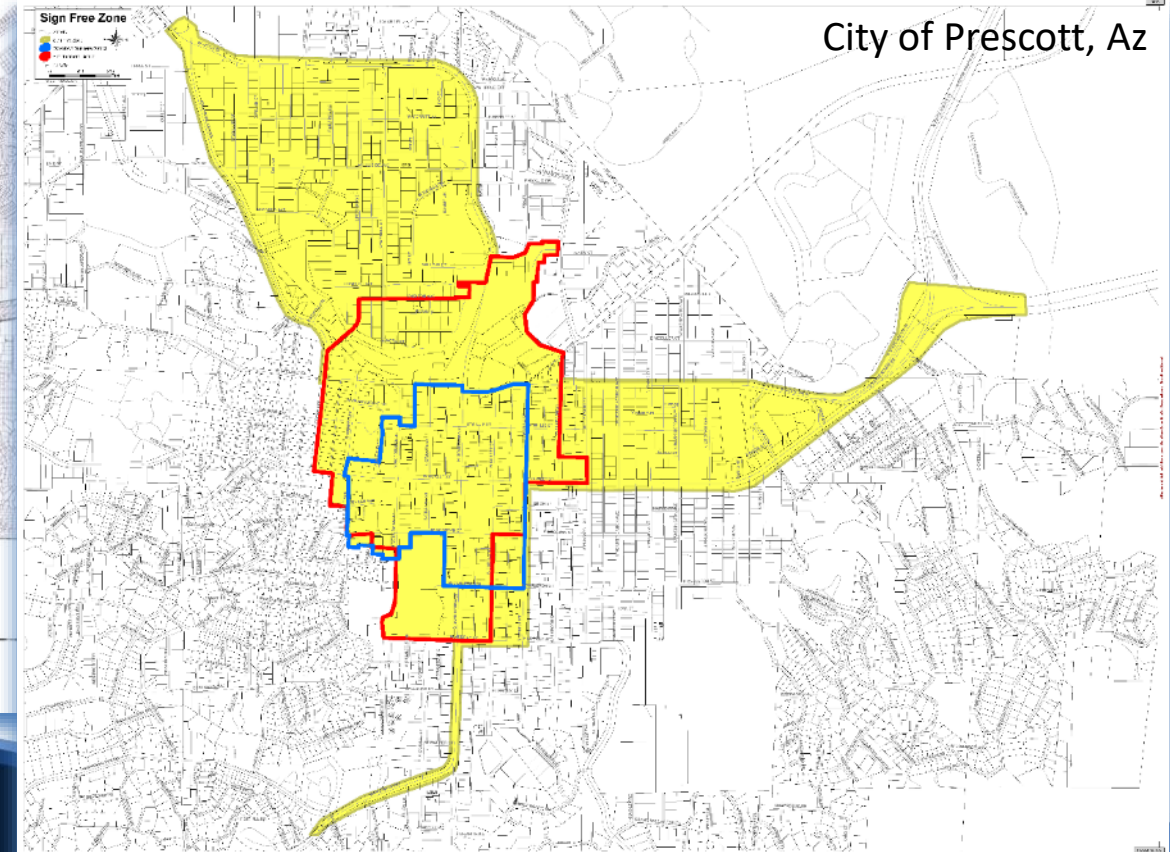
Sign Free Zone

TOWN OF PAYSON
SIGN FREE ZONE

Payson



W:\Data\Drawings\Bonne.DWG 06/22/2011 4:12:39 PM



City of Prescott, Az

Sign Walkers – ARS 9-499.13

- A. ... as a matter of statewide concern, **all municipalities shall allow the posting, display and use of sign walkers.** ... municipalities may adopt reasonable time, place and manner regulations relating to sign walkers.
- B. A municipality that adopts reasonable time, place and manner regulations ... **may not restrict a sign walker from using a public sidewalk,** walkway or pedestrian thoroughfare.



Thanks – Questions?



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Wendy Moeller, FAICP
Compass Point Planning



INTERNATIONAL SIGN ASSOCIATION

Wendy Moeller, FAICP



- Principal/Owner of Compass Point Planning in Cincinnati, Ohio
 - Focus on comprehensive planning and land use regulations, including extensive work with sign regulations
- Region IV Director for the American Planning Association
- Author of *Best Practices in Regulating Temporary Signs*

Other Challenging Topics in a Post-Reed America

- Billboards and Off-Premise Signs
- Murals
- Flags
- Obscenities



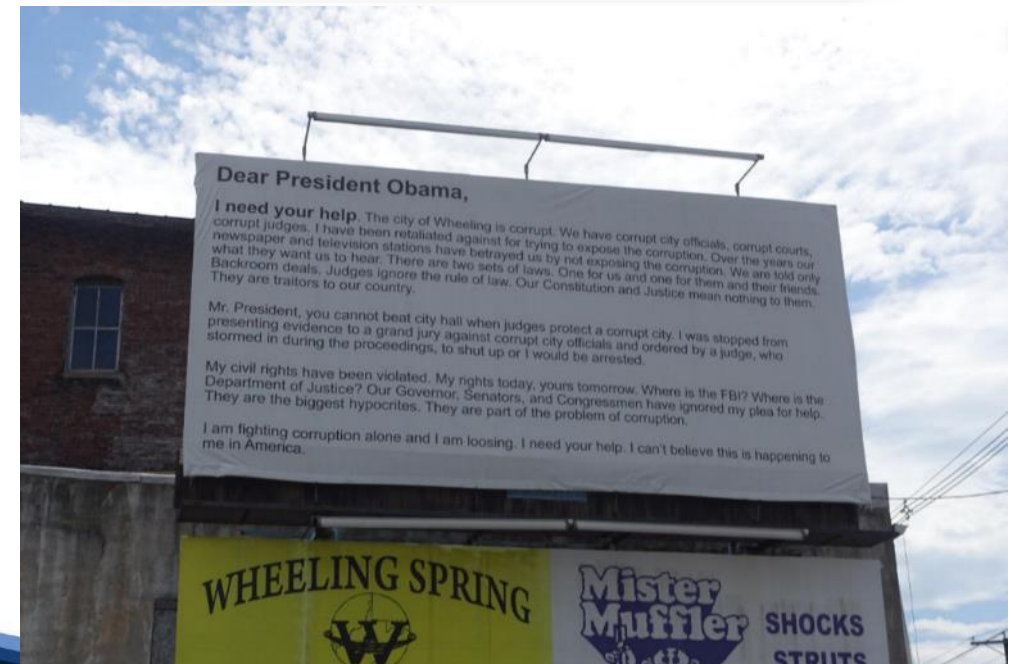
Billboards

- Traditionally defined and/or regulated as **off-premise signs**
- Reed left a gray area of the ability to make distinction
- *Thomas v. Bright* – not so much a gray area any more
- BUT...



Billboards

- On- versus off-premise might be the easiest distinction to eliminate
 - Each property can have “x” square feet of sign area
 - Most businesses are not going to give up their sign area for an off-premise issue
 - If so...who cares?



Implications of Getting Rid of On- versus Off-Premise

- If there are no situations where a lot can have a billboard size sign – then billboards are essentially prohibited without reference to the message
- Want to allow billboards?
 - Signs are accessory structures to other principal uses
 - Large signs (billboards) can be principal uses in certain districts
 - Minimum lots
 - No other uses or buildings on the same lot
 - Separation from other principal signs

Implications of Getting Rid of On- versus Off-Premise

- On-premise versus off-premise can come into play with temporary signs too
- If you use one of the main approaches to temporary signs, then the signs are just part of the temporary sign provisions – regulated by type, height, and location



Murals

- No simple solution
- Art is a form of a message
- Some communities simply prohibit any painted wall sign – regardless of whether it would be art or a sign.



Murals

- Other communities define art as essentially a noncommercial message and regulate differently than a commercial message.
 - Focus on facades that can be painted
 - Materials
 - % of coverage
 - General design principles
 - Use an Arts Commission to review



Murals – Cautionary Tales

- Art is in the eye of the beholder
- Most communities do not regulate how you paint a home...
- There are communities that do not regulate painted wall signs by any type of message but have discretionary reviews...
 - What happens the first time a board decides they don't like a proposed mural because of a message?



Noncommercial message on a residential garage door

Flags

- Flags can be signs too
- Many sign codes exempt U.S., state, and religious flags etc.
- **Don't do that!**
- Focus on the support structure (poles/posts)
- At the most – commercial versus noncommercial distinction



Thanks - Questions?



Resources & Code Assistance

- ISA provides complimentary sign code help at signs.org/planners
- Resources available at: signresearch.org



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