

M E M O R A N D U M

DATE: April 28, 2026
TO: City of Redmond Planning Commission
FROM: Rebecca Mueller, City Attorney's Office
SUBJECT: Legal overview re: proposed amendments to temporary non-commercial sign code

Memo Summary: The City of Redmond Planning Commission is in review of the proposed temporary non-commercial sign code amendments to RZC 21.44 *Definitions* and RZC 21.44 *Signs*. The purpose of this memo is to provide the Planning Commission a legal analysis of current sign code law consistent with U.S. Supreme Court and Washington court rulings and legal guidance on related matrix questions from April 2026.

Legal Questions from Planning Commission Matrix:

1. Is there a way to limit the continual renewal of signs?
2. Should there be a day/month for signs to be removed following elections. It will be publicized, and all the signs will be removed after that date. Is that possible?
3. Concerns around political message that is hateful or non-inclusive, is there any recourse to this?
4. Did the legal review include comparison of other jurisdictions?
5. Would the City be able to have "sign sweeps" on certain dates every year, chosen because the volume of temporary non-commercial signs is typically highest on those dates, where all temporary non-commercial signs are removed?
6. How should the City approach sign removal when two signs together create an unsafe condition but any one sign on its own would not?
7. Would the City be able to enact a regulation requiring that signs that are the same (e.g., two of the same message signs) be located a certain distance from one another so that no one person could monopolize the ability to place temporary non-commercial sign?
8. Does creating a permit requirement create a liability for the City? Could this create liability from a) creating an undue burden on speech, or b) associating the City with the content of the sign?

Legal Background and Analysis: The legal landscape for municipal sign regulation has undergone significant changes particularly following the U.S. Supreme Court’s decision in *Reed v. Town of Gilbert* (2015)¹ and *City of Austin v. Reagan National Advertising of Austin LLC* (2022)².

In *Reed*, the Supreme Court held that any regulation that categorizes signs based on the message content (e.g. political, ideological or temporary directional) is content-based on its face, and therefore, unconstitutional.³ A sign code regulation is content-based if it "target[s] speech based on its communicative content."⁴

The first step in considering the constitutionality of legislation affecting protected speech is to determine whether it is content-neutral or content-based. A sign regulation may not define the content of a sign. Sign regulations that are aimed at the content of speech or expression in a public forum are subject to “strict scrutiny” by the Courts.⁵ This means the municipality must prove such restriction is the “least restrictive means” to achieve a “compelling state interest,” and is “narrowly tailored” to further that interest. The Court summarizes this as “if law enforcement must *read* the sign to determine which regulation applies, the code is likely content-based.” This is a very high, difficult standard to overcome.

The Supreme Court went on to clarify *Reed* through its 2022 ruling in *City of Austin*. In April 2022, the United States Supreme Court ruled in favor of the City of Austin, Texas, in a challenge to the City’s off-premises sign regulations. This decision clarified a question whether on-/off-premises sign regulations (i.e., regulations that regulate off-premises signs such as billboards differently than on-premises signs) are “content-based” and therefore presumptively unconstitutional. The Court held that the City’s on-/off-premises sign regulations were not subject to the “strict scrutiny” standard of review that applies to content-based restrictions. Rather, the regulations were content neutral; and, therefore subject to the lower “intermediate scrutiny” standard of review.

For a regulation to survive intermediate scrutiny review, the regulation must:⁶

- Must be a lawful activity and not misleading (Commercial Speech);
- Serve a substantial governmental interest;
- Directly and materially advance the governmental interest;
- Restricts no more speech than necessary (narrowly tailored under Ninth Circuit); and,
- Must leave open ample alternatives for communicating.

¹ 576 U.S. 155, 135 S. Ct. 2218, 2226, 192 L. Ed. 2d 236 (2015).

² 596 U.S. 61 (2022).

³ *Reed*, at 163.

⁴ *Id.* at 163.

⁵ *Id.*

⁶ See generally, *City of Austin*.

Washington law provides broader protections for free speech under the WA State Constitution. For example, *Collier v. City of Tacoma* (1993)⁷, held that political signs are a core form of protected political speech. Tacoma's attempt to limit political signs to a 60-day window prior to an election was struck down because the City did not similarly limit other types of temporary signs. The Court further recognizes that traditional public forums (e.g. streets and sidewalks) are vital for political expression.

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech." U.S. Const., Amdt. Under that clause, a government, including a municipal government vested with state authority, "has no power to restrict expression because of its message, its ideas, its subject matter, or its content."⁸

Still, some kinds of speech, such as obscenity, defamation, and fighting words, are not protected by the First Amendment. And local governments may impose reasonable "time, place and manner" restrictions on speech, provided they advance a legitimate governmental interest.⁹ Also, sign regulations may limit the manner in which a sign can be displayed, the speaker must be allowed to express views somewhere in the community.

Noncommercial speech expresses some personal, political or religious view. Government regulation of non-commercial speech is more limited than its power over commercial speech.¹⁰ The U.S. Supreme Court has held that states can regulate obscenity without running afoul of the First Amendment.¹¹

However, cities generally cannot ban signs simply because they contain offensive, vulgar, or even some sexually suggestive content. Under the U.S. First Amendment, such expression is protected unless it falls into a narrow set of exceptions. For example, the City may issue a removal order and next steps included in code. However, enforcement is limited and requires clear legal justification. Including a general limitation of hateful, harmful or rude commentary in a sign code runs the risk of subjectively restricting content in violation of First Amendment protections. Most offensive signs — including those with profanity, provocative images, or controversial political messages — remain protected unless they meet one of the narrow exceptions. The current code's prohibitions adequately capture limitations (e.g. true threats, fighting words) consistent with constitutional protections. The goal is to provide view-point neutral and uniform enforcement measures while not putting City staff in the position of interpreting offensive speech.

⁷ 121 Wn.2d 737 (1993).

⁸ See *Reed*.

⁹ *Id.* at 153.

¹⁰ *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of N.Y.*, 447 U.S. 557, 562-563, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980).

¹¹ *Miller v. California*, 413 U.S. 15, 18-19 (1973).

As proposed, City of Redmond can regulate all signs visible to the public through the zoning code using reasonable and objective standards that are meant to protect the public's health, safety, welfare, and aesthetics. Considerations should include:

1. Regulate by content-neutral measures, e.g.:
 - a. Size;
 - b. Materials;
 - c. Lighting;
 - d. Moving parts;
 - e. Portability;
 - f. Public property restriction;
 - g. Locations;
 - h. Other time, place, and manner restrictions (e.g., time restrictions for one-time, non-recurring events); and,
 - i. Governmental signs
2. Avoid categorical and disproportionate exemptions
3. Do not prohibit types of messaging
4. Have clear regulations, with clear expectations, enforcement and approval processes
5. Intervene when signs contain unprotected speech under 1st amendment . E.g.:
 - a. True threats — signs that communicate a serious intent to commit violence against a specific person or group; signs that pose a true safety risk to public safety
 - b. Obscenity - can be used to remove signs, though this is narrowly defined and often requires legal determination that the material meets the legal test for obscenity.

Questions and Answers:

Q #1. Is there a way to limit the continual renewal of signs?

A #1: If the City imposes a cap on sign renewals, then it is likely to end up precluding a political sign in advance of an election, which should not happen. It is very challenging to put time limits on signs with the political protections in WA state.

Q #2: Should there be a day/month for signs to be removed following elections. It will be publicized, and all the signs will be removed after that date. Is that possible? Could that add clarity and simplicity to the code?

A #2: Regulations for, including enforcement of or limitations to, non-commercial signs based on viewpoints, types of messages, topics, or subject matter would not follow Supreme Court precedent in *Reed*. Placing a timeline for the removal of political signs post-election decision could be viewed as regulating only political (content) signs. The City could do periodic sweeps of signs that do not follow the regulations in general, or if the permit is expired.

Additionally, some might view their political signs may not be viewed as election based (though at the time they are election based) and want them to remain for 60 days.

Another consideration is that there are primaries and general elections, so signs tend to stay

up before and after the primary and continue through the general.

Q#3: Concerns around political message that is hateful or non-inclusive, is there any recourse to this?

A#3: The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws “abridging the freedom of speech.” U.S. Const., Amdt. Under that clause, a government, including a municipal government vested with state authority, “has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”

Still, some kinds of speech, such as obscenity, defamation, and true threats, are not protected by the First Amendment. Cities generally cannot ban signs simply because they contain offensive, vulgar, hateful, or even some sexually suggestive content. Under the U.S. First Amendment, such expression is protected unless it falls into a narrow set of exceptions. Most offensive signs — including those with profanity, provocative images, or controversial political messages — remain protected unless they meet one of the narrow exceptions.

The City may issue a removal order and next steps included in code for signs that are obscene, defamatory or a true threat. However, enforcement is limited and requires clear legal justification. Including a general limitation of hateful, harmful or rude commentary in a sign code runs the risk of subjectively restricting content in violation of First Amendment protections.

Q #4: Did the legal review include comparison of other jurisdictions?

A #4: Yes. Legal review included review of other jurisdictions and review of applicable case law.

Q #5: Would the City be able to have “sign sweeps” on certain dates every year, chosen because the volume of temporary non-commercial signs is typically highest on those dates, where all temporary non-commercial signs are removed?

A #5: Likely no, as establishing the timing would be difficult without overstepping. The *Collier* case has requirements for time allowances in advance of an election. Those requirements indicate there should not be a sweep that could remove temporary signs during the window where those signs should be allowed. City’s code does not distinguish between types of temporary signs, so that means all temporary signs would need the same allowances to ensure political signs get the allowance they need. Also, the nature of temporary signs in a limited public forum is that they are intended to facilitate a reactive or quick expression of speech. If there is a sweep, then the person that just posted their sign has no ability to fully express their First Amendment speech because they had their duration cut short.

Q #6: How should the City approach sign removal when two signs together create an unsafe condition but any one sign on its own would not?

A #6: This is certainly a valid question. While each situation should be evaluated case-by-case,

the City would want to have a consistent process in place for addressing these situations when removal is necessary, and to avoid the appearance of being arbitrary or capricious. Because each temporary sign in the ROW needs a permit, the City could consider a process for removal of the later issued sign with the reasonable presumption that the first sign was placed when the permit was issued with no issue, and the second sign came along and caused the issue.

Q #7: Would the City be able to enact a regulation requiring that signs that are the same (e.g., two of the same message signs) be located a certain distance from one another so that no one person could monopolize the ability to place temporary non-commercial sign?

A #7: The City will not regulate content, so limiting certain speech (e.g. the same message) and allowing other speech (different messages) is to be avoided. Otherwise, this creates the effect of regulating content. Also, signs that look the exact same (e.g. political signs) aren't necessarily placed by the same person. If more than one person wants to express themselves and place the same sign in a certain location, each person should be able to do that in the same way as if they all wanted to place different signs.

Q#8: Does creating a permit requirement create a liability for the City? Could this create liability from a) creating an undue burden on speech, or b) associating the City with the content of the sign?

A #8: As proposed, the permit decision does not appear to be based on the content of the sign. The content would not be noted on the permit application, and the City does not approve the content. The permit process should be reasonable and not unduly such that it prevents the opportunity to post a sign for its intended purpose. The process should be quick, easy, and free to specifically not create an undue burden on speech. As noted above, if someone wants to quickly express their first amendment right to free speech, it should not take days to get a permit approval, should not cost money, and should not be burdensome. The entire permit process should be created with that in mind.

cc:

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