International Municipal Lawyers Association

2015 Annual Conference

Las Vegas, Nevada

CODE ENFORCEMENT PROGRAM

Drafting a Content-Neutral Sign Ordinance: An Interactive Workshop and Discussion of Reed v Town of Gilbert

Presented by:
Charles W. Thompson, Jr.
Executive Director
IMLA

©2015 International Municipal Lawyers Association. This is an informational and educational report distributed by the International Municipal Lawyers Association during its 2015 Annual Conference, held October 3-7, 2015 in Las Vegas, NV. IMLA assumes no responsibility for the policies or positions presented in the report or for the presentation of its contents.

IMLA Model Sign Code – 3rd Rough Draft

This Model proposes a content neutral sign code developed based on the decision of *Reed v. Town of Gilbert, ___U.S.___, 135 S. Ct. 2218, 192 L. Ed. 2d 236, 2015 U.S. LEXIS 4061, 83 U.S.L.W. 4444, 25 Fla. L. Weekly Fed. S 383 (U.S. 2015)*. The sign code recognizes that government signs are government speech intended to ensure public safety. These government signs include those described and regulated in the Manual on Uniform Traffic Control Devices and signs that are necessary to identify properties and to implement the laws of the state. The skeleton of this Model derives from the Washington County, Oregon sign regulations which were found to be content neutral by the United States District Court for Oregon, Portland Division in *Icon Groupe, LLC v. Washington Cnty.,* 2015 U.S. Dist. LEXIS 67682 (D. Or. May 26, 2015).

This Model accepts at face value the Supreme Court's unanimous view that governments may regulate signs. In *City of Ladue v. Gilleo*, 512 U.S. 43, 48, 114 S. Ct. 2038, 2041-2042, 129 L. Ed. 2d 36, 42-43, (U.S. 1994) writing for a unanimous court Justice Stevens explained that "While signs are a form of expression protected by the Free Speech Clause, they pose distinctive problems that are subject to municipalities' police powers. Unlike oral speech, signs take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. It is common ground that governments may regulate the physical characteristics of signs -- just as they can, within reasonable bounds and absent censorial purpose, regulate audible expression in its capacity as noise. See, e. g., *Ward v. Rock Against Racism*, 491 U.S. 781, 105 L. Ed. 2d 661, 109 S. Ct. 2746 (1989); *Kovacs v. Cooper*, 336 U.S. 77, 93 L. Ed. 513, 69 S. Ct. 448 (1949)." In *Ladue,* the Court concluded that the City's regulation banning almost all residential signs went too far in restricting speech. At the same time the Court noted that its decision did not eliminate the city's ability to restrict some types of signs: "Nor do we hold that every kind of sign must be permitted in residential areas. Different considerations might well apply, for example, in the case of signs (whether political or otherwise) displayed by residents for a fee, or in the case of off-site commercial advertisements on residential property. We also are not confronted here with mere regulations short of a ban." *City of Ladue v. Gilleo*, 512 U.S. 43, 58, 114 S. Ct. 2038, 2045, 129 L. Ed. 2d 36, 49, (U.S. 1994). Thus, *Ladue* teaches us that governments may impose limits on some signs and impose regulations short of a complete ban.

In *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507, 101 S. Ct. 2882, 2892, 69 L. Ed. 2d 800, 814-815 (U.S. 1981) a majority of the Justices of the Supreme Court concluded that a government could distinguish between commercial and non-commercial speech when regulating signs: "Finally, in *Central Hudson Gas & Electric Corp. v. Public Service Comm'n*, 447 U.S. 557 (1980), we held: '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.' Id., at 562-563 (citation omitted). We then adopted a four-part test for determining the validity of government restrictions on commercial speech as distinguished from more fully protected speech. (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. Id., at 563-566.

"Appellants agree that the proper approach to be taken in determining the validity of the restrictions on commercial speech is that which was articulated in *Central Hudson*, but assert that the San Diego ordinance fails that test. We do not agree."

Despite concluding that San Diego's ordinance regulating billboard's survived the *Central Hudson* test, four members of the majority reached the conclusion that the city's ordinance was facially unconstitutional because it allowed commercial speech at certain locations where it prohibited non-commercial speech. "It does not follow, however, that San Diego's general ban on signs carrying noncommercial advertising is also valid under the First and Fourteenth Amendments. The fact that the city may value commercial messages relating to onsite goods and services more than it values commercial communications relating to offsite goods and services does not justify prohibiting an occupant from displaying its own ideas or those of others." *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 512-513, 101 S. Ct. 2882, 2895, 69 L. Ed. 2d 800, 818 (U.S. 1981)

Because *Metromedia* offers scant support for developing content based regulations of commercial signs, i.e., regulations that use the message to define whether the sign is commercial, this Model does not attempt to distinguish regulations of commercial versus non-commercial signs, but prohibits commercial signs in some locations. Arguments can be made and definitions constructed that could effectively allow or prohibit signs based on whether they are commercial versus non-commercial, but where commercial signs are allowed, Metromedia informs the conclusion that non-commercial signs must also be allowed.

Where this Model uses time limits or size limits, those should be considered as illustrative only and are not intended to form a part of the Model except for illustrative purposes.

Definitions.

1.1 Sign. A name, identification, description, display or illustration, which is affixed to, painted or represented directly or indirectly upon a building, or other outdoor surface which directs attention to or is designed or intended to direct attention to the sign face or to an object, product, place, activity, person, institution, organization or business and where sign area means the space enclosed within the extreme edges of the sign for each face, not including the supporting structure or where attached directly to a building wall or surface, the outline enclosing all the characters of the word. Signs located completely within an enclosed building, and not exposed to view from a street, shall not be considered a sign. Each display surface of a sign or sign face shall be considered to be a sign.

DRAFT

1.1.1 Electric. Any sign containing electric wiring. This does not include signs illuminated by an exterior floodlight source.

1.1.2 Flashing. Any illumined sign on which the artificial light is not maintained stationary or constant in intensity and color at all times when such sign is in use. For the purpose of this Code any moving illuminated sign, except digital billboards, shall be considered a flashing sign.

1.1.3 Freestanding. A sign erected and maintained on a freestanding frame, mast or pole not attached to any building, and not including ground mounted signs.

1.1.4 Government Sign. A government sign is a sign that is constructed, placed or maintained by the federal, state or local government or a sign that is required to be constructed, placed or maintained by the federal, state or local government either directly or to enforce a property owner's rights.

Comment: This model recognizes, as did the Supreme Court in Reed v. Town of Gilbert, ___U.S. ___, 135 S. Ct. 2218, 192 L. Ed. 2d 236, 2015 U.S. LEXIS 4061, 83 U.S.L.W. 4444 (U.S. 2015), that the government must speak and in doing so is not regulated as private individuals under the First Amendment. While the Government often speaks directly, its speech can often be found in requirements of law that demand members of a community, residents and property owners to post notices to protect the rights afforded by the government. This Cat's Paw form of speech finds protection in this Model as when a property owner must post a property against trespassing, solicitors and others; or where a property owner must warn of dangers on the property to protect public safety and limit liability such as warning of dangerous animals, high voltage, sinkholes, gun or weapon usage among other dangers. While these postings are sometimes voluntary, all are required by the government to be in a certain form and constitute the government's speech (they would not be considered private speech under the axiom: actus me invito factus non est meus actus. Compelled speech generally finds little support under First Amendment analysis and in the cases decided by the Supreme Court. Nevertheless, compelled commercial speech such as warning labels on cigarette packaging and requirements imposed by the SEC on business communications affecting investors have been sustained. Here the types of compelled speech that fall within the government speech definition are forms of speech required by law to warn of dangers or to assert rights protected by the law. A community attempting to rely on these forms of compelled speech should only do so after a full review and analysis by its attorney.

1.1.5 Ground Mounted. A sign which extends from the ground, or has support which places the bottom of the sign less than two (2) feet from the ground.

1.1.6 Highway Sign. A Freestanding sign, Integral Sign or Flat Mounted Sign that is erected and maintained within the view of motorists who are driving on a highway.

1.1.6 Integral. A sign that is embedded, extruded or carved into the material of a building façade. A sign made of bronze, brushed stainless steel or aluminum, or similar material attached to the building façade.

1.1.7 Marquee. A canopy or covering structure bearing a signboard or copy projecting from and attached to a building.

1.1.8 Original Art Display. A hand-painted work of visual art that is either affixed to or painted directly on the exterior wall of a structure with the permission of the property owner. An original art display does not include: mechanically produced or computer generated prints or images, including but not limited to digitally printed vinyl; electrical or mechanical components; or changing image art display.

1.1.9 Outdoor Advertising. A sign which advertises goods, products or services which are not sold, manufactured or distributed on or from the premises or facilities on which the sign is located.

Comment: *This definition is necessarily content based as it requires one to determine from reading or looking at the sign if a product is being advertised that is not sold, manufactured or distributed on or from the premises.*

1.1.10 Portable Sign. Any structure without a permanent foundation or otherwise permanently attached to a fixed location, which can be carried, towed, hauled or driven and is primarily designed to be moved rather than be limited to a fixed location regardless of modifications that limit its movability.

1.1.11 Projecting. A sign, other than a wall sign, which projects from and is supported by a wall of a building or structure.

1.1.12 Roof Sign. A sign located on or above the roof of any building, not including false mansard roof, canopy, or other fascia.

1.1.13 Temporary. A banner, pennant, poster or advertising display constructed of paper, cloth, canvas, plastic sheet, cardboard, wallboard, plywood or other like materials and that appears to be intended to be displayed for a limited period of time.

1.1.14 Flat Wall (Façade-Mounted). A sign affixed directly to or painted on or otherwise inscribed on an exterior wall and confined within the limits thereof of any building and which projects from that surface less than twelve (12) inches at all points.

1.1.15 Digital Billboard. A sign that is static and changes messages by any electronic process or remote control.

1.2 Prohibited Signs.

Signs are prohibited in all Districts unless:

1.2.1 Constructed pursuant to a valid building permit when required under this Code; and

1.2.2 Authorized under this Code.

1.3 Authorized Signs.

The following signs are authorized under Section 1.2.2 in every District:

1.3.1 Government signs in every zoning district which form the expression of this government when erected and maintained according to law and include the signs described and regulated in 1.3.1.1, 1.3.1.2 , 1.3.1.3 and 1.3.1.4.

DRAFT

1.3.1.1 Traffic control devices on private or public property must be erected and maintained to comply with the Manual on Uniform Traffic Control Devices adopted in this state and if not adopted by this state with the Manual on Uniform Traffic Control Devices adopted by the Federal Highway Administration.

Comment: *The Federal Highway Administration has established uniform standards for signs that regulate traffic or that are erected and maintained within road rights of way or adjacent property. These uniform standards are intended to be used by the owners of private property that is open to the public to reduce confusion and limit the risk of accident. While these signs are content specific they serve an extraordinarily important public function.*

1.3.1.2 Each property owner must mark their property using numerals that identify the address of the property so that public safety departments can easily identify the address from the public street. Where required under this code or other law the identification must be on the curb and may be on the principal building on the property. The size and location of the identifying numerals and letters if any must be proportional to the size of the building and the distance from the street to the building. In cases where the building is not located within view of the public street, the identifier shall be located on the mailbox or other suitable device such that it is visible from the street.

Comment: *The local government should establish a required dimensional limitation on identification signs based on the size of the structure and its distance from the public road if the structure is visible from the public road. The design and dimensions should conform to reasonable standards set to ensure that emergency responders can identify the property if necessary.*

1.3.1.3 Where a federal, state or local law requires a property owner to post a sign on the owner's property to warn of a danger or to prohibit access to the property either generally or specifically, the owner must comply with the federal, state or local law to exercise that authority by posting a sign on the property.

Comment: *As noted in Reed v. Town of Gilbert some content based signs are necessary to protect the public and are likely to survive strict scrutiny. Signs prohibiting trespassing or solicitors; warning of the dangers of "high voltage" or other hidden dangers may be required for a person to assert property rights or to protect a property owner from liability. A local government should establish dimensional limitations, quantity limitations and other regulations designed to ensure the purpose of the sign is furthered while protecting the aesthetics of the community and protecting traffic and other public safety goals.*

1.3.1.4 A flag that has been adopted by the federal government, this State or the local government may be displayed as provided under the law that adopts or regulates its use.

Comment: *Flags can be problematic. Most communities want to regulate them, to avoid the used car lots and other businesses that use multiple flags to attract attention. On the other hand, communities that adopt laws that restrict the flags face condemnation for restricting the the American Flag. While an argument can be made that displaying the federal, state and local flags merely affirm the government's adoption of those symbols, a person may wish to express different views by using flags as speech. IMLA believes that if flags are allowed as provided in 1.3.1.4, they are not likely to be found to be government speech and restrictions on other flags are not likely to survive a challenge under a strict scrutiny analysis.*

DRAFT

For that reason, IMLA suggests limiting a person to having no more than three flag poles on a property, the location of the flag poles and the size of the flags.

1.3.1.5 The signs described in Sections 1.3.1.1, 1.3.1.2 , and 1.3.1.3, are an important component of measures necessary to protect the public safety and serve the compelling governmental interest of protecting traffic safety, serving the requirements of emergency response and protecting property rights or the rights of persons on property.1.3.1.6 The flags described in Section 1.3.1.4 are permitted to serve a compelling governmental interest in promoting the rule of law by establishing symbolic representations of the governments who pass, protect and preserve those laws.

1.3.2 Temporary Signs, Generally.

1.3.2.1 Temporary signs allowed at any time:

a) A property owner may place one sign with a sign face no larger than two (2) square feet on the property at any time.
b) A property owner may place a sign no larger than 8.5 inches by 11 inches in one window on the property at any time.

1.3.2.2 One temporary sign per 0.25 acre of land may be located on the owner's property for a period of thirty (30) days prior to an election involving candidates for a federal, state or local office that represents the district in which the property is located.

1.3.2.3 One temporary sign may be located on the owner's property when:

a. that property is being offered for sale through a licensed real estate agent;

b. if not offered for sale through a real estate agent, when that property is offered for sale through advertising in a local newspaper of general circulation; and

c. for a period of 15 days following the date on which a contract of sale has been executed by a person purchasing the property.

1.3.2.4 One temporary sign may be located on the owner's property on a day when the property owner is opening the property to the public; provided, however, the owner may not use this type of sign in a Residential District on more than two days in a year and the days must be consecutive and may not use this type of sign in any [Commercial District] for more than 14 days in a year and the days must be consecutive. For purposes of this Section 1.3.2.4 a year is counted from the first day on which the sign is erected counting backwards and from the last day on which the sign exists counting forward.

1.3.2.5 During the 26 day period December 15 to January 10, a property owner may place [insert number] temporary signs on the property.

1.3.2.6 A property owner may place and maintain one temporary sign on the property on July 4.

1.3.2.7 A person exercising the right to place temporary signs on a property as described in this Section 1.3.2 must limit the number of signs on the property per 0.25 acre at any one time to 2 plus a sign allowed in 1.3.2.1(b).

DRAFT

1.3.2.8 The sign face of any temporary sign, unless otherwise limited in this Section 1.3.2 must not be larger than two (2) square feet.

Comment: Section 1.3.2 allows property owners to place temporary signs on their property during certain time periods and allows the property owner to select whatever message the owner chooses during those periods. This provision complies with both Reed v Town of Gilbert and City of Ladue v. Gilleo, 512 U.S. 43, 114 S. Ct. 2038, 129 L. Ed. 2d 36, 1994 U.S. LEXIS 4448, 62 U.S.L.W. 4477 (U.S. 1994) as it allows a property owner the ability to make use of the property for free expression but in a manner designed to reduce clutter and advance aesthetic interests of the community without any content based limitations.

1.3.3 For purposes of this Section (1.3) the lessor of a property is considered the property owner as to the property the lessor holds a right to use exclusive of others (or the sole right to occupy). If there are multiple lessors of a property then each lessor shall have the same rights and duties as the property owner as to the property the lessor leases and has the sole right to occupy and the size of the property shall be deemed to be the property that the lessor has the sole right to occupy under the lease.

1.3.4 A property owner may not accept a fee for posting or maintaining a sign allowed under Section 1.3.2 and any sign that is posted or maintained in violation of this provision is not authorized.

1.3.5 In residential zones or on property used for non-transient residential uses, commercial signs are not authorized.

Comment. This provision 1.3.5 may limit home occupations and transient residential uses, so should be considered carefully if adopted. An alternative might be to provide "except for those properties on which a home occupation or a transient residential use has been approved."

1.4 Specific Sign Regulations

The following sign regulations shall apply to all Use Districts as indicated.

1.4.1 Residential Districts

1.4.1.1 Scope:

This Section (1.4.1) shall apply to all Residential Districts.

1.4.1.2 Size:

A. When a sign is authorized on a property, the sign must not exceed two (2) square feet in area. Where attached dwellings exist on a property the total square footage of signs must not exceed two square feet per dwelling unit and must not exceed a total of twelve (12) square feet in area per structure.

B. For Residential Developments (including subdivision identification) the maximum size and number of signs that the owner or owners of the residential development may erect and maintain at the entrances to the development shall be controlled according to the following:

(1) Residential developments four (4) acres or less in area may have a sign or signs with a total area of no more than thirty-two (32) square feet.

(2) Residential developments over four (4) acres but less than forty (40) acres in area may have a sign or signs which have a total area of no more than forty-eight (48) square feet.

(3) Residential developments of forty (40) acres or more in area may have a sign or signs with a total area of no more than one hundred two (102) square feet.

1.4.1.3 Location:

Permitted signs may be anywhere on the premises, except in a required side yard or within ten (10) feet of a street right-of-way.

1.4.1.4 Height:

The following maximum heights shall apply to signs:

A. If ground-mounted, the top shall not be over four (4) feet above the ground; and

B. If building mounted, shall be flush mounted and shall not project above the roof line.

1.4.1.6 Illumination:

Illumination if used shall not be blinking, fluctuating or moving. Light rays shall shine only upon the sign and upon the property within the premises.

1.4.1.7 The following signs are not allowed: Highway Signs, Portable Signs, Marquee Signs, Digital Billboard, Outdoor Advertising Sign, and Projecting Sign.

1.4.2 Commercial and Institutional Districts

1.4.2.1 Scope:

This Section (1.4.2) shall apply to all [insert appropriate titles Commercial Districts and the Institutional District].

1.4.2.2 Number and Size:

For each lot or parcel a sign at the listed size may be authorized:

A. [insert name of district] signs shall not exceed thirty-five (35) square feet. [For additional standards for the [insert name of district] District see Section [if additional standards apply insert here]].

B. [insert appropriate district titles here: Community Business District (CBD), General Commercial District (GC) and Rural Commercial District (R-COM)] signs shall not exceed the following area requirements based on the speed limit and number of traffic lanes of the adjacent public street:

Maximum Speed Limit	No. of traffic lanes	Max. Sq. Footage of sign
30 mph or less	3 or less	32 sq. ft.
35 mph or more	3 or less	50 sq. ft.
30 mph or less	4 or more	40 sq. ft.

35 mph or more	4 or more	72 sq. ft.

C. Two (2) or more lots or parcels having a combined linear frontage of eighty-five (85) feet may combine their sign areas allowed by Section 1.4.2.2 B. for the purpose of providing one common free-standing or ground-mounted sign. The sign shall not exceed one hundred fifty (150) square feet.

D. Corner Lots:

Where a lot fronts on more than one street, only the square footage computed for each street frontage shall face that street frontage.

E. If not otherwise regulated as to maximum sign area in this code, signs are governed by the following:

Maximum Sign Area	Street Frontage
20 sq. ft.	85 ft. or less
25 sq. ft.	86-90 ft.
30 sq. ft.	91-99 ft.
35 sq. ft.	100 ft. or more

F. Commercial Center:

Signs used for Commercial Centers shall be allowed as follows:

(1) Only one (1) sign of one hundred fifty (150) square feet shall be permitted for centers less than five (5) acres and greater than one (1) acre.

(2) A maximum of two (2) signs of four hundred (400) square feet shall be permitted for complexes for five (5) to fifty (50) acres.

(3) A maximum of three (3) signs of four hundred (400) square feet shall be permitted for complexes of more than fifty (50) acres.

(4) Individual businesses are allowed a face building mounted sign pursuant to Section 1.4.2.2 A. and B.

G. Highway Signs:

Highway signs, including Digital Billboards and Outdoor Advertising Signs, shall be permitted only in the [insert appropriate district here, for example: General Commercial (GC) District]. Such signs shall not exceed three hundred (300) square feet per face, nor shall the face exceed a length of twenty-five (25) feet or a height, excluding foundation and supports, of twelve (12) feet. In determining these limitations, the following shall apply:

(1) Minimum spacing shall be as follows:

Type of Highway	Minimum space from	Minimum space between

	Interchange (in feet)	signs on same side of Highway (in feet)
Interstate Hwy	500	1000
Limited Access (Freeway)	500	1000
Other Roads	None	500

2) For the purpose of applying the spacing requirements of Section (1) above, the following shall apply:

(a) Distances shall be measured parallel to the centerline of the highway;
(b) Measurements for the spacing between signs shall be based on when the construction of the sign:
  i. Received final approval by the Code Official measuring from the first sign to have received that approval; or
  ii. If the Code Official has not given final approval to a sign that will be limited by the spacing requirement once it is constructed, then
    1)Measured from the first sign given a building permit that is not cancelled or void at the time of measurement; or
    2)When no permit has been issued that is still valid, measured from the first fully complete application for a building permit received by the Code Official that has not been cancelled or which is void; and
(c) A back-to-back, multiple signs on one freestanding pole, double-faced or V-type sign shall be considered as one sign.

1.4.2.3 Location:

A. Flat Wall Signs may be located on any wall of the building.

B. Freestanding Signs must have a minimum clearance of eight (8) feet six (6) inches above a sidewalk and [fifteen (15)] feet above driveways or alleys.

C. One Freestanding or Ground-Mounted sign per lot or parcel except as provided in Section 1.4.1.2 B. and 1.4.2.2 F. may be located anywhere on the premises except as follows:

(1) A ground-mounted sign shall not be located in a required side yard, rear yard or within five (5) feet of a street right-of-way.

(2) A freestanding sign shall not be located in a required side or rear yard. A freestanding sign may project up to the street right-of-way provided there is a minimum ground clearance of [eight (8) feet six (6) inches] and provided the location complies with the Manual on Uniform Traffic Control Devices.

DRAFT

D. Marquee Signs or signs located on or attached to marquees must have a minimum clearance of not less than [eight (8) feet six (6) inches (8' 6")]. The maximum vertical dimension of signs shall be determined as follows:

Height above Grade	Vertical Dimension
8' 6" up to 10'	2' 6" high
10' up to 12'	3' high
12' up to 14'	3' 6" high
14' up to 16'	4' high
16' and over	4' 6" high

E. Wall signs shall not extend above the top of a parapet wall or a roofline at the wall, whichever is higher.

F. Permitted highway signs, including digital billboards, may be allowed anywhere on the premises except in a required side yard, rear yard or within twenty (20) feet of a street right-of-way.

G. No portion of a digital billboard shall be located within two hundred and fifty (250) linear feet of the property line of a parcel with a residential land use designation or residential use that fronts on the same street and within the line of sight of the billboard face.

1.4.2.4 Height:

A. Ground-mounted signs shall not exceed four (4) feet in height from ground level.

B. Freestanding signs shall not exceed twenty-eight (28) feet in height from ground level.

C. Highway signs, including digital billboards, shall not exceed thirty-five (35) feet in height from ground level.

1.4.2.5 Content:

A. Any of the signs pursuant to this Section (1.4.2) may be changeable copy signs.

B. The primary identification sign as allowed under 1.3.1.2 for each firm shall contain its street number. The street number shall be clearly visible from the street right-of-way.

1.4.2.6 Illumination:

Shall be as provided in Section 1.4.6.

1.4.3 Industrial

1.4.3.1 Scope:

This Section shall apply to the Industrial District.

1.4.3.2 Number and Size:

A. One (1) sign for each street frontage, each with a maximum area of five (5) percent of the total square footage of the face of the building facing that street frontage shall be permitted.

B. One freestanding or ground-mounted sign not exceeding fifty (50) square feet per lot or parcel.

C. The maximum size and number of signs that the owner or owners of an Industrial Park development may erect and maintain at the entrances to the development shall be controlled according to the following:

(1) A maximum of two (2) signs of three hundred (300) square feet per face shall be permitted for industrial parks or complexes of less than ten (10) acres;

(2) A maximum of three (3) signs of four hundred (400) square feet shall be permitted for complexes of ten (10) acres or more. More than three (3) signs may be approved through [a Type I procedure], provided the total sign area does not exceed twelve hundred (1200) square feet.

1.4.3.3 Location:

Shall be as provided in Section 1.4.2.3.

1.4.3.5 Illumination:

Shall be as provided in Section 1.4.6.

1.4.4 Agriculture District

1.4.4.1 Scope:

This Section shall apply to the [insert appropriate language describing rural/agricultural and forestry areas] outside the [insert appropriate designation such as: Urban Growth Boundaries].

1.4.4.2 Size:

a. Signs other than highway signs shall have a maximum area that does not exceed thirty-two (32) square feet per sign.
b. Highway signs must comply with Section 1.4.2.G

1.4.4.3 Location:

a. Signs other than highway signs shall be at least twenty-five (25) feet from a right-of-way, and shall be at least twenty-five (25) feet from an adjacent lot.
b. Highway signs shall be
    a. at least twenty-five feet from a right of way and shall be
    b. at least 250 feet from a residence on an adjacent property; and
    c. comply with the distance and spacing requirements of Section 1.4.2 G.

DRAFT

1.4.4.4 Illumination:

As provided in Section 1.4.6.

1.4.4.5 Maximum number of signs:

DRAFT

Acreage	No. of Signs
0 – 20	2
21 – 40	3
41 – 60	4
61 & over	5

1.4.5 Supplemental Criteria in all Districts

1.4.5.1 Temporary Signs:

Temporary signs are subject to the following standards:

A. Shall not on one property exceed a total of sixteen (16) square feet in area;

B. Shall not be located within any right-of-way whether dedicated or owned in fee simple or as an easement;

C. Shall only be located on property that is owned by the person whose sign it is and shall not be placed on any utility pole, street light, similar object, or on public property;

D. Shall not be illuminated except as allowed in 1.4.1.6 or 1.4.6 based on the District in which the sign is located; and

E. Shall be removed within fourteen (14) days after the election, sale, rental, lease or conclusion of event which is the basis for the sign under 1.3.2 or if a different standard is required in Section 1.3.2 shall be removed within the time period required by that Section.

1.4.5.2 Bench Signs:

On street benches provided:

A. The benches shall not be higher than four (4) feet above ground;

B. Limited to fourteen (14) square feet in area;

C. The benches are not located closer than five (5) feet to any street right-of-way line;

D. Benches are located in a manner not to obstruct vision;

E. Shall be included as part of the total permitted sign area of the premise on which it is located.

1.4.5.3 Integral Signs:

There are no restrictions on sign orientation including whether it is freeway-oriented. Integral sign shall not exceed seventy-two (72) square feet per façade. Integral signs may be illuminated externally but shall not be illuminated internally.

1.4.5.4 Private Traffic Direction:

Illumination of signs erected as required by the Manual on Uniform Traffic Control Devices shall be in accordance with Section 1.4.6. Horizontal directional signs flush with paved areas are exempt from these standards.

1.4.5.5 Original Art Display

Original art displays are allowed provided that they meet the following requirements:

A. Located [designate where they are allowed such as: Urban Growth Boundary];

B. Shall not be placed on a dwelling;

C. Shall not extend more than six (6) inches from the plane of the wall upon which it is painted or to which it is affixed;

D. Shall be no more than sixty-four (64) square feet in size, per lot or parcel;

E. Compensation will not be given or received for the display of the original art or the right to place the original art on site; and

F. Shall not be illuminated.

1.4.6 Illumination

No sign shall be erected or maintained which, by use of lights or illumination, creates a distracting or hazardous condition to a motorist, pedestrian or the general public. In addition:

1.4.6.1 No exposed reflective type bulb, par spot or incandescent lamp, which exceeds twenty-five (25) Watts, shall be exposed to direct view from a public street or highway, but may be used for indirect light illumination of the display surface of a sign.

1.4.6.2 When neon tubing is employed on the exterior or interior of a sign, the capacity of such tubing shall not exceed three hundred (300) milliamperes rating for white tubing or one hundred (100) milliamperes rating for any colored tubing.

1.4.6.3 When fluorescent tubes are used for the interior illumination of a sign, such illumination shall not exceed:

A. Within Residential districts:

Illumination equivalent to four hundred twenty-five (425) milliamperes rating tubing behind a Plexiglas face with tubes spaced at least seven inches, center to center.

B. Within land use districts other than Residential:

Illumination equivalent to eight hundred (800) milliampere rating tubing behind a Plexiglas face spaced at least nine (9) inches, center to center.

1.4.6.4 Digital billboards allowed pursuant to Section 1.4.2.2 G shall:

DRAFT

A. Display only static messages that remain constant in illumination intensity and do not have movement or the appearance or optical illusion of movement;

B. Not operate at an intensity level of more than 0.3 foot-candles over ambient light as measured at a distance of one hundred and fifty (150) feet;

C. Be equipped with a fully operational light sensor that automatically adjusts the intensity of the billboard according to the amount of ambient light;

D. Change from one message to another message no more frequently than once every ten (10) seconds and the actual change process is accomplished in two (2) seconds or less;

E. Be designed to either freeze the display in one static position, display a full black screen, or turn off in the event of a malfunction; and

F. Not be authorized until the Code Official is provided evidence that best industry practices for eliminating or reducing uplight and light trespass were considered and built into the digital billboard.

1.4.7 Prohibited Signs

The following signs or lights are prohibited which:

1.4.7.1 Are of a size, location, movement, coloring, or manner of illumination which may be confused with or construed as a traffic control device or which hide from view any traffic or street sign or signal;

1.4.7.2 Contain or consist of banners, posters, pennants, ribbons, streamers, strings of light bulbs, spinners, or other similarly moving devices or signs which may move or swing as a result of wind pressure. These devices when not part of any sign are similarly prohibited, unless they are permitted specifically by other legislation;

1.4.7.3 Have blinking, flashing or fluttering lights or other illuminating devices which exhibit movement, except digital billboards as permitted pursuant to this Code;

1.4.7.4 Are roof signs except as allowed in Section 1.4.5.4;

1.4.7.5 Are freeway-oriented signs except as allowed as Highway signs;

1.4.7.6 Would be an Original Art Display but does not have the permission of the owner of the property on which it is located or is graffiti; or

1.4.7.6 Are portable signs that do not comply with the location, size or use restrictions of this Code.

1.4.8 Procedures

Applications for a sign permit shall be processed through [insert appropriate permitting procedure here].

1.4.9 Nonconformity and Modification

Except as provided in Section 1.4.9.2 of this Chapter, signs lawfully in existence on the date the provisions of this Code were first advertised, which do not conform to the provisions of this Code, but which were in compliance with the applicable regulations at the time they were constructed, erected, affixed or maintained shall be regarded as nonconforming. Provided, however, a sign constructed during the period of time following the day on which the Supreme Court released its opinion in *Reed v. Town of Gilbert, ___U.S. ___, 135 S. Ct. 2218, 192 L. Ed. 2d 236, 2015 U.S. LEXIS 4061, 83 U.S.L.W. 4444 (U.S. 2015)* and the date the provisions of this Code were first advertised for adoption shall not be considered a non-conforming sign unless it conformed to the regulations in effect on the day immediately preceding the release of the Supreme Court's decision in *Reed v. Town of Gilbert, ___U.S.___, 135 S. Ct. 2218, 192 L. Ed. 2d 236, 2015 U.S. LEXIS 4061, 83 U.S.L.W. 4444 (U.S. 2015)*.

Comment: This section attempts to address two issues common to regulation. 1. The race to vest – often a person who sees a regulation being proposed attempts to establish a vested right before the regulation can take effect where notice and public hearing are required. This race to vest often leads to a flurry of activity that can be difficult to process and allows uses that are considered undesirable to flourish while the government attempts to limit them. Allowing an ordinance to apply to properties based on the date it is first advertised provides a more fair solution allowing the government to provide public notice and give thoughtful contemplation to the issues involved rather than engaging in a race to adopt a measure before its utility is thwarted by a rash of construction and that insures the limited effect on individual property owners and the community as whole that the public process embraces. 2. The effect of a regulated business enjoying a period where there is no regulation due to a court decision. Clearly, the Supreme Court did not aim to eliminate sign regulation; it only sought to eliminate content based sign regulation. Rather than allow the decision in Reed v. Gilbert to extend authority beyond its intent, the Model limits the effect of an unregulated period by recognizing that signs constructed during that period do not deserve protection from the application of the law.

1.4.9.1 For the purpose of amortization, these signs may be continued from the effective date of this Code for a period not to exceed ten (10) years unless under a previous regulation the signs were to be amortized and in that case the amortization period shall be as previously required or ten years whichever is less.

1.4.9.2 Signs which were nonconforming to the prior Ordinance and which do not conform to this Code shall be removed immediately.

1.4.10 Compliance

Any sign which is altered, relocated, replaced or shall be brought immediately into compliance with all provisions of this Code.

DRAFT