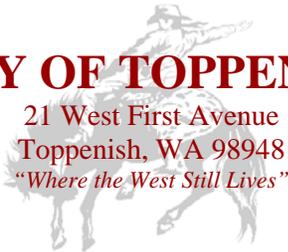




TOPPENISH PLANNING COMMISSION
MEETING AGENDA
FEBRUARY 4, 2020 – 6:00 P.M.
(This meeting is being recorded)

- 1. CALL TO ORDER:**
- 2. ROLL CALL:**
- 3. PUBLIC COMMENT:** The Planning Commission welcomes public attendance at Planning Commission meetings. Citizen comments and inquiries about agenda business are encouraged. If you wish to address the Planning Commission, please stand or raise a hand so you can be called upon. After you are recognized, please state your name and address for the public record. Please use the microphone.
- 4. APPROVAL of MINUTES:**
 - a. Consider Minutes of the December 3, 2019 meeting.
- 5. WORKSHOP**
 - a. Consider changes to Chapter 15.10 Signs.
 - b. Consider changes to Chapter 15.20 Fences.
- 6. TRAINING**
 - a. Open Public Meeting Act.
- 7. UPDATES**
- 8. ADJOURNMENT**



CITY OF TOPPENISH

21 West First Avenue
Toppenish, WA 98948
"Where the West Still Lives"

Planning Commission Membership Roster (January 2020)

Chair:

Anastasia Sanchez

949-3492

865-3492 (Bus.)

Sanchez@toppenish.wednet.edu

Commissioners:

Randy Cobb

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Al Hubert

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Joseph Omlin

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Derald Ortloff

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Vacant

Vacant

TOPPENISH PLANNING COMMISSION
Meeting Minutes
December 3, 2019

Chairperson Sanchez called the meeting to order at 6:00 p.m.

ROLL CALL

Present: Chairperson Anastasia Sanchez and Commissioners Randy Cobb, Al Hubert, Joseph Omlin and Derald Ortloff.
Staff Present: City Manager Lance Hoyt, Administrative Services Director Debbie Zabell, Fire Chief Tim Smith and City Clerk Heidi Riojas.

PUBLIC COMMENT

No public comment.

APPROVAL OF MINUTES

Motion by Commissioner Hubert, seconded by Commissioner Ortloff to approve the November 5, 2019 Meeting Minutes as presented. Motion carried unanimously.

PUBLIC HEARINGS

Zoning Conformance Review – to consider amendments to the Toppenish Zoning Code to repeal Chapter 17.16 in its entirety and replace it with a new Chapter 17.16.

Chairperson Sanchez opened the public hearings at 6:02 p.m.

Toppenish Municipal Code 17.16 establishes the general criteria for zoning compliance for the zoning code. The Chapter was created in 1964 and has only had minor change since. Currently the Chapter is superfluously wordy and out of date. The Chapter update will require all applicants to obtain a business license, building permit, or lot line adjustment, to obtain a zoning compliance review and a zoning certificate.

The purpose of the review and certificate is to ensure that buildings or structures erected, constructed, altered, repaired or moved, as well as the use of vacant land, or changes in the character of the use of the land or building comply with the City's Zoning Code.

The Planning Commission is recommending the City Council repeal and reenact Chapter 17.16 and request staff to forward the ordinance to the City Council for consideration during the December 9, 2019 Regular Meeting.

Special Property Uses – to consider amendments to the Toppenish Zoning Code to repeal Chapter 17.56 in its entirety and replace it with a new Chapter 17.56.

Toppenish Municipal Code 17.56 establishes the general criteria for the consideration of special property uses in designated zones within the zoning code. The chapter was originally created in

1964 with some minor change since. Staff has reviewed the types of uses and the process for considering them and has determined that changes are needed to the chapter. The Chapter update will reflect suitable uses and allows for home occupations to be issued administratively.

The Planning Commission is recommending the City Council repeal and reenact Chapter 17.56 and request staff to forward the ordinance to the City Council for consideration during the December 9, 2019 Regular Meeting.

There being no public comment, Chairperson Sanchez closed the public hearings at 6:09 p.m.

Commissioner Hubert motioned, seconded by Commissioner Omlin for staff to prepare and send recommendation to the City Council to adopt the amendments to the Toppenish Zoning Code for the repealing of Chapter 17.16 and replacing it with a new Chapter 17.16. Motion carried unanimously.

Commissioner Hubert motioned, seconded by Commissioner Ortloff for staff to prepare and send recommendation to the City Council to adopt the amendments to the Toppenish Zoning Code for the repealing of Chapter 17.56 and replacing it with a new Chapter 17.56 with the removal of Section 17.56.110 titled Bed and Breakfast or Tourist Home. Motion carried unanimously.

WORKSHOP

No workshop.

COMMUNICATIONS

Administrative Services Director Zabell updated the Commissioners that the new Permit Coordinator will start December 9, 2019.

The Commissioners were encouraged to notify City Clerk Riojas if they know of any person interested in serving on the Planning Commission to fill the two vacant positions.

ADJOURNMENT

There being no further business the meeting was adjourned at 6:13 p.m.

Anastasia Sanchez, Chairperson

Heidi Riojas, City Clerk

Chapter 15.10

SIGNS

15.10.005 Purpose statement.

The purpose of this chapter is to not only promote the use of signs which are both functional and attractive in appearance through a sign regulations and permit system, but also complementary to the Old West murals that currently abound in the city of Toppenish and reflect the diversity of Toppenish's ethnic population. This code is intended to permit such signs that will not, by their size, location, design, construction or manner of display, endanger the public safety of individuals, obstruct vision necessary for traffic safety or otherwise endanger the public health, safety or general welfare. Further, it is recognized that Toppenish is located in a valley having a historical significance, and that this significance has led to the adoption of an Old West theme. This theme of the Toppenish Mural Society's perceived documentation of the city of Toppenish, circa 1880 to 1920, forms the basis on which the Toppenish's thriving tourist industry so heavily depends. Signs stylistically complementing the Old West will form a key part of the overall visual attractiveness of the city and thereby contribute to the aesthetic and economic well-being of Toppenish. (Ord. 2010-4, 2010).

15.10.010 Definitions.

For purposes of this chapter, the following terms, phrases, words and their derivatives shall be construed as specified in this section:

“Abandoned sign” means any sign which represents or displays any reference to a business or use which has been discontinued for 60 or more consecutive days or for which no valid business license is in effect in the city. “Abandoned sign” shall also mean any sign remaining in place after it has not been maintained for a period of 60 or more consecutive days.

“Animated sign” means any sign which uses movement or change of lighting to depict action or to create a special effect or scene.

“Area” or “sign area” means, for regularly shaped signs, the simple area of the sign. For irregularly shaped signs, the area shall be that of the rectangle, triangle or circle (whichever is smaller) which will wholly contain the sign. The structure supporting a sign shall not be included in determining the area of the sign unless the structure is designed in a way to form an integral background for the display. In the case of a wall mural incorporating commercial wording, the sign area includes only the portion of the mural which contains the wording circumscribed as set forth in this definition.

“Banner” means any sign intended to be hung, with or without framing, and possessing characters, letters, illustrations or ornamentations applied to fabric or any nonrigid material. Governmental flags shall not be considered banners.

“Billboard” means a large outdoor panel or structure with a sign that displays advertisements in a public place, such as alongside a roadway or on the side of a building. See TMC [15.10.036\(K\)](#).

“Commercial” means any activity carried on for financial gain.

“Electronic message center sign” means a computerized programmable electronic visual communication device designed for an outside environment that is capable of storing and displaying different images and formats.

“Erect” means to build, construct, attach, place, affix, raise, assemble, create, paint, and draw or in any other way bring into being or establish.

“Existing nonconforming sign” means any sign located within the city limits on the date of adoption or amendment of the ordinance codified in this chapter, which does not conform with the provisions of this chapter, as amended, but which did conform to all applicable laws in effect on the date the sign was erected. Existing nonconforming signs shall not include temporary signs. See TMC [15.10.066](#).

“Flashing sign” means a sign which contains an intermittent or sequential flashing light source used primarily to attract attention.

“Freestanding sign” means a sign, not attached to any building or structure, which is securely and permanently attached to the ground. See TMC [15.10.030\(B\)](#) and (D).

“Interactive sign” means an electronic or animated sign that reacts to the behavior or electronic signals of drivers.

“Maintained” means not broken, torn or ripped, securely attached or affixed to the supporting structure, clean in appearance, without chipped, faded or peeling paint or finish, or otherwise in a condition a reasonable person would deem in good condition.

“Maintenance” means the cleaning, painting and minor repair of a sign in a manner that does not alter the basic design, size, color or structure of the sign.

“Nit” means a unit of illuminative brightness equal to one candle per square meter, measured perpendicular to the rays from the source, i.e., as measured from a sign’s face.

“Planning commission” means the advisory commission created by Chapter [2.30](#) TMC.

“Political sign” means a temporary sign advertising a candidate or candidates for public elective office, or a political party, or signs urging a particular vote on a public issue decided by ballot in connection with local, state or national election or referendum.

“Portable sign” means any mobile, movable sign or sign structure, such as a sandwich board sign, which is not securely attached to the ground or any other structure. See TMC [15.10.015](#).

“Roof sign” means any sign erected or constructed wholly upon and over the roof of any building and supported on the roof structure; provided, however, that a sign located on a roof of a canopy shall be regarded as a projecting or freestanding sign. See TMC [15.10.030](#)(C).

“Sign” means any letter, number, figure, character, mark, point, design, drawing, message, painting, placard, billboard, poster, pictorial, picture, stroke, stripe, line, trademark, sandwich board, reading matter or other thing, which shall be constructed, designed, intended, used, placed, attached, painted, erected, fastened or manufactured in any manner whatsoever, so that the same shall be used to advertise or inform, for the attraction of the public to any place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever, which is displayed in any manner outdoors, or indoors if any part of the contents of which is visible from any place on a public street.

“Temporary sign” means a sign used to advertise a passing event. Examples include but are not limited to a political sign, a real estate “for sale” sign, including realtor information, and any other sign advertising a matter limited in time, such as a yard sale, a fund-raising activity, or a sales promotion. See TMC [15.10.065](#). (Ord. 2011-10 § 1, 2011; Ord. 2010-4, 2010).

15.10.015 Scope – Murals – Exemptions.

A. This chapter applies within Toppenish city limits to all existing signs and all signs erected, moved, relocated, enlarged, structurally changed, painted, or altered after the date of adoption of the ordinance codified in this chapter. All such signs, including portable (sandwich) signs, must comply with the requirements of this chapter.

B. Murals which are based upon accurate historical research of a local person or event and which have been approved by the Toppenish Mural Society are not subject to this chapter.

C. The following are either not signs as defined in this chapter or are otherwise exempt from this chapter:

1. Gravestones;
2. Barber poles;

3. Memorials and historic plaques;
4. Official and legal notices issued by any court or public body;
5. Directional, warning or information signs required or authorized by law;
6. "Entrance" and "Exit" signs;
7. School and hospital signs; and
8. Signs advertising community events such as fund raising activities conducted by the Chamber of Commerce, the Rodeo Association, local service clubs, the Toppenish Mural Society or other local nonprofit organizations. (Ord. 2012-5 § 1, 2012; Ord. 2010-4, 2010).

15.10.020 Permit – Application procedure – Fee.

A. It is unlawful to place, alter, maintain, erect, install, repair or re-erect any sign in the city without complying first with the provisions of this chapter relating to signs, and no sign shall be erected, installed, repaired, altered, or re-erected in a different location in the city without first securing a permit therefor as provided in this section.

B. Any sign maintained, erected, installed, repaired, altered, re-erected, modified or erected without prior approval or permits, as required by this chapter, shall be removed or completely covered at owners' expense within 24 hours upon written notification by the building official or his designee. Failure to comply with such written order shall subject the sign owner to the penalties as described in TMC [15.10.090](#).

C. Any person desiring to obtain a sign permit shall obtain the application from the city, which application shall be on a form provided by the City and shall require information showing the type of construction, supports, design drawings and location of the sign and other information as may be necessary to determine the compliance of the sign with this chapter. The application shall be filed with the building official and shall be accompanied by permission in writing of the owner of the building or property on which the sign is to be erected, together with the permit fee (see subsection G of this section regarding permit fees).

D. The building official shall promptly, within a reasonable time, consider such application, and if it appears therefrom that the sign will comply with the provisions of the ordinances of the city, the building official shall issue a preliminary permit conditioned upon construction of the sign in compliance with the approved application. No sign for which a preliminary permit has been issued shall be erected unless it has first been inspected by the building official and been found to comply with the approved application and the preliminary permit. Upon completing the inspection and finding the sign to be in compliance, the building official shall issue a final permit.

E. A preliminary permit shall expire and become null and void 90 days after the date of the preliminary permit unless a final permit has been issued. A final permit shall expire and become null and void 30 days after the date of the final permit unless the sign has been erected.

F. The building official shall have authority to grant an extension of the expiration date of any permit, not to exceed 45 days, if the permit holder has submitted a written request for the extension at least 15 days prior to the expiration date and has shown good cause for the extension.

G. The permit fee for signs as defined in TMC [15.10.010](#) shall be established by resolution of the city council, as amended from time to time. The fees required by this section shall not apply to nonprofit, charitable, temporary, or political signs, or to changes on a reader board. (Ord. 2017-01 § 1, 2017; Ord. 2010-4, 2010).

15.10.030 Sign construction regulation.

A. No sign shall be hung so that the bottom thereof shall be less than 10 feet above the sidewalk, and all signs that come within three feet of a vertical line with the outside edge of the curb shall be 15 feet above the sidewalk.

B. In residential-zoned areas of the city (R1 and R2 zoning districts), all signs which are freestanding shall:

1. Be a maximum of eight feet high;
2. Not exceed 40 square feet on each side.

C. In residential-zoned areas of the city (R1 and R2 zoning districts), no roof-top signs shall be allowed.

D. In commercial-zoned areas of the city (B1, B2 and B3 zoning districts), all signs which are freestanding shall:

1. Not obstruct the view of surrounding businesses;
2. Be a maximum of 30 feet high; except, they may be a maximum of 40 feet high along the following roadways: (a) Within the B-2 general business district along South Elm Street from Washington Avenue through the intersection with State Route 22 onto Highway 97 to the south city limits; and (b) along West First Avenue from South Beech Street to the west city limits.
3. Have an area not to exceed 200 square feet on each side.

E. In commercial-zoned areas of the city (B1, B2 and B3 zoning districts), signs which are building-mounted shall:

1. Not obstruct the view of surrounding businesses;
2. Not exceed 15 feet above roof line. (Ord. 2010-4, 2010).

15.10.035 Western theme requirements.

In addition to the requirements set forth elsewhere in this chapter, all signs must comply with the following requirements:

A. Except as may be approved by the planning commission for corporate logos, as specifically set forth below in subsection E of this section, lettering and colors shall conform to the list of fonts and colors as approved by the planning commission and maintained by the building official, which list shall include the corresponding Pantone color numbers that have been approved by the planning commission. Colors of paint, plastic, vinyl or other material must match the appropriate Pantone matching system color number that is equivalent to the color on the planning commission's list that has been approved, but if an exact match cannot be made because the manufacturer of the colored material does not use the Pantone system, then a color may be used that substantially matches the approved Pantone system number, if approved by the planning commission.

B. Hot, fluorescent, or neon colors are not allowed.

C. Artwork on signs, including bordering, pictures or graphics, is not required but if used must complement the western theme. Examples of artwork which have been approved by the planning commission are maintained by the building official.

D. Signs shall not distract or otherwise take away from the overall appearance of the western theme. See TMC [15.10.036](#).

E. The planning commission shall have the authority to approve corporate logos which have lettering, fonts, and colors other than those described in subsection A of this section, if they are part of a graphic design used by commercial enterprises, organizations or institutions on their signs as unique icons, marks, emblems or words by which they can easily be recognized by the public, provided they comply with subsections B, C and D of this section. (Ord. 2012-5 § 2, 2012; Ord. 2010-4, 2010).

15.10.036 Prohibited signs.

The following signs are prohibited:

A. Temporary door and window signs not related to business activities, except signs advertising community events, such as Mural Society, Chamber of Commerce, local service club, and Rodeo Association fund-raising activities.

B. Digital signs in doors and windows, such as electronic message boards and signs that flash or strobe, except “open” and “closed” signs that are no larger than one foot by two feet in overall size.

C. Interactive signs, other than those used for public safety as determined by the building official, public works director, police chief or fire chief.

D. Animated signs.

E. Flashing signs.

F. Electronic message center signs, except those that are part of and within a permitted sign and meet all of the following requirements:

1. Size does not exceed 40 percent of the area of the sign of which it is a part;
2. Does not display moving images; provided, that static images may be changed up to twice in any 24-hour period; and provided further, that the numerals in time and temperature displays may change from moment to moment as their accuracy may require;
3. Is factory preset to limit brightness levels to 5,000 nits or less during daylight hours and 500 nits between dusk and dawn;
4. Includes an ambient light meter to automatically dim the sign to 500 nits or less between dusk and dawn;
5. Is certified by the manufacturer to have brightness levels that fall within the nit limitations specified above.

G. Strobe lights.

H. Banners on display for more than 90 days, and banners that are out of date or torn, ragged, or dilapidated.

I. Projection signs not designed by a structural engineer and not approved by the planning commission.

J. Temporary window and door signs which exceed 33 percent of the surface area of the windows on which they are displayed. Exception: “open” and “closed” signs that are no larger than one foot by two feet in overall size.

K. Billboards.

L. Abandoned signs. (Ord. 2011-10 § 2, 2011; Ord. 2010-4, 2010).

15.10.040 Maintenance requirements – Inspection – City not liable.

Signs shall not be abandoned and must be kept and maintained in a good state of repair at all times and shall be subject to inspection by the building inspector of the city; provided, however, that in no case shall the city be liable for neglect or failure to keep signs in good condition, nor shall the city be liable for any damage caused by any sign or object hung over the streets or sidewalks. (Ord. 2010-4, 2010).

15.10.050 Notice requirement – Revocation of permit – Dangerous signs.

A. If, upon inspection by the building inspector, it is determined that any sign is in need of repair, the building inspector shall notify the owner of the sign to place the same in a good state of repair; or, if the business has been closed, shall send by mail to the owner of the property notice to remove the sign within 60 days from the date of the mailing of the notice. A 30-day reminder shall be mailed to the owner of record to comply with the 60-day notice.

B. Any failure or neglect of the owner of a sign to comply with the provisions of such 60-day notice shall be considered a violation of the terms of this chapter, and shall be grounds for the revocation of the permit for the said sign. The city manager shall be authorized in such cases to revoke any such permit.

C. If, upon inspection by the building inspector, he determines a sign is hazardous to public safety, the building inspector shall order the immediate repair or removal of said sign. The procedure to be used in such repair or removal shall be the same as set forth in the dangerous building code of the city for repair or removal. (Ord. 2010-4, 2010).

15.10.060 Maintenance of sign after revocation of permit – Penalty – Temporary signs.

A. It is unlawful to maintain a sign after the revocation of a permit therefor. Any person maintaining a sign after the revocation of the permit therefor shall be subject to the penalties set forth in TMC [15.10.090](#), and each day's maintenance shall constitute a separate offense.

B. It is unlawful to maintain or to fail to remove temporary signs, including but not limited to yard sale signs, political signs and signs which advertise special events, within seven days after the completion of the event advertised. (Ord. 2010-4, 2010).

15.10.065 Temporary signs – Location and duration requirements.

A. It is unlawful for any temporary sign to be erected more than 50 days before or seven days after the event which it advertises.

B. It is unlawful for any temporary sign to have a sign area of more than 32 square feet.

C. Sign permits are not required for temporary signs.

D. Any temporary sign erected or maintained contrary to the provisions of this section is a public nuisance. If the owner of the sign fails to comply with this section or remove any such sign within five days after being notified to remove the sign, he is guilty of a civil infraction. The procedural requirements for issuing a notice of civil infraction, the duties and rights of the parties, the hearing procedures, penalties, restitution, and all other matters regarding processing a civil infraction notice shall be as set forth in Chapter [2.90](#) TMC. In addition to the penalties imposed by law upon conviction, an order may be entered compelling removal of the sign. Each day the sign is maintained constitutes a separate offense.

E. If the owner of the sign is not found or fails to remove the sign after five days' notice, the code enforcement officer of the city shall abate the nuisance and destroy the sign. The owner of the sign shall compensate the city for the actual cost of abating the nuisance. If the nuisance is abated pursuant to this section, the city shall not incur any liability for the value of the sign. (Ord. 2013-1, 2013; Ord. 2010-4, 2010).

15.10.066 Existing nonconforming signs.

Existing nonconforming signs as defined in this chapter are permitted, but shall be removed or brought into compliance with this chapter, as amended, any time the basic design, size, color or structure of the sign is altered. Existing nonconforming signs damaged or altered in any manner shall be repaired or replaced with a sign that meets the requirements of this chapter. All existing nonconforming signs that were erected pursuant to a permit approved by the planning commission or the former design review board shall be brought into compliance with this chapter on or before December 31, 2020. The owners of all other existing nonconforming signs that were erected without the proper permit shall have until August 1, 2010, to apply for the permit as provided under TMC [15.10.020](#). Appeals shall be heard as provided by TMC [15.10.080](#). (Ord. 2010-5, 2010; Ord. 2010-4, 2010).

15.10.070 Placement restrictions.

It is unlawful hereafter to construct or maintain or cause to be constructed or maintained any sign under or on a marquee, awning or other projection extending over any sidewalk, unless the lowest part of the same is at least seven feet above the top of such sidewalk. It is unlawful hereafter to construct or maintain or cause to be constructed or maintained any sign, marquee, awning, cover or other projection over any street or public property other than sidewalks. (Ord. 2010-4, 2010).

15.10.080 Revocation or refusal of permit – Hearing – Appeal.

A. Revocation or Refusal of Permit. The hearing examiner may revoke or the city clerk may refuse to issue a sign permit for any violation by the applicant of the term of the permit, or of any ordinance, state or federal law relating thereto.

B. Hearing. A hearing shall be conducted by the hearing examiner before any such action. Not less than five calendar days prior to the hearing, the hearing examiner shall give written notice to applicant of the time and place of such hearing, which notice shall include a statement of the purpose of such hearing and shall notify the applicant of his right to be present and be heard at such hearing. After the hearing is held, the hearing examiner shall determine whether grounds exist for such action. The hearing examiner shall notify the applicant in writing of the hearing examiner's findings and decision. In the event a permit is to be revoked as a result of such hearing, the notice to applicant shall specify the effective date of revocation.

C. Appeal.

1. Upon revocation of a permit by the hearing examiner, the applicant may appeal to the city council. The applicant must appeal in writing filed with the city clerk within five calendar days of the decision of the hearing examiner, setting forth the reasons for the appeal, or be forever barred.

2. The city council shall cause the appeal to be placed upon the city council agenda within 30 days from notice of the applicant, and conduct a hearing, giving the applicant and the city the opportunity to be heard. The decision of the city council is final. (Ord. 2010-4, 2010).

15.10.090 Violation – Penalty.

A. Any person, firm, corporation or other legal entity violating any of the provisions of this chapter shall be deemed to have committed a civil infraction and each such party shall be deemed to have committed a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted. The procedural requirements for issuing a notice of civil infraction, the duties and rights of the parties, the hearing procedures, penalties, restitution, and all other matters regarding processing a civil infraction notice shall be as set forth in Chapter [2.90](#) TMC. In lieu of a civil infraction notice, a voluntary compliance agreement may be entered into, in writing and signed by the responsible party, if it includes a specific plan to end the violation within 30 days. (Ord. 2010-4, 2010).

The Importance of Bringing Your Sign Code Up-to-Date

October 29, 2015 by [Steve Butler](#)
Category: [Sign Control](#)



The U.S. Supreme Court's decision in *Reed v. Town of Gilbert* is a major case with far-reaching impacts on local government. While the *Reed* case addressed regulation of temporary directional signs, its ramifications go beyond just that one category of sign regulation. The potential impacts of this case may also extend beyond the regulation of signs. With that said, this post will focus just on sign codes.

Summary of Major Findings

from the *Reed* Case

Content neutrality is not a new issue for sign regulations. Before the *Reed* case, however, the U.S. Supreme Court and other courts would consider the *intent* of a sign regulation and strike down "content-based" regulations only when the courts determined they were "adopted to suppress speech with which the government disagreed." With *Reed*, the new standard is that any law or regulation of speech that is based on the content of the speech is presumptively unconstitutional and subject to "strict scrutiny," which is the most rigorous standard for First Amendment review. Strict scrutiny requires a challenged regulation to be "narrowly tailored to serve a compelling governmental interest," with legal experts stating that such scrutiny is almost always fatal to the regulation in question. See the MRSC blog post, [US Supreme Court Issues Significant Sign Code Decision](#), for a more detailed summary of the *Reed* case.

The primary takeaways of the *Reed* case are that local sign regulations must be content-neutral *and* that a sign code will be subject to "strict scrutiny" judicial review if it applies different standards based on:

- a sign's content (i.e., what is written or portrayed on the sign);
- the purpose of the sign; or
- who is putting up the sign.

In other words, if you have to differentiate the type of sign being regulated by reading the sign's content or knowing the sign message's author, then the regulation is probably unconstitutional. Before *Reed*, most regulations, if challenged, would have been subject to a "lesser" scrutiny test.

With the *Reed* decision, you can still regulate noncommercial signs in a content-neutral “time, place, or manner” approach, using such factors as:

- Location, such as commercial vs. residential locations or zoning districts (for example, highway commercial, downtown commercial, and single-family residential);
- Size and height;
- Type of structure (for example, freestanding signs, monument signs, permanent façade signs, banner signs, and inflatable roof signs);
- Use of materials;
- Maximum number;
- Lighted vs. unlighted signage;
- Fixed message signs vs. signs with changing messages (electronic or otherwise);
- Moving parts;
- Portability (for example, A-frame or sandwich board signs).

Less clear are restrictions on signs advertising a one-time event or regulations differentiating between on-premise vs. off-premise signs (even though those two types of signs are included on a list in Supreme Court Justice Alito’s list of “rules” for effective regulations that are not content-based, set out in his concurring opinion in *Reed*), since such restrictions could be viewed as counter to *Reed*’s generalized rule that, “if you have to read what a sign says to determine whether it complies with the sign code, then the sign code is impermissibly content-based.”

There is also the open question of whether the *Reed* case pertains only to noncommercial signs, with a lesser constitutional standard being applied to commercial sign regulations (see the [recent MRSC blog post](#) for more details about this issue).

What Can Local Governments Do to Regulate Signs?

All is not lost. Local government can still regulate signs, albeit with a narrower, more content-neutral focus than they may have applied in the past.

With the *Reed* case raising many issues about local sign regulations, the following is a partial list of how cities, counties, and towns might be able to deal with some specific sign situations:

- **Signs on public property:** Since *Reed* indicates that a local government can regulate a sign’s location, then it would appear permissible to prohibit or restrict signs on public property. If you enact limitations, however, you will need to treat all signs equally, based on such factors as size and location. So, for example, if you allow political campaign signs on public property, you would need to allow other types of temporary signs on public property also.
- **Public safety signs:** It is permissible – and necessary – for cities, towns, and counties to exempt these signs (such as speed limit and stop signs) from regulation under sign codes and to allow their placement in the ROW, where other signs are not allowed.
- **A-frame/sandwich board signs on public sidewalks** (usually commercial signs related to an activity): Local action on portable signs, such as A-frames, depends upon one’s reading of the *Reed* case. If it applies only to noncommercial signs, then your existing regulations for such signs would only be reviewed under the “lesser scrutiny” constitutional test and may not need to be changed. On the other hand, if *Reed* is deemed to extend to

commercial speech, then a local government may need to decide whether to either prohibit them altogether or allow all such signs, subject to numerical and locational limits (based on local needs and preferences).

- **Political signs:** Regulating political signs will prove to be a particularly sticky issue. Local regulations will not be able to differentiate political signs from other types of temporary noncommercial signs in a content-neutral manner. As such, the common post-election durational limitation on election campaign signs will have to go. Again, it appears that local governments may apply size, numerical, locational, and other limits to such signs, although that may not be a popular approach to some people.
- **Attention-getting device/inflatable signs:** If you want to regulate such signs, add them as a specific type of sign and develop standards for them, based on their structural characteristics. Examples include large rooftop balloon signs and air-activated graphics signs (e.g., inflatable “waving man” signs).

Helpful Tips

While not meant to be comprehensive in scope, the following list contains tips that we recommend you consider when reviewing and updating your sign regulations:

1. Review your sign code to identify any content-based standards and amend them to eliminate any standards based on content (which is the primary point being discussed in this article).
2. Do not enforce any existing content-based sign regulations.
3. Have a strong purpose statement (based on such factors as traffic safety and aesthetics) and link it closely to your sign regulations.
4. Have the adopting ordinance cite specific factual studies and analyses that relate to your sign code’s purpose and intent (you can either prepare your own study, or rely on one done by another entity if its findings are pertinent to your jurisdiction).
5. Revise your sign definitions to ensure they are not based on content. One example would be to define “temporary signs” based on **material** (since they are usually made of cardboard or wood, rather than metal and heavy plastic) and **size** (since they are usually much smaller than a permanent sign).
6. Add a severability clause (for example, “If one or more sections of this sign code are found to be invalid, the remaining sections stand on their own and are still valid”), either in the adopting ordinance or the code itself.
7. Add a substitution clause to avoid claims of favoritism towards signs with commercial or noncommercial messages (one example is “Whenever a commercial message is allowed to be displayed, then a noncommercial message will be automatically allowed as well”).
8. Avoid having exemptions in your sign code, because they are usually not content-neutral (common examples are exemptions for “grand openings” or “special events”).
9. Work closely with your municipal or prosecuting attorney!

Even though it raises a lot of unanswered questions, the *Reed* case makes it clear that local governments need to review their sign codes and update them in response to a changing legal landscape. It is important for Washington cities, counties, and towns to heed that advice, and embark upon the significant work of regulating signs in a manner that both meets local expectations and passes constitutional muster.

Good Reference Materials

1. A detailed research paper entitled "[Sign Regulation after Reed: Suggestions for Coping with Legal Uncertainty.](#)" written by Alan C. Weinstein and Brian J. Connolly, The Urban Lawyer, Quarterly Journal of the ABA Section of State & Local Government Law, 2015
2. A YouTube video of a [webinar titled "Reed v Town of Gilbert: The Supreme Court's New Rules for Temporary – and Other – Signs."](#) sponsored by the National Planning Webcast Series Consortium, July 30, 2015.

Photo courtesy of [Graham Ballantyne](#)

MRSC is a private nonprofit organization serving local governments in Washington State. Eligible government agencies in Washington State may use our free, one-on-one [Ask MRSC service](#) to get answers to legal, policy, or financial questions.



About Steve Butler

Steve joined MRSC in February 2015. He has been involved in most aspects of community planning for over 30 years, both in the public and private sectors. He received a B.A. from St. Lawrence University (Canton, New York) and a M.S. in Urban and Regional Planning from the University of Wisconsin-Madison. Steve has served as president of statewide planning associations in both Washington and Maine, and was elected to the American Institute of Certified Planner's College of Fellows in 2008.

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Chapter 15.20 FENCES

15.20.010 Definitions.

As used in this chapter:

- A. “Backyard” means that portion of the yard extending the entire width of the lot, lying between the front of the building on the lot and the back of the lot.
- B. “Closed construction” means a fence with more than 50 percent thereof of solid material.
- C. “Fence” means any artificial permanent structure, partition or gate erected as a dividing marker, barrier or enclosure.
- D. “Front yard” means that portion of the yard extending the entire width of the lot, lying between the street and the front of the building on the lot. (Ord. 2004-6 § 1, 2004).

15.20.020 Unlawful construction.

All fences shall be constructed in accordance with the requirements and restrictions provided in this chapter. It is unlawful for any person to construct or cause to be constructed any fence within the city except in accordance with this chapter. (Ord. 2004-6 § 1, 2004).

15.20.030 Building permit.

Fences six feet or less in height shall not require a building permit. An electric fence, a fence in excess of six feet in height, or any addition to a fence which shall increase the fence height to more than six feet shall not be constructed unless a building permit has first been issued. Written application for such permit shall be made to the city building inspector on such form as shall be provided by the building inspector. Fence permits shall be established by resolution of the city council, as amended from time to time. (Ord. 2017-01 § 1, 2017; Ord. 2004-6 § 1, 2004).

15.20.040 Location, height, and material restrictions.

The following provisions shall govern the location, height and construction material of fences in residential districts (R1, R2 and B1 residential uses):

- A. In the Front Yard. Fences shall not exceed four feet in height nor be of closed construction within the required front yard setback area.

B. Fences Over Six Feet in Height. All fences over six feet in height shall meet the provisions of the Uniform Building Code.

C. Within the Clearview Triangle. Fences within the clearview triangle established in TMC [15.20.050](#) shall not exceed two and one-half feet in height and shall not be of closed construction.

D. All fences shall be placed within the property line. (Ord. 2004-6 § 1, 2004).

15.20.050 Vision clearance at intersections.

All corner lots at street intersections shall maintain, for safety vision purposes, a vision clearance triangle as required by TMC [17.68.010](#). (Ord. 2004-6 § 1, 2004).

15.20.060 Sharp extrusions prohibited – Exceptions.

Except on the top of permitted fences having a height of more than six feet, there shall not be attached, affixed or placed any barb, barb wire, spike, or other pointed or sharp instrument. (Ord. 2004-6 § 1, 2004).

15.20.070 Electrical fences prohibited – Exception.

No fence shall be constructed or maintained which is charged or connected to an electrical current, except that fences may be energized by equipment specifically designed for that purpose, provided such fences are enclosed within a nonelectric fence or other suitable buffer to protect the public from casual or accidental contact with the electric fence, as authorized by building permit. (Ord. 2004-6 § 1, 2004).

15.20.080 Maintenance.

Fences shall be maintained so as not to endanger health, life or property. Any fence which, through lack of repair, type of construction or otherwise, endangers health, life or property is declared a nuisance. The building inspector shall serve on the owner of such a fence, or on the agent or person in control of the property upon which such fence is located, a written notice describing the condition which causes a danger to health, life or property and specifying the required repairs or modifications to be made, or requiring the fence or any portion thereof to be removed. The notice shall provide a time limit of no less than 30 days for such repair, modification or removal. If the required repair, modification or removal is not made within the specified time limit, a citation for violation of this section shall be issued to the person upon whom the notice was served. (Ord. 2004-6 § 1, 2004).

15.20.090 Violation – Penalties.

Any person, firm, corporation or other legal entity violating any of the provisions of this chapter shall be deemed to have committed a civil infraction, and each such party shall be deemed to have committed a separate offense for each and every day or portion thereof during which any

violation of any of the provisions of this chapter is committed, continued or permitted, and upon a finding that any such infraction was committed there shall be a monetary penalty not to exceed \$1,000. (Ord. 2004-6 § 1, 2004).