

MEMORANDUM



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TO: Planning and Zoning Commission
DATE: February 28, 2018
FOR: Preliminary Review
FROM: Tamara Baer, Planning Manager
RE: Sign Code Revised

This draft of the revised Los Alamos County Sign Code is presented for discussion purposes. Following the Planning & Zoning Commission's preliminary review, Planning Division staff will bring the draft, or a revised version, to the business community through the Los Alamos Chamber of Commerce.

Revisions to the Los Alamos County Sign Code, Article X of Chapter 16, the Development Code, were prompted by the June 2015 U.S. Supreme Court decision in *Reed v. Town of Gilbert*. That decision struck down the Arizona town's sign code for violating the First Amendment of the Constitution, guaranteeing free speech and the requirement for content neutrality in any regulation of speech, including signage.

In the *Reed v. Gilbert* case, the pastor of the Good News Community Church had placed temporary signs in the town's right-of-way (ROW) advertising church services. The town's sign code disallowed those signs and the town required their removal. The church challenged the ordinance and the case went all the way to the Supreme Court as a First Amendment issue. The Court had previously found that sign regulations based on content were prohibited, and that any such regulations would be subject to "strict scrutiny," which is the highest standard of review and demand that the regulator demonstrate compelling governmental interest. Further, such compelling interest must translate into narrowly tailored regulations that address that specific interest. In *Gilbert*, certain other signs, including election signs, were permitted in the ROW. The regulations were clearly content specific and were ruled invalid. There were some nuances in separate opinions from the Court, but the clear and overriding message of the decision in this case reinforced the Court's position that the regulation of speech must be content neutral. As this applied to signs, and local government's regulation of signage, the Court's decision clarified and narrowed the applicability of content neutrality to ensure that such regulation not only does not suppress free speech, but that there is valid and defensible governmental purpose in the regulation.

As a result of Reed v. Gilbert, many if not most municipalities and counties across the country, including Los Alamos, have had to revise their sign ordinances. The current revisions in Los Alamos County (LAC) have removed the regulation of content, with exceptions in those cases where there is compelling governmental interest, primarily safety. Size, material, time, place, and manner of display regulations are still permitted, and the LAC sign code revisions address these aspects of signage.

Certain basic aspects of the current sign code, including specific standards, have been functional and effective since the last major sign code overhaul in 2012, and are retained in the new sign code. Sign Areas, which relate standards to pedestrian versus automobile orientation, as well as width of roadway and traffic design speed are the prime example of signage regulation that is both effective and defensible. The new sign code, with a minor revision, continues to be based on this approach. Regulation of wall, awning and canopy signs based on length of façade or façade segment has also been shown to be effective and is retained as well.

In addition to removing content based regulations, which is the primary purpose of the revisions, the revised sign code presents several other changes:

- **Sign Areas.** While keeping the “Sign Area” approach, the number of Sign Areas are reduced from five (5) to four (4). Sign Area 2, which applied only to Pajarito Acres in White Rock, has been eliminated and is now included in Sign Area 1, which is essentially all residential areas. There were only two differences previously between Sign Areas 1 and 2. First, commercial and industrial “building identification” signs could be 2 square feet in Sign Area 1 and four square feet in former Sign Area 2. And second, “incidental commercial” signs were allowed in Sign Area 2, but not in Sign Area 1. Both of these sign categories are removed and replaced by “Minor” sign regulation.
- **Definitions.** Previously the Development Code had definitions related to signs in two locations – 16-9, the Definitions section, and in Article X, the Sign Code. These definitions were duplicative in some cases, and contradictory in others. The definitions are now located in the Sign Code, Article X, and are significantly reduced in number since many of the old definitions were content based. Section 16-9, the general definitions section, still has the two most basic definitions, for “Sign” and “Sign Area”, but refers the reader to Article X for a complete list of sign related definitions.
- **Permanent v. Temporary Signs.** The main structural change in the new code is the separation of all signs into two categories – permanent and temporary. In many cases the standards are the same or similar, with the difference in the duration of time a temporary sign is allowed. (An example of this is a temporary wall sign for a new business. Allowing the temporary sign to be the same size as the permanent sign allows the owner to gauge the appropriateness and attractiveness of the yet to come permanent sign.) Since virtually all sign applications are either for permanent or temporary signage, dividing the two types creates ease of access to the regulations as well as simplifying the understanding and processing of permits.

- Duration of display. Related to temporary signs, the County will now issue a “sticker” for signs that are time restricted, e.g., 14 days, that will be affixed to the sign, for ease of enforcement of temporary signs.
- Strictness or leniency. The revisions aim to find a balance between an implicit leniency once content is removed and sufficient regulation to preserve aesthetics and prevent visual clutter. Along these lines, the regulations also try to address issues raised by the business community, both regarding the specific rules governing signage and the process for permitting.
- New “Sign Area” Maps. The Sign Area maps have been revised to show the four Sign Areas, versus the previous five. Graphics are updated for clarity, and the total number of maps is reduced from five to three.
- Authority of the CDD Director. The CDD Director is currently granted authority over sign applications in 16-51 (c). Language is added to this section to allow for new and unanticipated types of signs. In addition, waiver authority for distance between freestanding signs is relocated from Article X to this section.
- Waiver review criteria. Language regarding general waiver review criteria is moved from the sign code to the general waiver section 16-157.

Overall, the revisions simplify the organization and the specifics of sign regulation, as well as simplifying the permitting process. Removal of many of the previously regulated sign categories, which were content specific, deletion of outdated graphics, removal of the enforcement section, which is sufficiently covered by Sections 16-85 and 1-8 of the County Code, as well as removal of much of the former content that legally may not be regulated, has resulted in a significantly shorter sign code. The current sign code consists of 37 pages, not including maps. The proposed sign code is 18 pages.

The following “Before and After” chart lists all the former sign categories and how they are handled in the new sign code. The yellow shading in the “Before” column indicates those sign categories that are content based.

BEFORE	AFTER
Address	Permanent. Compelling government interest makes content regulation ok.
Animated Sign and flashing lights - Not allowed	Not allowed. Category moved to Prohibited Signs.
Banners (per facade or facade segment) – One per parcel + one more per 300’ st. frontage. Included feather signs.	Temporary. New standards proposed. “Feather” signs now called “Blade/feather” with new standards proposed.
Billboards - Not allowed	Not allowed. Category moved to Prohibited Signs.
Bldg. identification (residential only, not including mixed-use)	Category deleted. Content based. Now regulated as Permanent – Freestanding or Wall sign.
Bldg. identification (commercial and industrial only)	
Canopy/Awning (per façade or façade segment)	Permanent. Now called Awning/Canopy. Same max. size. Now one, not 2, per façade or façade segment in former SA 4 & 5.
Community event (public land)	Category deleted. Now regulated as Temporary Freestanding, designated areas only, or, Minor/Incidental.
Community event (ROW)	Category deleted. Now regulated as Temporary Freestanding, designated areas only, or, if smaller, as Minor/Incidental.
Community event (private land)	Category deleted. See Temporary Freestanding – Private Land.

Construction/Property development (per building)	Deleted. Content based. See Temporary Interim, a new category.
Directional (private land)	Category deleted. See Permanent (or Temporary) Minor/Incidental signs.
Directional (Public/ROW)	Category deleted. Now regulated as Minor/Incidental signs.
District identification	Regulated same as before, but with content restrictions removed. See Permanent District ID.
Election (public land/ROW)	Category deleted. Content based. Now regulated as Freestanding Public Land - Special Temp. Sign Areas.
Election (private land)	Category deleted. Content based. Now regulated as Temporary Freestanding, Wall or Window. No permit req. if 8 sq. ft. or less.
Electronic message center (EMC)	Permanent. Content and % EMC restrictions removed. Formerly Freestanding only. Now Freestanding or Wall.
Flags, decorative	These categories are changed to Permanent Flags, Governmental, and Permanent Flags, Non-Governmental. Governmental flags are exempt from regulation except for height. Temporary flags are subject to same sq. ft. req. by Sign Area.
Flags, commercial	
Freestanding sign	Permanent and Temporary.
Garage sales	Category deleted. Content based. Now regulated as Temporary Freestanding.

Hanging (per façade or façade segment)	Permanent. Regulated the same.
Home occupation or home business	Category deleted. Content based. Now regulated as Minor/Incidental Permanent or Temporary.
Hours of operation	Category deleted. Content based. Now regulated as Permanent Wall or Window, or Temporary Wall, Window or Sidewalk/Portable.
Incidental commercial	All now combined into Minor/Incidental, both Permanent and Temporary. Previously allowed to a minor extent with no permit. No permit required but now somewhat more restricted as to size, height and number. See also Interim signs – new category for new businesses or during construction.
Incidental residential (single family and duplex bldgs.)	
Incidental residential (multi-family bldg.)	
Kiosks	Permanent. Regulated as previously with some content language removed.
Menu boards	Category deleted. Content based. Now called Sidewalk/Portable. Regulated as Temporary. Size, quantity, manner of display. Could also be Wall or Window signs.
Pennants, strings of lights, inflatable, and tethered balloons	Not previously allowed in any Sign Area. Still not allowed. Moved to Prohibited signs.
Portable (per 50 feet of commercial frontage)	Temporary. Now called Sidewalk/Portable.
Project identification (1 per 250 feet of street frontage)	Category deleted. Content based. Now regulated as Permanent Freestanding or Temporary Interim signs.
Projecting (per façade or façade segment)	Permanent.

Real estate, single family and duplex (sale, rent, or lease)	Category removed. Now regulated as Temporary Minor/Incidental. Size, height, & quantity vary per Sign Area.
Roof mounted – Not allowed.	Not allowed. Category moved to Prohibited Signs.
Sandwich board	Now called Sidewalk/Portable. Regulated as Temporary. Size, quantity, manner of display.
Subdivision identification	Category removed. Regulated as Permanent, free-standing sign.
Time and temp (per lot)	Category removed. Regulated as EMC.
Transit shelters	Category removed. Regulated as Minor signs.
Utility warning	Category removed. Considered exempt from regulation.
Vehicle signs (per legal lot of record)	Permanent. Some new restrictions – 12’ max. ht. & vehicle must be moved min. every 48 hrs. & cannot be parked on vacant land. Still no permit required.
Vending machines	Category removed. Not regulated under sign code.
Wall	Permanent and Temporary. Minor only in SA1.
Window (first story only, per façade or façade segment)	Permanent and Temporary. Minor only in SA1. Up to 50% of any window or door elsewhere.

In addition to sign regulations covered by the sign code in Chapter 16, the County also has a civic banner policy that addresses the overpass banners. This is a County Manager policy that will be reviewed and revised as necessary in conformance with the Supreme Court decision. However, since this is a policy only, and not an ordinance, it will be handled as an administrative matter and is not a part of these revisions.

Finally, as an administrative matter for the purpose of monitoring and enforcement, CDD may implement a “sticker” program for Temporary signs. It is hoped that business owners, and others, will self-regulate the time allowances for temporary banners, blade/feather signs, and all other types of temporary signs. In order to help the installers of such signs and as an aide to enforcement, the sticker could indicate the time allowance and expiration date for various types of temporary signs.