CITY COUNCIL WORKSHOP MEETING

Fruita Civic Center
Tuesday, January 23, 2024 at 6:30 PM

AGENDA

AGENDA ITEMS

1. Economic Development Update & Discussion (Greenway Business Park, CO-OP tower, The Beach, 169 S. Mulberry) (6:30 - 8:00 PM)

2. Sign Code text review and discussion (8:00 - 8:30 PM)

3. City Council Handbook Review (8:30 - 9:00 PM)

OTHER ITEMS (9:00 PM)

FRUITA COLORADO

AGENDA ITEM COVER SHEET

TO: Fruita City Council and Mayor

FROM: City Manager Mike Bennett & Planning Director Dan Caris

DATE: January 23, 2024

AGENDA TEXT: Economic Development Update & Discussion (Greenway Business Park, CO-OP tower, The Beach, 169 S. Mulberry)

BACKGROUND

The purpose of this workshop is to discuss current economic development projects as well as future opportunities.

Projects to be covered:

1. Request from developers to establish a Metro District for Greenway Business Park
2. Possible leasing options for the exterior facade of the CO-OP tower
3. Future meetings with 2Forks Ventures regarding the Development of the "Beach"
4. Possible sale of 169. S Mulberry

ATTACHMENTS

Attachments:

Butler Snow PowerPoint Presentation – The ButlerSnow presentation from November 14th, 2023, on public financing agreements.
City of Littleton Metro District Standards – as an example of how the City of Littleton established a process for evaluating public financing requests by developers.
Sparks Fly Letter to City of Fruita – regarding the CO-OP tower & rail spur.

BUTLER | SNOW

Public Finance Agreements

Dee Wisor and Dalton Kelley

Overview

- What are public finance agreements?
- What are the available tools?
  - Public improvement fees
  - Tax rebate agreements
  - Tax increment financing
  - Metropolitan districts
  - Direct contributions, waivers of fees, reimbursements
- How do these pieces fit together?
- Considerations

Public Finance Agreements
What are they?

- Public Finance Agreements are agreements between a governmental entity and a developer whereby the governmental entity agrees to provide certain financial support directly or indirectly in exchange for the construction of public improvements.

What tools can be used as part of a Public Financing Agreement?

- Public Improvement Fees
- Tax Rebate Agreements
- Tax Increment Financing
- Metropolitan Districts
- Direct Contributions
- Waiver or Rebate of Development Fees
- Reimbursement Programs

Public Improvement Fees
What are they?

- A public improvement fee ("PIF") is a fee imposed by the owner of real property on retail or other transactions, such as lodging.
    - PIF on retail sales is typically imposed as a percentage of gross sales, similar to a sales tax.
    - PIF on lodging is typically imposed as a percentage on the total lodging price paid, similar to a lodging tax.
- Though PIFs may function similar to a sales tax or a lodging tax, they are not taxes.
- The PIF is imposed by the owner of real property recording a covenant that runs with the land.
    - PIF revenue must be spent on improvements that benefit (or touch and concern) the property that is subject to the PIF.

Credit PIFs

- There are two types of PIFs – Credit PIFs and Add-on PIFs.
- A Credit PIF is where a municipality grants a credit against a portion of the sales tax or lodging tax due to the municipality that corresponds to the PIF being collected.
    - Example: The City has a 2% sales tax. The City grants a 1% credit if a 1% PIF is collected. With the credit, the City collects a 1% sales tax and the property owner (through a PIF collection agent) collects the 1% Credit PIF.
- The credit is granted at the cash register and is only granted to the extent that the Credit PIF is actually collected by the retailer from the consumer.
- In exchange for granting the credit, the developer agrees to use the Credit PIF proceeds to construct public infrastructure.
- Attractive for developers because consumers pay the same effective rate.
- Less attractive for the municipality because it is collecting less than its full tax rate.
- The credit for the Credit PIF is established by the municipality adopting a resolution or an ordinance granting the credit.

Add-on PIFs

- An Add-on PIF is where the PIF is added to the cost of the goods sold or accommodations provided without a credit being granted against the existing tax.
    - Example: The City has a 2% sales tax. The real property owner imposes a 1% Add-on PIF on goods sold at retail. The purchaser pays an effective rate of 3% on the goods.
- Less attractive for developers because consumers pay a higher effective rate at establishments on their property than at establishments on property that does not impose an Add-on PIF.
- More attractive for the municipality because it is collecting its full tax rate.
- Imposition requires no action by the municipality.

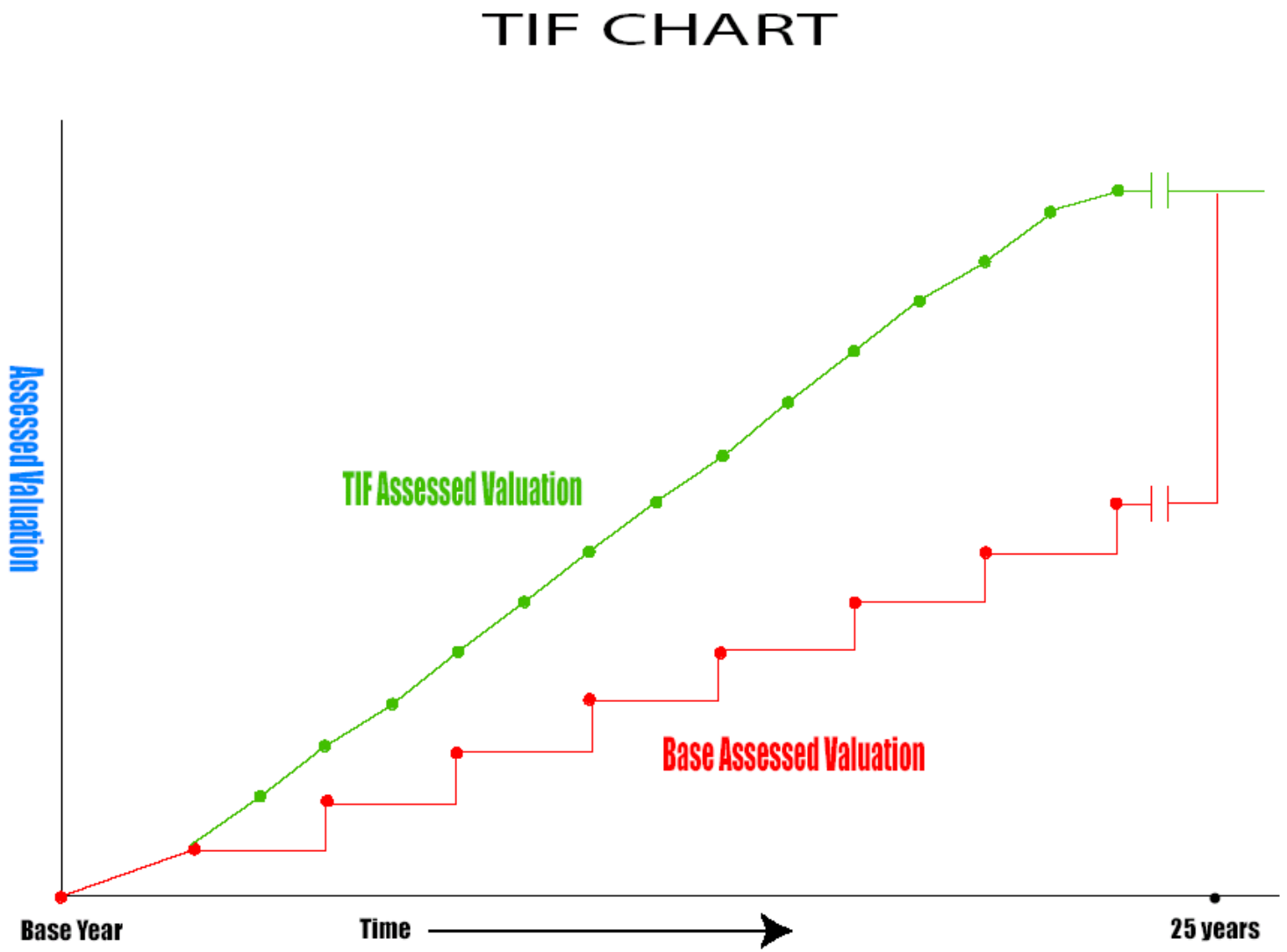
Tax Rebate Agreements

- Agreement where the municipality collects its tax, such as sales tax or lodging tax, at the full rate and then agrees to rebate all or a portion of the amount collected from a specific taxpayer back to the taxpayer.
- The agreement has to be subject to annual appropriation by the municipality.
- The nature of the agreement being subject to annual appropriation makes it less desirable to developers and the investors.

Tax Increment Financing ("TIF")

- Available to Urban Renewal Authorities, Downtown Development Authorities and Public Highway Authorities
- Once an area is established and a plan is adopted, the property tax base and/or municipal sales tax base for the area is "frozen."
    - This means that after the date of plan adoption, the assessed value to which the mill levy for the municipality, the school district, the county, and other overlapping taxing entities would be the same each year with adjustment for general reassessments.
    - Example: If the assessed value in an area is $1 million on the date of plan adoption, then the mill levy for each of the overlapping taxing jurisdictions is applied to that $1 million assessed value each year of the plan. If the assessed value of property in the area increases to $10 million, the taxes derived from multiplying the combined mill levy times the $1 million base go to the overlapping taxing jurisdictions and the mill levy times the $9 million increase goes to the URA.

How is increment calculated?



Metro Districts
What Are They?

- Formed under C.R.S. Section 32-1-101, *et seq.*
- Independent quasi-municipal corporation and political subdivision of the state.
- Metropolitan districts provide two or more services.
- Services which may be provided include:
  - Fire Protection
  - Mosquito Control
  - Parks and Recreation
  - Safety Protection
  - Sanitation (sewers)
  - Solid Waste disposal or collection and transportation
  - Streets
  - TV relay and translator
  - Water
  - Transportation (Mass Transit)

Metro Districts
Revenue Raising Powers

- May levy a property tax imposed on the property within the district.
- May levy special assessments on specially benefitted property within the district.
- May impose fees, rates, tolls, charges and penalties for revenue-producing services or facilities.
- May levy sales taxes for certain purposes on property that is not also within the boundaries of an incorporated municipality, subject to certain conditions.

Other Tools

- The City could appropriate funds from the general fund or special funds for specific public improvements.
- The City could choose to waive or rebate certain development or permit fees.
- The City could reimburse the developer for certain improvements, such as for oversizing certain improvements.

The “But-For” Argument

- Absent the investment by the municipality, development may not happen or the type of development that is desired would not occur.
- ***Without*** development, tax revenues remain stagnate or decline.
- ***With*** municipal investment, development occurs, and sales, lodging and property tax revenues increase.

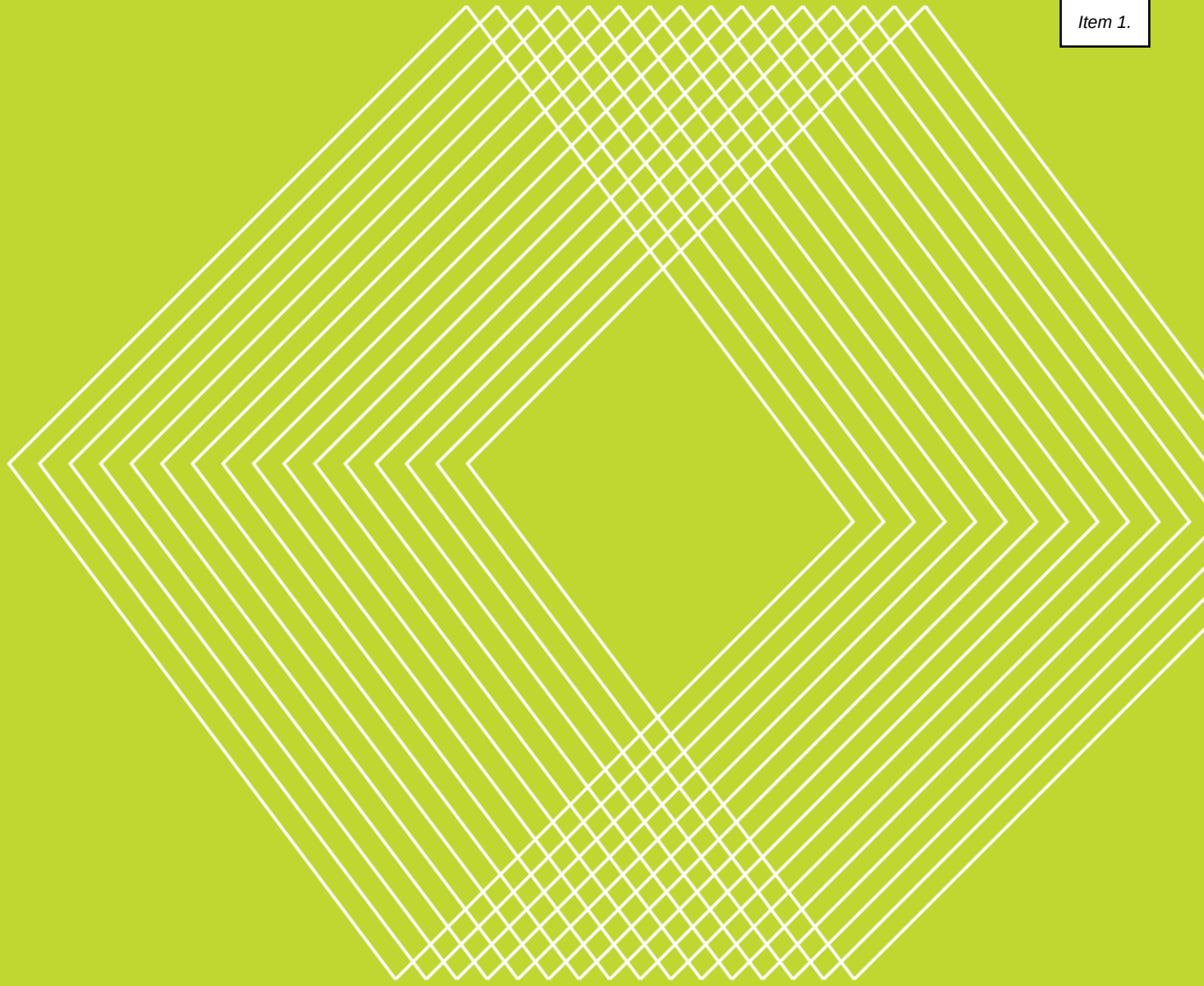
How do the pieces fit together?

- The municipality usually enters into one or more agreements to deploy one or more of the tools identified.
- A Public Finance Agreement is used to reflect the agreement of the parties, the flow of revenues and to set restrictions on how revenues are used.
- Typically, revenues flow to a metropolitan district that issues bonds to finance the public infrastructure.
- The bonds are then payable from the revenue flowing to the metropolitan district through the Public Finance Agreement or other agreements.
- Bond repayment sources could include:
    - PIF revenue
    - Rebated tax revenue
    - TIF revenue; and
    - Metropolitan district revenue

Considerations

- With a Credit PIF, will the City still generate enough tax revenue to provide services to the new project and the rest of the City?
- Will an Add-on PIF create a burden on citizens or deter visitors?
- Does a tax rebate agreement increase costs too much by introducing risk?
- Should TIF be used on this project or another urban renewal project in the urban renewal plan area?
- Is a metropolitan district appropriate for this project?

QUESTIONS?



CITY OF LITTLETON POLICY FOR REVIEWING SERVICE PLANS FOR METROPOLITAN DISTRICTS

August 18, 2020

Introduction.

This policy establishes the criteria, guidelines and processes to be followed by City Council and City staff in considering, as well as by applicants in submitting to the City service plans for the organization of metropolitan districts or amendments to those plans ("Policy"), as provided in Colorado's Special District Act in Article 1 of Title 32 of the Colorado Revised Statutes (the "Act"). The Act provides that metropolitan districts are quasi-municipal corporations and political subdivisions ("District") that can be organized within the boundaries of a municipality provided the municipality's governing body approves by resolution the proposed service plan for the District. Under the Act, the service plan constitutes the document that delineates the specific powers and functions the District can exercise, including the facilities and services it can provide, the taxes it can impose and its permitted financial arrangements (the "Service Plan"). The Act requires Districts to conform to their Service Plans.

Section 1 – Policy Objectives and Statements.

A. This Policy generally supports the formation of a District where it will deliver both District and public benefits that align with the goals and objectives of the Envision Littleton Comprehensive Master Plan (the Plan), as may be amended from time to time by the City. This Policy applies regardless of whether the District and public benefits are provided by the District or by the entity organizing the District because the District exists to provide public improvements.

B. A District, when properly structured, can enhance the quality of development in the City. The City is receptive to District formation that provides District and public benefits which could not be practically provided by the City or an existing public entity, within a reasonable time and on a comparable basis. It is not the intent of the City to create multiple entities which would be construed as competing or duplicative.

C. The approval of a District Service Plan is at the sole discretion of City Council, which may reject, approve, or conditionally approve Service Plans on a case-by-case basis. Nothing in this Policy is intended, nor shall it be construed, to limit this discretion of City Council, which retains full authority regarding the approval, terms, conditions and limitations of all

Service Plans.

D. Policy Objectives. The City will evaluate a proposed District and its Service Plan based on the District's ability to deliver District and public benefits that support the goals, policies and objectives of the Plan through development outcomes.

In determining whether a proposed District delivers both a District and public benefit, the City may consider: (i) ways in which the proposed improvements exceed the City's zoning and subdivision requirements and standards; (ii) ways in which the existence of the District facilitates the public benefits, and whether the benefits are reasonably economically feasible without the District; (iii) ways in which any proposed benefits work together with other regional systems to deliver greater benefit to the community than individually; and (iv) support and bring to reality the goals, policies, and objectives set forth in the Plan, as amended; and (v) any other factors the City deems relevant under the circumstances.

E. Policy Statements:

1. Limited Use: The City wishes to exact a high standard of use for Districts thereby limiting their use. An applicant project must deliver benefits across multiple City policy objectives, of which at least three or more of the objectives described in Section 1.D. of this Policy must be addressed.

2. Broad and Demonstrable Public Benefit: Districts will provide public benefits and the applicant will be asked to demonstrate and provide assurances of those benefits. The City will utilize the Service Plans, development agreements, and other contractual agreements to document and enforce District commitments.

3. District Governance: It is the intent of the City that owner/resident control of Districts occur as early as feasible. Service Plans will include governance structures that encourage and accommodate this. The use of control Districts (also known as "service" or "managing" Districts) that allow developers to control the other Districts that provide the tax revenues beyond the time needed to repay the issued debt will not be allowed unless demonstratable benefits for the need are shown, as to be determined by City Council in its sole discretion.

4. Basic Infrastructure Improvements: A District proposing to fund only basic infrastructure improvements such as interior roads, water, sewer, tract landscaping, etc., will not be favorably received except when used to offset higher costs associated with delivering general public benefits through development outcomes as envisioned in Exhibit A.

Section 2 – Evaluation Criteria.

A. To provide City Council with information and an assessment consistent with this Policy, staff will review and report on District proposals in the following areas:

1. District and Public Benefit Assessment: To comprehensively and consistently evaluate District proposals, staff, including representatives from Community Development and Public Works, will evaluate and assess a District proposal's consistency with this Policy and the Plan goals and objectives more broadly.

2. Financial Assessment: All District proposals are required to submit a Financial Plan to the City for review. Utilizing the District's Financial Plan, and other supporting information which may be necessary, the Economic Development Department will evaluate a District's debt capacity and servicing ability.

3. Policy Evaluation: All proposals will be evaluated by City staff against this Policy and the City's "Model Service Plan" attached as **Exhibit "B"** for single-district or multi-district Service Plans with any areas of difference being identified, evaluated and reported to City Council.

Section 3 – Application Process

A. Process Overview: The application process is designed to provide early feedback to an applicant, adequate time for a comprehensive staff review, and the appropriate steps and meeting opportunities with decision makers.

B. Letter of Interest: Applicant will provide the City with a Letter of Interest and pre-application fee (refer to fees below). The Letter of Interest shall contain the following:

1. Summary narrative of the proposed development and District proposal.

2. Sketch plan showing: property location and boundaries; surrounding land uses; proposed use(s); proposed improvements (buildings, landscaping, parking/drive areas, water treatment/detention, drainage); existing natural features (water bodies, wetlands, large trees, wildlife, canals, irrigation ditches); utility line locations (if known); and photographs (helpful but not required).

3. Clear justification for why a District is needed. For example: whether the infrastructure costs are cost prohibitive; the City does not have the capacity to extend utilities; amenities such as pool and landscaping are being requested; etc...

4. Explanation of the District and general public benefits, making specific reference to this Policy and other relevant City documents including the Plan.

5. District proposal and Service Plan specifics, including: District powers and purpose; District infrastructure and costs; developer costs; mill levy rate (both debt and, operations and maintenance); term of District; forecasted period of build-out; proposed timeline for formation; and current development status of project.

6. Explanation of the Structure of Districts-controlling and sub districts and their role.

7. Status of Development/Development Agreement: include where the applicant is in the development process.

8. Letter of Interest: Staff will provide a written response to a Letter of Interest within thirty (30) days of receipt and payment of the pre-application fee.

C. Preliminary Staff Meeting with Applicant (Optional): Based on an initial review of the Letter of Interest, staff may meet with the applicant prior to the end of the thirty (30) day review period, to discuss the District proposal, potential public benefits, initial staff feedback, the evaluation process, fees, and other application elements.

D. Formal Application and Service Plan Submittal: Upon taking account of staff input, applicant may submit a formal application for consideration following the requirements specified in the City's District Application, including the Service Plan in which the applicant shall highlight all provisions that deviate from this Policy and the Model Service Plan attached as **Exhibit "B"**. The formal application and application fees must be received by the City no later than the third Tuesday of December in the preceding year for a spring election (May) or the third Tuesday of May for a fall election (November). The City cannot commit to timely processing of applications submitted after these dates for their respective elections. The applicant shall send written notice of the application for a Service Plan via first-class mail to all fee title owners of real property within the boundaries of the proposed District(s) and of any future inclusion area proposed in the Service Plan. The applicant shall deliver an affidavit of proof of mailing along with a copy of the list of addresses to which all mailed notifications were sent.

E. Formal Staff Review: City staff will review the applicant submittal along with any follow-up documentation that is requested in order to assess the application according to this Policy and other appropriate City policy. Applicants should expect several rounds of feedback and review from City staff prior to the selection of a date for a public hearing before the City Council

F. Selection of Date for a Public Hearing: City staff will share the dates of City Council's upcoming, available agenda dates and the applicant will alert Staff to the preferred date(s).

City staff will confirm the date of the hearing to the Applicant when the hearing date has been entered into the City Council's tentative calendar of public hearings.

G. Public Hearing Notice: The Service Plan Applicant must cause a written notice of the public hearing to be mailed by first-class mail to all fee title owners of real property within the boundaries of the proposed District(s) and of any future inclusion area proposed in the Service Plan and such notice shall be mailed no later than thirty (30) days before the scheduled hearing date. A notice shall also be published once in a newspaper of general circulation in the City no later than thirty (30) days before the scheduled hearing date. The mailed and published notices shall include the following information:

1. A description of the general nature of the public improvements and services to be provided by the District;

2. A description of the real property to be included in the District and in any proposed future inclusion area, with such property being described by street address, lot and block, metes and bounds if not subdivided, or such other method that reasonably apprises owners that their property will or could be included in the District's boundaries;

3. A statement of the maximum amount of property tax mill levy that can be imposed on property in the District under the proposed Service Plan;

4. A statement that property owners desiring to have the City Council consider excluding their properties from the District must file a petition for exclusion with the Littleton City Clerk's Office no later than ten (10) days before the scheduled hearing date in accordance with C.R.S. § 32-1-203(3.5);

5. A statement that a copy of the proposed Service Plan can be reviewed in the Littleton City Clerk's Office; and

6. The date, time and location of the City Council's public hearing on the Service Plan.

H. Council Public Hearing: The City Council will conduct a noticed public hearing at a regular or special Council meeting to consider resolution approval of Service Plan. This hearing will occur no later than thirty (30) days prior to the final submittal date to the District Court to order an election. By way of example, for a fall District election City Council, which meets on the first and third Tuesday's of the month, must conduct the public hearing no later than the third Tuesday in August.

Section 4 –Service Plan

A. Purpose: In addition to the requirements of the Act, a Service Plan will memorialize the understandings and agreements between the District and the City, as well as the considerations that compelled the City to authorize the formation of the District. The Service Plan must also include all applicable information required by the Act.

B. Compliance with Applicable Law: Any Service Plan submitted to the City for approval must comply with all state, federal and local laws and ordinances, including the Act.

C. Model Service Plan: To clearly communicate City requirements and streamline legal review, the City will require the use of the applicable Model Service Plan attached as **Exhibit "B"**. With justification, the City may consider deviations in the proposed Service Plan, but generally all Service Plans should include the following:

1. Eminent Domain is NOT Authorized: The Service Plan shall contain language that prohibits the District from exercising the power of eminent domain.

2. Maximum Mill Levy: The Service Plan shall restrict the District's total mill levy authorization for both debt service and operations and maintenance to forty (40) mills, subject to adjustment as provided below. A portion of the Maximum Mill Levy may be utilized by the District to fund operations and maintenance functions, including customary administrative expenses incurred in operating the District such as accounting and legal expenses and otherwise complying with applicable reporting requirements. No more than half of the max mill levy may be used for operations and maintenance (the "Operations and Maintenance Mill Levy"). Should there be additional amenities, that are high quality smart growth projects, and/or strategic priorities of the City as listed in Exhibit A Public Benefits and are of direct benefit to end users, the mill levy could be higher. The exact amount of the increase above 40 mills will be solely at the discretion of the City Council.

   a. Increased mill levies may be considered for Districts that are predominately commercial in use, at the sole discretion of the City Council.

   b. The Maximum Mill Levy may be adjustable from the base year of the District as provided for in the Model Service Plan, so that to the extent possible, the actual tax revenues generated by the District's mill levy, as adjusted, for changes occurring after the base year, are neither diminished nor enhanced as a result of the changes.

3. Debt Term Limit: A District shall be allowed no more than thirty-five (35) years for the levy and collection of taxes used to service debt unless a majority of the Board of Directors of the District imposing the mill levy are residents of such District and have voted in favor of a refunding of a part or all of the Debt and such refunding is for one or

more of the purposes authorized in C.R.S. § 11-56-104.

2. District refinancing: Refinancing of debt shall be allowed so long as it does not extend the term past the issuance of the original loan/bond without the expressed written consent of the City of Littleton."

4.

5. District Dissolution: Perpetual Districts shall not be allowed except in cases where ongoing operations and maintenance are required. Except where ongoing operations and maintenance has been authorized, a District must be dissolved as soon as practical upon:

   - The payment of all debt and obligations; and
   - The completion of development activity.

   In addition, Districts shall have no more than three years from approval of the Service Plan to secure City Council approval by resolution of an intergovernmental agreement and/or a development agreement documenting the proposed construction phasing of all public benefits described in, the Service Plan. Staff will inform City Council, in writing, of any Districts that have not obtained this approval ninety (90) days in advance of the expiration of the three-year period. This written notice will provide a status update on the Districts progress towards obtaining Council approval and the other activities of the Districts. Districts may request an extension for approval of city-wide improvements planned for future construction phases when it can be shown that economic and market conditions have changed enough to warrant a slow-down in construction and sales/leasing activity. If no development activity has occurred within three (3) years of the approval of a District, the approved Service Plan shall be null and void and the District shall be dissolved unless extended by City Council.

6. District Fees: Impact fees, development application fees, service fees, and any other fees must be identified with particularity in the District Service Plan.

7. Notice Requirements: The Service Plan shall require that the District use reasonable efforts to ensure that all developers of the property located within the District provide written notice to all purchasers of property in the District regarding the District's existing mill levies, its maximum debt mill levy, as well as a general description of the District's authority to impose and collect rates, fees, tolls and charges. The form of notice shall be filed with the City prior to the initial issuance of the debt of the District imposing the mill levy.

8. Annual Report: The Service Plan must obligate the District to file an annual report not later than September 1st of each year with the City Clerk for the year ending the preceding December 31st, the requirements of which may be waived in whole or in part by the City Manager. Details of the Annual Report are included in the Model Service

Plan.

B. Service Plan Requirements: In addition to all other information required in a Service Plan by the Act, a Service Plan must include the following:

1. Financial Plan: The Service Plan must include debt and operating financial projections prepared by an investment banking firm or financial advisor qualified to make such projections. The financial firm must be listed in the Bond Buyers Marketplace or, in the City's sole discretion, other recognized publication as a provider of financial projections. The Financial Plan must include debt issuance and service schedules and calculations establishing the District's projected maximum debt capacity (the "Total Debt Limitation") based on assumptions of: (i) Projected Interest Rate on the debt to be issued; (ii) Projected Assessed Valuation of the property within the District; and (iii) Projected Rate of Absorption of the assessed valuation within the District. These assumptions must use market-based, market comparable valuation and absorption data and may use an annual inflation rate of three percent (3%) or the Consumer Price Index for the preceding 12-month period for the Denver-Boulder-Greeley statistical region as prepared by the U.S. Department of Labor Statistics, whichever is lesser.

   - Total Debt Limitation: The total debt authorized in the Service Plan must not exceed 100% of the projected maximum debt capacity as shown in the Financial Plan.

   - Administrative, Operational and Maintenance Costs: The Financial Plan must also include foreseeable administrative, operational and maintenance costs.

2. Public Improvements and Estimated Costs: Every Service Plan must include, in addition to all materials, plans and reports required by the Act, a summary of District and general public improvements to be constructed and/or installed by the District (the "Public Improvements"). The description of these Public Improvements must include, at a minimum:

   A. A map or maps, and construction drawings of such a scale, detail and size as required by the Community Development and or Public Works Department, providing an illustration of public improvements proposed to be built, acquired or financed by the District;

   B. A written narrative and description of the public improvements; and

   C. A general description of the District's proposed role with regard to the same.

Due to the preliminary nature, the Service Plan must indicate that the City's approval of the Public Improvements shall not bind the City and City Council in any way

relating to the review and consideration of land use applications within the District.

3. Intergovernmental Agreement: Any intergovernmental agreement which is required or known at the time of formation of the District to likely be required, to fulfill the purposes of the District, must be described in the Service Plan, along with supporting rationale. The Service Plan must provide that execution of other intergovernmental agreements with the City or other public agencies which are likely to cause substantial increase in the District's budget and are not described in the Service Plan will require the prior approval of City Council.

4. Extraterritorial Service Agreement: The Service Plan must describe any planned extraterritorial service agreement. The Service Plan must provide that any other extraterritorial service agreement by the District that are not described in the Service Plan will require prior approval of City Council.

Section 5 – Fees

A. No request to create a Metro District shall proceed until the fees set forth herein are paid when required. All checks are to be made payable to the City of Littleton and sent to the Community Development Department.

1. Letter of Intent Submittal Fee: A Letter of Intent is to be submitted to the City's Community Development Department.

2. Application Fee: An application along with a draft Service Plan (based on the Model Service Plan) is to be submitted to the City's Community Development Department along with an application fee of $5,000 at the time of submittal of the Application and draft Service Plan.

3. Non-Model Service Plan Fee: A District proposal requesting a substantial deviation from this Policy or the applicable Model Service Plan, shall pay an additional non-refundable fee of $5,000 at the time of submitting its application; the City shall in its sole and reasonable discretion determine if a draft Service Plan proposes a substantial deviation from this Policy or the applicable Model Service Plan.

4. Other Expenses: An escrow deposit in the amount of $5,000 will be provided by the applicant at the time of submittal to cover potential expenses, such as consultant, legal, and other fees and expenses incurred by the City in the process of reviewing the draft Service Plan or amended Service Plan prior to adoption, documents related to a bond issue and such other expenses as may be necessary for the City to incur to interface with the District. All such fees and expenses shall be paid within 30 days

of receipt of an invoice for these additional fees and expenses and if the city expenses are less than $5,000 the difference will be refunded to the applicant. All such fees and expenses shall be paid within 30 days of receipt of an invoice from the City.

5. Service Plan Amendment Fee: If a proposed amendment to a Service Plan is submitted to the City's Community Development Department, it should be submitted with a non-refundable $2,500 fee along with a $2,500 deposit towards the City's other expenses and shall be paid at the time of submittal of the application and draft amended Service Plan.

EXHIBIT A
PUBLIC BENEFIT EXAMPLES

The following list of examples is meant to be illustrative of the types of projects that deliver the defined general public benefits in this policy. Projects that deliver similar or better outcomes will also be considered on their merits.

Category / Sub-Category	Example Projects
Critical Public Infrastructure	
1. Within District Area	- Open Space (beyond code requirements) - Regional Stormwater Improvements - Major arterial development - Parking Structures (Publicly Accessible) - Transit-oriented development - Non-motorized transportation opportunities -
2. Adjacent to Proposed District	- Contribution to major interchange/intersection - Contribution to grade separated auto or pedestrian crossings - Connection to transit

Category / Sub-Category	Example Projects
High Quality and Smart Growth Management	
1. Walkability & Pedestrian Friendliness	- Wider than city required sidewalks - Enhanced pedestrian crossings (different material, raised, signalized) - Underpass(es) or Overpasses - Trail system and wayfinding enhancements - Streetscape amenities such as planters, benches and trash receptacles
2. Increase availability of Transit	- Improved bus stops with shelters - Restricted access guideways for bus operations - Transfer facilities - Pedestrian connections to transit
3. Public Spaces	- Pocket Parks - Neighborhood Parks (beyond code requirements) - High quality streetscape, landscaping and artwork - Community Center, community pool or gathering space for more than 100 people
Strategic Priorities	
1. Affordable Housing	- Units permanently affordable to 80% Area Median Income

	- Land dedicated to City for future use
2. Attainable Housing	- Units permanently affordable to 81 to 120% Area Median Income
3. Infill/Redevelopment	- Address environmental sensitivity - Consolidate wetlands or natural area (positive benefits) - Locate new residences in close proximity to a wide variety of transit choices - Urban design that prioritizes walkers, cyclists, and wheelchair users above automobile users
4. Economic Health Outcomes	- Facilitate job growth that focuses on a net increase to the city's sales tax base, or employment centers.

City of Littleton

Title 32 Metropolitan District Model Single-District Service Plan

This model service plan template should be referenced in conjunction with the City of Littleton Policy for Reviewing Service Plans for Title 32 Metropolitan Districts.

I. INTRODUCTION

A. Purpose and Intent.

The District, which is an independent unit of local government separate and distinct from the City, is governed by this Service Plan, the Special District Act and other applicable State law. Except as may otherwise be provided by State law, City Code or this Service Plan, the District's activities are subject to review and approval by the City Council only insofar as they are a material modification of this Service Plan under C.R.S. § 32-1-207 of the Special District Act.

It is intended that the District will assist in funding Public Improvements for the Project for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements by the issuance of Debt.

The District is not intended to provide ongoing operations and maintenance services except as expressly authorized in this Service Plan.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of all Debt, except that if the District is authorized in this Service Plan to perform continuing operating or maintenance functions, the District shall continue in existence for the sole purpose of providing such functions and shall retain only the powers necessary to impose and collect the taxes or Fees authorized in this Service Plan to pay for the costs of those functions.

It is intended that the District shall comply with the provisions of this Service Plan and that the City may enforce any non-compliance with these provisions as provided in Section XVII of this Service Plan.

B. Need for the District.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction, installation, relocation, redevelopment and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

C. Objective of the City Regarding District's Service Plan.

The City's objective in approving this Service Plan is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District, but in doing so, to also establish in this Service Plan the means by which both the Regional Improvements and the Public Benefits will be provided. Except as specifically

provided in this Service Plan, all Debt is expected to be repaid by taxes and Fees imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term for residential properties, and at a tax mill levy no higher than the Maximum Debt Mill Levy. Fees imposed for the payment of Debt shall be due no later than upon the issuance of a building permit unless a majority of the Board which imposes such a Fee is composed of End Users as provided in Section VII.B.2 of this Service Plan. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate property owners from excessive tax and Fee burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

D. Relevant Intergovernmental Agreements.

[Add description of any relevant intergovernmental agreements.]

E. City Approvals.

Any provision in this Service Plan requiring "City" or "City Council" approval or consent shall require the City Council's prior written approval or consent exercised in its sole discretion. Any provision in this Service Plan requiring "City Manager" approval or consent shall require the City Manager's prior written approval or consent exercised in the City Manager's sole discretion.

II. DEFINITIONS

In this Service Plan, the following words, terms and phrases which appear in a capitalized format shall have the meaning indicated below, unless the context clearly requires otherwise:

Aggregate Mill Levy: means the total mill levy resulting from adding the District's Debt Mill Levy and Operating Mill Levy. The District's Aggregate Mill Levy does not include any Regional Mill Levy that the District may levy.

Aggregate Mill Levy Maximum: means the maximum number of combined mills that the District may levy for its Debt Mill Levy and Operating Mill Levy, at a rate not to exceed the limitation set in Section IX.B.l of this Service Plan.

Approved Development Plan: means a City-approved development plan or other land-use application required by the City Code for identifying, among other things, public improvements necessary for facilitating the development of property within the Service Area, which plan shall include, without limitation, any development agreement required by the City Code.

Board: means the duly constituted Board of Directors of the District.

Bond, Bonds or Debt: means bonds, notes or other multiple fiscal year financial obligations for the payment of which a District has promised to impose an ad valorem property tax mill levy, Fees or other legally available revenue. Such terms do not include contracts through which a District procures or provides services or tangible property.

City: means the City of Littleton, Colorado, a home rule municipality.

City Code: means collectively the City's Municipal Charter, Municipal Code, Land Use Code and ordinances as all are now existing and hereafter amended.

City Council: means the City Council of the City.

City Manager: means the City Manager of the City.

C.R.S.: means the Colorado Revised Statutes.

Debt Mill Levy: means a property tax mill levy imposed on Taxable Property by the District for the purpose of paying Debt as authorized in this Service Plan, at a rate not to exceed the limitations set in Section IX.B of this Service Plan.

Developer: means a person or entity that is the owner of property or owner of contractual rights to property in the Service Area that intends to develop the property.

District: means the *[Name of District]* organized under and governed by this Service Plan.

District Boundaries: means the boundaries of the area legally described in **Exhibit "A"** attached hereto and incorporated by reference and as depicted in the District Boundary Map.

District Boundary Map: means the map of the District Boundaries attached hereto as **Exhibit "B"** and incorporated by reference.

End User: means any owner, or tenant of any owner, of any property within the District, who is intended to become burdened by the imposition of ad valorem property taxes and/or Fees. By way of illustration, a resident homeowner, renter, commercial property owner or commercial tenant is an End User. A Developer and any person or entity that constructs homes or commercial structures is not an End User.

External Financial Advisor: means a consultant that: (1) is qualified to advise Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (2) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place or, in the City's sole discretion, other recognized publication as a provider of financial projections; and (3) is not an officer or employee of the District or an underwriter of the District's Debt.

Fees: means the fees, rates, tolls, penalties and charges the District is authorized to impose and collect under this Service Plan.

Financial Plan: means the Financial Plan described in Section IX of this Service Plan which was prepared or approved by an External Financial Advisor, in accordance with the requirements of this Service Plan and describes: (a) how the Public Improvements are to be financed; (b) how the Debt is expected to be incurred; and

(c) the estimated operating revenue derived from property taxes and any Fees for the first budget year through the year in which all District Debt is expected to be defeased or paid in the ordinary course.

Inclusion Area Boundaries: means the boundaries of the property that is anticipated to be added to the District Boundaries after the District's organization, which property is legally described in **Exhibit "C"** attached hereto and incorporated by reference and depicted in the map attached hereto as **Exhibit "D"** and incorporated herein by reference.

Maximum Debt Authorization: means the total Debt the District is permitted to issue as set forth in Section IX.B.7 of this Service Plan.

Maximum Debt Mill Levy Imposition Term: means the maximum term during which the District's Debt Mill Levy may be imposed on property developed in the Service Area for residential use, which shall include residential properties in mixed-use developments. This maximum term shall not exceed thirty-five (35) years from December 31 of the year this Service Plan is approved by City Council.

Operating Mill Levy: means a property tax mill levy imposed on Taxable Property for the purpose of funding District administration, operations and maintenance as authorized in this Service Plan, including, without limitation, repair and replacement of Public Improvements, and imposed at a rate not to exceed the limitations set in Section IX.B. of this Service Plan.

Planned Development: means the private development or redevelopment of the properties in the Service Area, commonly referred to as the ***{The Name of the Development}***, under an Approved Development Plan.

Project: means the installation and construction of the Public Improvements for the Planned Development.

Public Improvements: means the improvements and infrastructure the District is authorized by this Service Plan to fund and construct for the Planned Development to serve the future taxpayers and inhabitants of the District, except as specifically prohibited or limited in this Service Plan. Public Improvements shall include, without limitation, the improvements and infrastructure described in **Exhibit "E"** attached hereto and incorporated by reference. Public Improvements do not include Regional Improvements.

Regional Improvements: means any regional public improvement identified by the City, as provided in Section X of this Service Plan, for funding, in whole or part, by a Regional Mill Levy levied by the District, including, without limitation, the public improvements described in **Exhibit "F"** attached hereto and incorporated by reference.

Regional Mill Levy: means the property tax mill levy imposed on Taxable Property for the purpose of planning, designing, acquiring, funding, constructing, installing, relocating and/or redeveloping the Regional Improvements and/or to fund the administration and overhead costs related to the Regional Improvements as provided in Section X of this Service Plan.

Service Area: means the property within the District Boundaries and the property in the Inclusion Area Boundaries when it is added, in whole or part, to the District Boundaries.

Special District Act: means Article I in Title 32 of the Colorado Revised Statutes, as amended.

Service Plan: means this service plan for the District approved by the City Council.

Service Plan Amendment: means a material modification of the Service Plan approved by the City Council in accordance with the Special District Act, this Service Plan and any other applicable law.

State: means the State of Colorado.

Taxable Property: means the real and personal property within the District Boundaries and within the Inclusion Area Boundaries when added to the District Boundaries that will be subject to the ad valorem property taxes imposed by the District.

TABOR: means Colorado's Taxpayer's Bill of Rights in Article X, Section 20 of the Colorado Constitution.

Vicinity Map: means the map attached hereto as **Exhibit "G"** and incorporated by reference depicting the location of the Service Area within the regional area surrounding it.

III. BOUNDARIES AND LOCATION

The area of the District Boundaries includes approximately ***[Insert Number]*** acres and the total area proposed to be included in the Inclusion Area Boundaries is approximately ***[Insert Number]*** acres. A legal description and map of the District Boundaries are attached hereto as **Exhibit A** and **Exhibit B,** respectively. A legal description and map of the Inclusion Area Boundaries are attached hereto as **Exhibit C** and **Exhibit D,** respectively. It is anticipated that the District's Boundaries may expand or contract from time to time as the District undertakes inclusions or exclusions pursuant to the Special District Act, subject to the limitations set forth in this Service Plan. The location of the Service Area is depicted in the vicinity map attached as **Exhibit G.**

IV. DESCRIPTION OF PROJECT, PLANNED DEVELOPMENT, PUBLIC BENEFITS & ASSESSED VALUATION

A. Project and Planned Development.

[Describe the nature of the Project and Planned Development, estimated population at build out, timeline for development, estimated assessed value after 5 and 10 years and estimated sales tax revenue. Also, please identify, all plans, including but not limited to Citywide Plans, Envision Littleton Comprehensive Plan, Small Area Plans, and General Development Plans that apply to any portion of the District's Boundaries or Inclusion Area Boundaries and describe how the Project and Planned

Development are consistent with the applicable plans.]

Approval of this Service Plan by the City Council does not imply approval of the development of any particular land-use for any specific area within the District. Any such approval must be contained within an Approved Development Plan.

B. Public Benefits.

In addition to providing a portion of the Public Improvements, the organization of the District is intended to enable the Project to deliver a number of extraordinary direct and indirect public benefits, including: ***(Describe Public Benefits)*** (collectively, the "Public Benefits"). The Public Benefits to be enabled under this Service Plan are specifically described in **Exhibit J** attached hereto and incorporated herein by reference.

Therefore, notwithstanding any provision to the contrary contained in this Service Plan, the District shall not be authorized to issue any Debt or to impose a Debt Mill Levy or any Fees for payment of Debt unless and until the delivery of the Public Benefits specifically related to the phase of the Planned Development of a portion of the Project to be financed with such Debt, Debt Mill Levy or Fees, are secured in a manner approved by the City Council. To satisfy this precondition to the issuance of Debt and to the imposition of the Debt Mill Levy and Fees, delivery of the Public Benefits for each phase of the Project and the Planned Development must be secured by the following methods, as applicable:

1. For any portion of the Public Benefits to be provided by the District, the District must enter into an intergovernmental agreement with the City by either: (i) agreeing to provide those Public Benefits as a legally enforceable multiple-fiscal year obligation of the District under TABOR, or (ii) securing performance of that obligation with a surety bond, letter of credit or other security acceptable to the City, and any such intergovernmental agreement must be approved by the City Council by resolution;

2. For any portion of the Public Benefits to be provided by one or more Developers of the Planned Development, each such Developer must either: (i) enter into a development agreement with the City under the Developer's applicable Approved Development Plan, which agreement must legally obligate the Developer to provide those Public Benefits before the City is required to issue building permits and/or certificates of occupancy for structures to be built under the Approved Development Plan for that phase of the Planned Development, or (ii) secure such obligations with a surety bond, letter of credit or other security acceptable to the City, and all such development agreements must be approved by the City Council by resolution; or

3. For any portion of the Public Benefits to be provided in part by the District and in part by one or more of the Developers, an agreement between the City and the affected District and Developers that secures such Public Benefits as legally binding obligations using the methods described in subsections 1 and 2 above, and all such agreements must be approved by the City Council by resolution.

C. Assessed Valuation.

The current assessed valuation of the Service Area is approximately ***[Dollar Amount]*** and, at build out, is expected to be ***[Dollar Amount].*** These amounts are expected to be sufficient to reasonably discharge the Debt as demonstrated in the Financial Plan.

V. INCLUSION OF LAND IN THE SERVICE AREA

Other than the real property in the Inclusion Area Boundaries, the District shall not include any real property into the Service Area without the City Council's prior written approval and in compliance with the Special District Act. Once the District has issued Debt, it shall not exclude real property from the District's boundaries without the prior written consent of the City Council.

VI. DISTRICT GOVERNANCE

The District's Board shall be comprised of persons who are a qualified "eligible elector" of the District as provided in the Special District Act. It is anticipated that over time, the End Users who are eligible electors will assume direct electoral control of the District's Board as development of the Service Area progresses. The District shall not enter into any agreement by which the End Users' electoral control of the Board is removed or diminished.

VII. AUTHORIZED AND PROHIBITED POWERS

A. General Grant of Powers.

The District shall have the power and authority to provide the Public Improvements, the Regional Improvements and related operation and maintenance services, within and without the District Boundaries, as such powers and authorities are described in the Special District Act, other applicable State law, common law and the Colorado Constitution, subject to the prohibitions, restrictions and limitations set forth in this Service Plan.

If, after the Service Plan is approved, any State law is enacted to grant additional powers or authority to metropolitan districts by amendment of the Special District Act or otherwise, such powers and authority shall not be deemed to be a part hereof. These new powers and authority shall only be available to be exercised by the District if the City Council first approves a Service Plan Amendment to specifically allow the exercise of such powers or authority by the District.

B. Prohibited Improvements and Services and other Restrictions and Limitations.

The District's powers and authority under this Service Plan to provide Public Improvements and services and to otherwise exercise its other powers and authority under the Special District Act and other applicable State law, are prohibited, restricted and limited as hereafter provided. Failure to comply with these prohibitions, restrictions and limitations shall constitute a material modification under this Service Plan and shall entitle the City to pursue all remedies available at law and in equity as provided in Sections XVII and XVIII of this Service Plan:

1. Eminent Domain Restriction

The District shall not exercise its statutory power of eminent domain without first obtaining resolution approval from the City Council. This restriction on the District's exercise of its eminent domain power is being voluntarily acquiesced to by the District and shall not be interpreted in any way as a limitation on the District's sovereign powers and shall not negatively affect the District's status as a political subdivision of the State as conferred by the Special District Act.

2. Fee Limitation

Any Fees imposed for the repayment of Debt, if authorized by this Service Plan, shall not be imposed by the District upon or collected from an End User. In addition, Fees imposed for the payment of Debt shall not be imposed unless and until the requirements for securing the delivery of the District's portion of the Public Benefits have been satisfied in accordance with Section IV.B of this Service Plan. Notwithstanding the foregoing, this Fee limitation shall not apply to any Fee imposed to fund the operation, maintenance, repair or replacement of Public Improvements or the administration of the District.

3. Operations and Maintenance

The primary purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate jurisdiction or owners' association in a manner consistent with the Approved Development Plan and the City Code, provided that nothing herein requires the City to accept a dedication. The District is specifically authorized to operate and maintain all or any part of the Public Improvements not otherwise conveyed or dedicated to the City or another appropriate governmental entity until such time as the District is dissolved.

4. Fire Protection Restriction

The District is not authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain fire protection facilities or services, unless such facilities and services are provided pursuant to an intergovernmental agreement with the South Metro Fire Rescue Authority. The authority to plan for, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain fire hydrants and related improvements installed as part of the Project's water system shall not be limited by this subsection.

5. Public Safety Services Restriction

The District is not authorized to provide policing or other security services. However, the District may, pursuant to C.R.S. § 32-1-1004(7), as amended, furnish security services pursuant to an intergovernmental agreement with the City.

6. Grants from Governmental Agencies Restriction

The District shall not apply for grant funds distributed by any agency of the United States Government or the State without the prior written approval of the City Manager. This does not restrict the collection of Fees for services provided by the District to the United States Government or the State.

7. Television Relay and Translation Restriction

The District is not authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project, unless such facilities and services are provided pursuant to prior written approval from the City Council as a Service Plan Amendment.

8. Potable Water and Wastewater Treatment Facilities

Acknowledging that the City and other existing special districts operating within the City currently own and operate treatment facilities for potable water and wastewater that are available to provide services to the Service Area, the District shall not plan, design, acquire, construct, install, relocate, redevelop, finance, own, operate or maintain such facilities without obtaining the City Council's prior written approval either by intergovernmental agreement or as a Service Plan Amendment.

9. Sub-district Restriction

The District shall not create any sub-district pursuant to the Special District Act without the prior written approval of the City Council.

10. Privately Placed Debt Limitation

Prior to the issuance of any privately placed Debt, the District shall obtain the certification of an External Financial Advisor substantially as follows:

"We are [I am] an External Financial Advisor within the meaning of the District's Service Plan.

We [I] certify that (I) the net effective interest rate (calculated as defined in C.R.S. Section 32-1-103(12)) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax -exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial

circumstances of the District."

11. Junior Bond limitations. No junior or subordinate bonds can be issued for an interest rate in excess of that issued for senior bonds.
12. Refinance limitations. Refinancing of debt shall be allowed so long as it does not extend the term past the issuance of the original loan/bond without the expressed written consent of the City of Littleton."

VIII. PUBLIC IMPROVEMENTS AND ESTIMATED COSTS

Exhibit E summarizes the type of Public Improvements that are projected to be constructed and/or installed by the District. The cost, scope, and definition of such Public Improvements may vary over time. The total estimated costs of Public Improvements, as set forth in **Exhibit H,** excluding any improvements paid for by the Regional Mill Levy necessary to serve the Planned Development, are approximately ***[Dollar Amount]*** in ***[Year]*** dollars and total approximately ***[Dollar Amount]*** in the anticipated year of construction dollars. The cost estimates are based upon preliminary engineering, architectural surveys, and reviews of the Public Improvements set forth in **Exhibit E** and include all construction cost estimates together with estimates of costs such as land acquisition, engineering services, legal expenses and other associated expenses. Maps of the anticipated location, operation, and maintenance of Public Improvements are attached hereto as **Exhibit I**. Changes in the Public Improvements or cost, which are approved by the City in an Approved Development Plan and any agreement approved by the City Council pursuant to Section
IV.B of this Service Plan, shall not constitute a Service Plan Amendment. In addition, due to the preliminary nature of the Project, the City shall not be bound by this Service Plan in reviewing and approving the Approved Development Plan and the Approved Development Plan shall supersede the Service Plan with regard to the cost, scope, and definition of Public Improvements. Provided, however, any agreement approved and entered into under Section IV.B of this Service Plan for the provision of a Public Improvement that is also a Public Benefit, shall supersede both this Service Plan and the applicable Approved Development Plan.

Except as otherwise provided by an agreement approved under Section IV.B of this Service Plan: (i) the design, phasing of construction, location and completion of Public Improvements will be determined by the District to coincide with the phasing and development of the Planned Development and the availability of funding sources; (ii) the District may, as approved by the City in its discretion, phase the construction, completion, operation, and maintenance of Public Improvements or defer, delay, reschedule, rephase, relocate or determine not to proceed with the construction, completion, operation, and maintenance of Public Improvements, and such actions or determinations shall not constitute a Service Plan Amendment; and (iii) the District shall also be permitted to allocate costs between such categories of the Public Improvements as deemed necessary in its discretion.

The Public Improvements shall be listed using an ownership and maintenance matrix in **Exhibit E,** either individually or categorically, to identify the ownership and

maintenance responsibilities of the Public Improvements.

The City Code has development standards, contracting requirements and other legal requirements related to the construction and payment of public improvements and related to certain operation activities. Relating to these, the District shall comply with the following requirements:

A. Development Standards.

The District shall ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City Code and of other governmental entities having proper jurisdiction, as applicable. The District directly, or indirectly through any Developer, will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. Unless waived by the City Council, the District shall be required, in accordance with the City Code, to post a surety bond, letter of credit, or other approved development security for any Public Improvements to be constructed by the District. Such development security may be released in the City Manager's discretion when the District has obtained funds, through Debt issuance or otherwise, adequate to insure the construction of the Public Improvements, unless such release is prohibited by or in conflict with any City Code provision, State law or any agreement approved and entered into under Section IV.B of this Service Plan. Any limitation or requirement concerning the time within which the City must review the District's proposal or application for an Approved Development Plan or other land use approval is hereby waived by the District.

B. Contracting.

The District shall comply with all applicable State purchasing, public bidding and construction contracting requirements and limitations.

C. Land Acquisition and Conveyance.

The purchase price of any land or improvements acquired by the District from the Developer shall be no more than the then-current fair market value as confirmed by an independent MAI appraisal for land and by an independent professional engineer for improvements. Land, easements, improvements and facilities conveyed to the City shall be free and clear of all liens, encumbrances and easements, unless otherwise approved by the City Manager prior to conveyance. All conveyances to the City shall be by special warranty deed, shall be conveyed at no cost to the City, shall include an ALTA title policy issued to the City, shall meet the environmental standards of the City and shall comply with any other conveyance prerequisites required in the City Code.

IX. FINANCIAL PLAN/PROPOSED DEBT

This Section IX of the Service Plan describes the nature, basis, method of funding and financing limitations associated with the acquisition, construction, completion, repair, replacement, operation and maintenance of Public Improvements.

A. Financial Plan.

The District's Financial Plan, attached as **Exhibit J** and incorporated by reference,

reflects the District's anticipated schedule for incurring Debt to fund Public Improvements in support of the Project. The Financial Plan also reflects the schedule of all anticipated revenues flowing to the District derived from District mill levies, Fees imposed by the District, specific ownership taxes, and all other anticipated legally available revenues. The Financial Plan is based on economic, political and industry conditions as they presently exist and reasonable projections and estimates of future conditions. These projections and estimates are not to be interpreted as the only method of implementation of the District's goals and objectives but rather a representation of one feasible alternative. Other financial structures may be used so long as they are in compliance with this Service Plan. The Financial Plan incorporates all of the provisions of this Article IX.

Based upon the assumptions contained therein, the Financial Plan projects the issuance of Bonds to fund Public Improvements and anticipated Debt repayment based on the development assumptions and absorptions of the property in the Service Area by End Users. The Financial Plan anticipates that the District will acquire, construct, and complete all Public Improvements needed to serve the Service Area.

The Financial Plan demonstrates that the District will have the financial ability to discharge all Debt to be issued as part of the Financial Plan on a reasonable basis. Furthermore, the District will secure the certification of an External Financial Advisor who will provide an opinion as to whether such Debt issuances are in the best interest of the District at the time of issuance.

B. Mill Levies.

It is anticipated that the District will impose a Debt Mill Levy and an Operating Mill Levy on all property within the Service Area. In doing so, the following shall apply:

1. Aggregate Mill Levy Maximum

   The Aggregate Mill Levy shall not exceed in any year the Aggregate Mill Levy Maximum, which is forty (40) mills.

2. Regional Mill Levy Not Included in Other Mill Levies

   The Regional Mill Levy shall not be counted against the Aggregate Mill Levy Maximum.

3. Operating Mill Levy

   The District may impose an Operating Mill Levy of up to forty (40) mills until the District imposes a Debt Mill Levy. Once the District imposes a Debt Mill Levy of any amount, the District's Operating Mill Levy shall cannot exceed twenty (20) mills at any point.

4. Gallagher Adjustments

   In the event the State's method of calculating assessed valuation for the Taxable Property changes after January 1, *[current year]* or any constitutionally mandated tax credit, cut or abatement, the District's Aggregate Mill Levy, Debt Mill Levy, Operating Mill Levy, and Aggregate Mill Levy Maximum, amounts

herein provided may be increased or decreased to reflect such changes; such increases or decreases shall be determined by the District's Board in good faith so that to the extent possible, the actual tax revenues generated by such mill levies, as adjusted, are neither enhanced nor diminished as a result of such change occurring after January 1, *[current year].* For purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation will be a change in the method of calculating assessed valuation.

5. Excessive Mill Levy Pledges

Any Debt issued with a mill levy pledge, or which results in a mill levy pledge, that exceeds the Aggregate Mill Levy Maximum or the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Service Plan and shall not be an authorized issuance of Debt unless and until such material modification has been approved by a Service Plan Amendment.

6. Refunding Debt

The Maximum Debt Mill Levy Imposition Term may be exceeded for Debt refunding purposes if: (1) a majority of the District Board is composed of End Users and have voted in favor of a refunding of a part or all of the Debt; or (2) such refunding will result in a net present value savings.

7. Maximum Debt Authorization

The District anticipates approximately ***[Dollar Amount]*** in project costs in ***[Year]*** dollars as set forth in **Exhibit E** and anticipate issuing approximately ***[Dollar Amount]*** in Debt to pay such costs as set faith in **Exhibit J,** which Debt issuance amount shall be the amount of the Maximum Debt Authorization Bonds, loans, notes or other instruments which have been refunded shall not count against the Maximum Debt Authorization. The District must obtain from the City Council a Service Plan Amendment prior to issuing Debt in excess of the Maximum Debt Authorization.

At least seven days prior to the issuance of any Debt, the Districts must provide the City Attorney with an opinion prepared by nationally recognized bond counsel evidencing that the District has complied with all Service Plan requirements relating to such Debt.

Excluding any refunding of Debt, the District shall not issue any Debt after ten (10) years from the date of the approved Service Plan.

C. Maximum Voted Interest Rate and Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. The maximum interest rate on any Debt, including any defaulting interest rate, is not permitted to exceed twelve percent (12%). The maximum underwriting discount shall be three percent (3%). Debt, when issued, will comply with all relevant requirements of this Service Plan, the Special District Act, other applicable State law and federal law as

then applicable to the issuance of public securities.

D. Interest Rate and Underwriting Discount Certification.

The District shall retain an External Financial Advisor to provide a written opinion on the market reasonableness of the interest rate on any Debt and any underwriter discount payed by the District as part of a Debt financing transaction. The District shall provide this written opinion to the City before issuing any Debt based on it.

E. Disclosure to Purchasers.

In order to notify future End Users who are purchasing residential lots or dwellings units in the Service Area that they will be paying, in addition to the property taxes owed to other taxing governmental entities, the property taxes imposed under the Debt Mill Levy, the Operating Mill Levy and possibly the Regional Mill Levy, the District shall not be authorized to issue any Debt under this Service Plan until there is included in the Developer's Approved Development Plan provisions that require the following:

1. That the Developer, and its successors and assigns, shall prepare and submit to the City Manager for his approval a disclosure notice in substantially the form attached hereto as **Exhibit K** (the "Disclosure Notice");

2. That when the Disclosure Notice is approved by the City Manager, the Developer shall record the Disclosure Notice in the applicable County Clerk and Recorder's Office; and

3. That the approved Disclosure Notice shall be provided by the Builder, and by its successors and assigns, to each potential End User purchaser of a residential and or commercial lots or dwelling unit in the Service Area before that purchaser enters into a written agreement for the purchase and sale of that residential lot or dwelling unit.

4. That the Disclosure Notice also contain an estimate of the mill levy in terms of dollars based upon a range of estimated and anticipated purchase prices of the properties.

F. Disclosure to Debt Purchasers.

District Debt shall set forth a statement in substantially the following form:

> "By acceptance of this instrument, the owner of this Debt agrees and consents to all of the limitations with respect to the payment of the principal and interest on this Debt contained herein, in the resolution of the District authorizing the issuance of this Debt and in the Service Plan of the District. This Debt is not and cannot be a Debt of the City of Littleton"

Similar language describing the limitations with respect to the payment of the principal and interest on Debt set forth in this Service Plan shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a Developer of property within the Service Area.

G. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Service Plan. Approval of this Service Plan shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Service Plan be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

H. TABOR Compliance.

The District shall comply with the provisions of TABOR. In the discretion of the Board, the District may set up other qualifying entities to manage, fund, construct and operate facilities, services, and programs. To the extent allowed by law, any entity created by a District will remain under the control of the District's Board.

I. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization\ anticipated to be ***[Dollar Amount],*** which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the Districts will require operating funds for administration and to plan and cause the Public Improvements to be operated and maintained. The first year's operating budget is estimated to be ***[Dollar Amount].***

Ongoing administration, operations and maintenance costs may be paid from property taxes collected through the imposition of an Operating Mill Levy, as set forth in Section IX.B.3, as well as from other revenues legally available to the District.

J. Gallagher Adjustment.

In the event the method of calculating assessed valuation is changed after January I, *[current year},* or any constitutionally mandated tax credit, cut or abatement, the Regional Mill Levy may be increased or shall be decreased to reflect such changes; such increases or decreases shall be determined by the District's Board in good faith so that to the extent possible, the actual tax revenues generated by the Regional Mill Levy, as adjusted, are neither enhanced nor diminished as a result of such change occurring after January I, *[current year].* For purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation will be a change in the method of calculating assessed valuation.

X. CITY FEES

The District shall pay all applicable City fees as required by the City Code.

XI. ANNUAL REPORTS AND BOARD MEETINGS

A. General.

The District shall be responsible for submitting an annual report to the City Clerk no later than September 1st of each year following the year in which the Order and Decree creating the District has been issued. The annual report may be made available to the public on the City's website.

B. Board Meetings.

The District's board of directors shall hold at least one public board meeting in three of the four quarters of each calendar year, beginning in the first full calendar year after the District's creation. Notice for each of these meetings shall be given in accordance with the requirements of the Special District Act and other applicable State law. This meeting requirement shall not apply until there is at least one End User of property within the District. Also, this requirement shall no longer apply when a majority of the directors on the District's Board are End Users.

C. Report Requirements.

Unless waived in writing by the City Manager, the District annual report must include the following in the Annual Report:

I. Narrative

A narrative summary of the progress of the District in implementing its Service Plan for the report year.

2. Financial Statements

Except when exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year including a statement of financial condition (i.e., balance sheet) as of December 31 of the report year and the statement of operation (i.e., revenue and expenditures) for the report year.

3. Capital Expenditures

Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of improvements in the report year.

4. Financial Obligations

Unless disclosed within a separate schedule to the financial statements, a summary of financial obligations of the District at the end of the report year, including the amount of outstanding Debt, the amount and terms of any new District Debt issued in the report year, the total assessed valuation of all Taxable Property within the Service Area as of January 1st of the report year and the current total District mill levy pledged to Debt retirement in the report year.

5. Board Contact Information

The names and contact information of the current directors on the District's Board, any District manager and the attorney for the District shall be listed

in the report. The District's current office address, phone number, email address and any website address shall also be listed in the report.

6. Other Information

Any other information deemed relevant by the City Council or deemed reasonably necessary by the City Manager.

D. Reporting of Significant Events.

The annual report shall also include information as to any of the following that occurred during the report year:

1. Boundary changes made or proposed to the District Boundaries as of December 31st of the report year.

2. Intergovernmental Agreements with other governmental entities, either entered into or proposed as of December 31st of the report year.

3. Copies of the District's rules and regulations, if any, or substantial changes to the District's rules and regulations as of December 31st of the report year.

4. A summary of any litigation which involves the District's Public Improvements as of December 31st of the report year.

5. A list of all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of December 31st of the report year.

6. Notice of any uncured events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument.

7. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.

XII. SERVICE PLAN AMENDMENTS

This Service Plan is general in nature and does not include specific detail in some instances. The Service Plan has been designed with sufficient flexibility to enable the District to provide required improvements, services and facilities under evolving circumstances without the need for numerous amendments. Modification of the general types of improvements and facilities making up the Public Improvements, and changes in proposed configurations, locations or dimensions of the Public Improvements, shall be permitted to accommodate development needs provided such Public Improvements are consistent with the then-current Approved Development Plans for the Project and any agreement approved by the City Council pursuant to Section IV.B of this Service Plan. Any action of the District, which is a material modification of this Service Plan requiring a Service Plan Amendment as provided in Section XV of this Service Plan or that does not comply with provisions of this Service Plan, shall be deemed to be a material modification to this Service Plan unless otherwise expressly provided in this Service Plan. All other departures from the provisions of this Service Plan shall be considered on a case-by-case

basis as to whether such departures are a material modification under this Service Plan or the Special District Act.

XIII. MATERIAL MODIFICATIONS

Material modifications to this Service Plan may be made only in accordance with C.R.S. § 32-1-207 as a Service Plan Amendment. No modification shall be required for an action of the District that does not materially depart from the provisions of this Service Plan, unless otherwise provided in this Service Plan.

Departures from the Service Plan that constitute a material modification requiring a Service Plan Amendment include, without limitation:

1. Actions or failures to act that create materially greater financial risk or burden to the taxpayers of the District;
2. Performance of a service or function, construction of an improvement, or acquisition of a major facility that is not closely related to an improvement, service, function or facility authorized in the Service Plan;
3. Failure to perform a service or function, construct an improvement or acquire a facility required by the Service Plan; and
4. Failure to comply with any of the preconditions, prohibitions, limitations and restrictions of this Service Plan.

XIV. DISSOLUTION

Upon independent determination by the City Council that the purposes for which the District was created have been accomplished, the District shall file a petition in district court for dissolution as provided in the Special District Act. In no event shall dissolution occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State law.

In addition, if within three (3) years from the date of the City Council's approval of this Service Plan no agreement contemplated under Section IV.B of this Service Plan has been entered into by the City with the District and/or any Developer, despite the parties conducting good faith negotiations attempting to do so, the City may opt to pursue the remedies available to it under C.R.S. § 32-1-701(3) in order to compel the District to dissolve in a prompt and orderly manner. In such event: (i) the limited purposes and powers of the District, as authorized herein, shall automatically terminate and be expressly limited to taking only those actions that are reasonably necessary to dissolve; (ii) the Board of the District will be deemed to have agreed with the City regarding its dissolution without an election pursuant to C.R.S. § 32-1-704(3)(b); (iii) the District shall take no action to contest or impede the dissolution of the District and shall affirmatively and diligently cooperate in securing the final dissolution of the District, and (iv) subject to the statutory requirements of the Special District Act, the District shall thereupon dissolve.

XV. REMEDIES

Should the District undertake any act without obtaining prior City Council approval or consent or City Manager approval or consent under this Service Plan, that constitutes a material modification to this Service Plan requiring a Service Plan Amendment as provided herein or under the Special Districts Act, or that does not otherwise comply with the provisions of this Service Plan, the City Council may impose one (1) or more of the following sanctions, as it deems appropriate:

1. Exercise any applicable remedy under the Special District Act;
2. Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default; or
3. Exercise any other legal and equitable remedy available under the law, including seeking prohibitory and mandatory injunctive relief against the District, to ensure compliance with the provisions of the Service Plan or applicable law.

XVI. INTERGOVERNMENTAL AGREEMENT WITH CITY

The District and the City shall enter into an intergovernmental agreement, the form of which shall be in substantially the form attached hereto as **Exhibit "L"** and incorporated by reference (the "IGA"). However, the City and the District may include such additional details, terms and conditions as they deem necessary in connection with the Project and the construction and funding of the Public Improvements and the Public Benefits. The District's Board shall approve the IGA at its first board meeting, unless agreed otherwise by the City Manager. Entering into this IGA is a precondition to the District issuing any Debt or imposing any Debt Mill Levy, Operating Mill Levy or Fee for the payment of Debt under this Service Plan. In addition, failure of the District to enter into the IGA as required herein shall constitute a material modification of this Service Plan and subject to the sanctions in Article XVII of this Service Plan. The City and the District may amend the IGA from time-to-time provided such amendment is not in conflict with any provision of this Service Plan.

XVII. CONCLUSION

It is submitted that this Service Plan, as required by C.R.S. § 32-1-203(2), establishes that:

1. There is sufficient existing and projected need for organized service in the Service Area to be served by the District;
2. The existing service in the Service Area to be served by the Districts is inadequate for present and projected needs;
3. The Districts are capable of providing economical and sufficient service to the Service Area; and
4. The Service Area does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

XVIII. RESOLUTION OF APPROVAL

The District agrees to incorporate the City Council's resolution approving this Service Plan, including any conditions on any such approval, into the copy of the Service Plan presented to the District Court for and in appropriate County of the State of Colorado.

Tim Navin
146 Hwy 6
Fruita, CO, 81521
(970) 270-6500
tim@sparksflystudioltd.com

15 January 2024

Dear Dan,

My name is Tim Navin and I am the owner of Sparks Fly Studio Ltd. here in Fruita, Colorado. We have been in business since 2020 and have seen exponential growth with our welding business. We are currently under contract to purchase the Co-op silo building located at 248 Highway 6 & 50; an iconic building we as “Fruitians” have all grown to love and cherish.

Our business has begun to heavily pursue a manufacturing need that has arisen to support the overlanding/river rafting/outdoor tourism trend that the Valley is seeing continuous growth in. I, along with Travis Lindley of Element Adventures, are working diligently to bring about an opportunity for several related businesses to find a home in our community. The Co-op Silo and attached warehouse provide an amazing space for these businesses to thrive and grow. Labrinth Overland, U.K., / Way Out Box , Quebec / Open Range Adventure Rigs, TX have all shown genuine interest in moving their operations to our town.

We are running into an issue that concerns a Rail Spur Lease with the Union Pacific Railroad (U.P.R.R.) which is a requirement in order to own the building and property. This extra cost has created a Gap in being able to find a lending solution with Tom Oliver and Alpine Bank. As a relatively new business still, we will have other costs and needs associated with our move to a new space and to continue our growth and economic contribution to our community. As mentioned before, this building and its silo are monuments in our little town. I would be honored with the privilege of being the steward of the property and keeper of our lighthouse.

I humbly ask that The City of Fruita and its leadership take a look at our situation, the partnership we can create and the potential that comes with it.

Best Regards,

Tim Navin

FRUITA COLORADO

AGENDA ITEM COVER SHEET

TO: Fruita City Council and Mayor

FROM: City Attorney, Mary Elizabeth Geiger

DATE: January 23, 2024

AGENDA TEXT: Sign Code text review and discussion

BACKGROUND

The City's current sign code needs to be amended to fully comply with recent case law. The City did amend its sign code after the U.S. Supreme Court decision in *Reed, et al. v. Town of Gilbert* (decided June 18, 2015) which imposed new standards on sign codes for compliance with the First amendment to the US Constitution. However, additional case law and interpretation of *Gilbert* means that the City needs to update its sign code again. Essentially, the City can only regulate the size, timing and placement/location of signs but cannot regulate the content. The City can regulate "temporary signs" differently from "permanent ones." However, if you have to ask what the sign says in order to ascertain what regulations apply, then the regulations are not lawful. Example: City Code states that political signs can go up 60 days before the election and must be taken down within 30 days after the election. Garage sale signs can go up one week before the sale and must be removed within three days after. These regulations are not lawful because you have to know what the sign says in order to know how long it can stay in place.

This item is to discuss with Council next steps on amending the code by addressing duration for all temporary signs. Attached is an example of such an update from Newcastle, CO.

ATTACHMENTS

Attachments:

City of Austin v Reagan National Advertising
Reed v Gilbert
New Castle Sign Ordinance

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CITY OF AUSTIN, TEXAS *v.* REAGAN NATIONAL ADVERTISING OF AUSTIN, LLC, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 20–1029. Argued November 10, 2021—Decided April 21, 2022

Like a great many jurisdictions around the country, the City of Austin, Texas (City), specially regulates signs that advertise things that are not located on the same premises as the sign, as well as signs that direct people to offsite locations. See City Code §25–10–102(1). These are known as off-premises signs. The City's sign code at the time of this dispute prohibited construction of new off-premises signs. *Ibid.* Grandfathered off-premises signs could remain in their existing locations as "nonconforming signs," but could not be altered in ways that increased their nonconformity. §§25–10–3(10), 25–10–152(A)–(B). On-premises signs were not similarly restricted. §25–10–102(6).

Respondents, Reagan National Advertising of Austin, LLC, and Lamar Advantage Outdoor Company, L. P., own billboards in Austin. When Reagan sought permits to digitize some of its billboards, the City denied its applications. Reagan filed suit in state court, alleging that the City's prohibition against digitizing off-premises signs, but not on-premises signs, violated the First Amendment's Free Speech Clause. The City removed the case to federal court, and Lamar intervened. The District Court held that the challenged sign code provisions were content neutral under *Reed* v. *Town of Gilbert*, 576 U. S. 155, reviewed the City's on-/off-premises distinction under intermediate scrutiny, and found that the distinction satisfied that standard. The Court of Appeals reversed. It found the on-/off-premises distinction to be facially content based because a government official had to read a sign's message to determine whether the sign was off-premises. The court then reviewed the City's on-/off-premises distinction under strict scrutiny, and it held that the City failed to satisfy that onerous standard.

Held: The City's on-/off-premises distinction is facially content neutral

under the First Amendment. Pp. 6–14.

(a) *Reed* held that a regulation of speech is content based under the First Amendment if it "target[s] speech based on its communicative content," *i.e.,* if it "applies to particular speech because of the topic discussed or the idea or message expressed." 576 U. S., at 163. The Court of Appeals' interpretation of *Reed*—to mean that a regulation cannot be content neutral if its application requires reading the sign at issue—is too extreme an interpretation of this Court's precedent. Pp. 6–12.

(1) In *Reed*, the town of Gilbert, Arizona, adopted a comprehensive sign code that applied distinct size, placement, and time restrictions to 23 different categories of signs, giving more favorable treatment to some categories (such as ideological signs or political signs) and less favorable treatment to others (such as temporary directional signs relating to religious events, educational events, or other similar events). The Court rejected the contention that the restrictions were content neutral because they did not discriminate on the basis of particular viewpoints, reasoning that "a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter." 576 U. S., at 169. Unlike the sign code in *Reed*, the City's sign ordinances here do not single out any topic or subject matter for differential treatment. A sign's message matters only to the extent that it informs the sign's relative location. Thus, the City's on-/off-premises distinction is more like ordinary time, place, or manner restrictions, which do not require the application of strict scrutiny. Cf. *Frisby* v. *Schultz,* 487 U. S. 474, 482. Pp. 6–8.

(2) This Court's precedents and doctrines have consistently recognized that restrictions on speech may require some evaluation of the speech and nonetheless remain content neutral. Most relevant here, the First Amendment allows for regulations of solicitation, and speech must be read or heard to determine whether it entails solicitation. See *Heffron* v. *International Soc. for Krishna Consciousness, Inc.,* 452 U. S. 640. Moreover, the Court has previously understood distinctions between on-premises and off-premises signs to be content neutral. See *Suffolk Outdoor Advertising Co.* v. *Hulse*, 439 U. S. 808 (order dismissing appeal); *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789. Underlying these cases and others is a rejection of the view that *any* examination of speech or expression inherently triggers heightened First Amendment concern. Rather, content-based regulations are those that discriminate based on "the topic discussed or the idea or message expressed." *Reed*, 576 U. S., at 171. Pp. 8–10.

(3) Reagan's counterargument relies primarily on a sentence in *Reed* recognizing that "[s]ome facial distinctions based on a message

are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose." 576 U. S., at 163. Reagan contends that the City's sign code defines off-premises signs on the basis of function or purpose and is therefore content based and subject to strict scrutiny. This stretches *Reed*'s "function or purpose" language too far. *Reed* held that subtler forms of content discrimination cannot escape classification as content based simply because they swap an obvious subject-matter distinction for a function or purpose proxy. That does not mean that any classification that considers function or purpose is *always* content based. Reagan's reading of *Reed* would contravene numerous precedents and cast doubt on the Nation's history of regulating off-premises signs. Pp. 11–12.

(b) This Court's determination that the City's on-/off-premises distinction is facially content neutral does not end the First Amendment inquiry. Evidence that an impermissible purpose or justification underpins a facially content-neutral restriction may mean that the restriction is nevertheless content based. Moreover, to survive intermediate scrutiny, a restriction on speech or expression must be "'narrowly tailored to serve a significant governmental interest.'" *Ward* v. *Rock Against Racism,* 491 U. S. 781, 791. Because the Court of Appeals did not address these issues, the Court leaves them for remand and expresses no view on the matters. Pp. 13–14.

972 F. 3d 696, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and BREYER, KAGAN, and KAVANAUGH, JJ., joined. BREYER, J., filed a concurring opinion. ALITO, J., filed an opinion concurring in the judgment in part and dissenting in part. THOMAS, J., filed a dissenting opinion, in which GORSUCH and BARRETT, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 20–1029

CITY OF AUSTIN, TEXAS, PETITIONER *v.*
REAGAN NATIONAL ADVERTISING
OF AUSTIN, LLC, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April 21, 2022]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Like thousands of jurisdictions around the country, the City of Austin, Texas (City), regulates signs that advertise things that are not located on the same premises as the sign, as well as signs that direct people to offsite locations. These are known as off-premises signs, and they include, most notably, billboards. The question presented is whether, under this Court's precedents interpreting the Free Speech Clause of the First Amendment, the City's regulation is subject to strict scrutiny. We hold that it is not.

I

A

American jurisdictions have regulated outdoor advertisements for well over a century. See C. Taylor & W. Chang, The History of Outdoor Advertising Regulation in the United States, 15 J. of Macromarketing 47, 48 (Spring 1995). By some accounts, the proliferation of conspicuous patent-medicine advertisements on rocks and barns prompted States to begin regulating outdoor advertising in the late 1860s. *Ibid.*; F. Presbrey, The History and

Development of Advertising 500–501 (1929). As part of this regulatory tradition, federal, state, and local governments have long distinguished between signs (such as billboards) that promote ideas, products, or services located elsewhere and those that promote or identify things located onsite. For example, this Court in 1932 reviewed and approved of a Utah statute that prohibited signs advertising cigarettes and related products, but allowed businesses selling such products to post onsite signs identifying themselves as dealers. *Packer Corp.* v. *Utah*, 285 U. S. 105, 107, 110.

On-/off-premises distinctions, like the one at issue here, proliferated following the enactment of the Highway Beautification Act of 1965 (Act), 23 U. S. C. §131. In the Act, Congress directed States receiving federal highway funding to regulate outdoor signs in proximity to federal highways, in part by limiting off-premises signs. See §§131(b)–(c) (allowing exceptions for "signs, displays, and devices advertising the sale or lease of property upon which they are located" and "signs, displays, and devices . . . advertising activities conducted on the property on which they are located"). Under the Act, approximately two-thirds of States have implemented similar on-/off-premises distinctions. See App. A to Reply to Brief in Opposition (collecting statutes); Brief for State of Florida et al. as *Amici Curiae* 7, n. 3 (same). The City represents, and respondents have not disputed, that "tens of thousands of municipalities nationwide" have adopted analogous on-/off-premises distinctions in their sign codes. Brief for Petitioner 19; see also App. B to Reply to Brief in Opposition (collecting examples of ordinances); Brief for State of Florida et al. as *Amici Curiae* 8, n. 4 (same).

The City of Austin is one such municipality. The City distinguishes between on-premises and off-premises signs in its sign code, and specially regulates the latter, in order to "protect the aesthetic value of the city and to protect public safety." App. 39.

During the time period relevant to this dispute, the City's sign code defined the term "off-premise sign" to mean "a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site." Austin, Tex., City Code §25–10–3(11) (2016). This definition was materially analogous to the one used in the federal Highway Beautification Act and many other state and local codes referenced above. The code prohibited the construction of any new off-premises signs, §25–10–102(1), but allowed existing off-premises signs to remain as grandfathered "non-conforming signs," §25–10–3(10). An owner of a grandfathered off-premises sign could "continue or maintain [it] at its existing location" and could change the "face of the sign," but could not "increase the degree of the existing nonconformity," "change the method or technology used to convey a message," or "increase the illumination of the sign." §§25–10–152(A)–(B). By contrast, the code permitted the digitization of on-premises signs. §25–10–102(6) (permitting "electronically controlled changeable-copy sign[s]").[1]

B

Respondents, Reagan National Advertising of Austin, LLC (Reagan), and Lamar Advantage Outdoor Company, L. P. (Lamar), are outdoor-advertising companies that own billboards in Austin. In April and June of 2017, Reagan sought permits from the City to digitize some of its off-premises billboards. The City denied the applications. Reagan filed suit against the City in state court alleging that the code's prohibition against digitizing off-premises signs, but not on-premises signs, violated the Free Speech Clause of the First Amendment. The City removed the case

[1] The City subsequently amended its sign code. The parties agree that the amendments do not affect this dispute. Reply to Brief in Opposition 11–12; Brief for Respondent Reagan 9.

to federal court, and Lamar intervened as a plaintiff.[2]

After the parties stipulated to the pertinent facts, the District Court held a bench trial and entered judgment in favor of the City. 377 F. Supp. 3d 670, 673, 683 (WD Tex. 2019). As relevant, the court held that the challenged sign code provisions were content neutral under *Reed* v. *Town of Gilbert*, 576 U. S. 155 (2015). The court explained that "the on/off premises distinction [did] not impose greater restrictions for political messages, religious messages, or any other subject matter," and "d[id] not require a viewer to evaluate the topic, idea, or viewpoint on the sign"; instead, it required the viewer only "to determine whether the subject matter is located on the same property as the sign." 377 F. Supp. 3d, at 681. The court therefore held that the distinction was a facially content-neutral "regulation based on location." *Ibid.* The court further found "no evidence in the record" that the City had applied the sign code provisions "differently for different messages or speakers" or that its stated concern for esthetics and safety was "pretext for any other purpose." *Id.,* at 681–682. Accordingly, the court reviewed the City's on-/off-premises distinction under the standard of intermediate scrutiny applicable to content-neutral regulations of speech. *Id.,* at 682. The court found that the distinction satisfied this standard. *Id.,* at 682–683.

The Court of Appeals reversed. 972 F. 3d 696, 699 (CA5 2020). The court opined that because the City's on-/off-premises distinction required a reader to inquire "who is the speaker and what is the speaker saying," "both hallmarks of a content-based inquiry," the distinction was content based. *Id.,* at 706. It reasoned that "[t]he fact that a government official ha[s] to read a sign's message to determine the sign's purpose [i]s enough to" render a regulation content based and "subject [it] to strict scrutiny." *Ibid.*

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[2] Lamar did not participate in the proceedings on the merits before this Court. Brief for Respondent Reagan II.

(citing *Thomas* v. *Bright*, 937 F. 3d 721, 730–731 (CA6 2019)); see also 972 F. 3d, at 704 ("To determine whether a sign is on-premises or off-premises, one must read the sign . . . "). The court acknowledged that its interpretation of *Reed* was "broad," but reasoned that the consequences were "not . . . unforeseen," given the concerns raised by Justices who did not join the opinion of the Court. 972 F. 3d, at 707.

Because the Court of Appeals determined that the City's on-/off-premises distinction imposed a content-based restriction on speech, it reviewed that distinction under the onerous standard of strict scrutiny. Recognizing that strict scrutiny "is, understandably, a hard standard to meet" and that it "leads to almost certain legal condemnation," *id.,* at 709, the court held that the City's justifications for the distinction could not meet that standard, rendering it unconstitutional, *id.,* at 709–710.[3]

This Court granted certiorari. 594 U. S. ___ (2021).

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[3]The Court of Appeals further considered the possibility that the code provisions regulated only commercial speech, such that only intermediate scrutiny would apply even if the provisions were content based. 972 F. 3d, at 707–709; see *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557, 566 (1980). The court rejected this view because the provisions "applie[d] with equal force to both commercial and noncommercial messages." 972 F. 3d, at 709. Before this Court, the City makes a similar argument, claiming that "[a]s applied to billboards like those owned by respondents," the contested code provisions regulate commercial speech and so are subject to intermediate scrutiny. Brief for Petitioner 49. It is undisputed, however, that Reagan's billboards also display noncommercial messages, meaning that the City's denial of Reagan's applications for digitization implicated Reagan's commercial and noncommercial speech alike. See Brief for Respondent Reagan 45–46; App. 130–141. More importantly, as the Court of Appeals explained, the contested code provisions admit of no exception for noncommercial speech. The only way in which they differentiate speech is by distinguishing between on-premises and off-premises signs. The Court thus must determine which level of scrutiny applies to the manner in which the provisions actually regulate speech.

II

A regulation of speech is facially content based under the First Amendment if it "target[s] speech based on its communicative content"—that is, if it "applies to particular speech because of the topic discussed or the idea or message expressed." *Reed*, 576 U. S., at 163. The Court of Appeals interpreted *Reed* to mean that if "[a] reader must ask: who is the speaker and what is the speaker saying" to apply a regulation, then the regulation is automatically content based. 972 F. 3d, at 706. This rule, which holds that a regulation cannot be content neutral if it requires reading the sign at issue, is too extreme an interpretation of this Court's precedent. Unlike the regulations at issue in *Reed*, the City's off-premises distinction requires an examination of speech only in service of drawing neutral, location-based lines. It is agnostic as to content. Thus, absent a content-based purpose or justification, the City's distinction is content neutral and does not warrant the application of strict scrutiny.

A

The *Reed* Court confronted a very different regulatory scheme than the one at issue here: a comprehensive sign code that "single[d] out specific subject matter for differential treatment." 576 U. S., at 169. The town of Gilbert, Arizona, had adopted a code that applied distinct size, placement, and time restrictions to 23 different categories of signs. *Id.,* at 159. The Court focused its analysis on three categories defined by whether the signs displayed ideological, political, or certain temporary directional messages. The code gave the most favorable treatment to "'Ideological Sign[s],'" defined as those "'communicating a message or ideas for noncommercial purposes'" with certain exceptions. *Id.,* at 159–160 (alteration in original). It offered less favorable treatment to "'Political Sign[s],'" defined as those "'designed to influence the outcome of an election.'" *Id.,* at

160 (alteration in original). Most restricted of all were "'Temporary Directional Signs Relating to a Qualifying Event,'" with qualifying events defined as gatherings "'sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar nonprofit organization.'" *Id.,* at 160–161.

The *Reed* Court determined that these restrictions were facially content based. *Id.,* at 164–165. Rejecting the contention that the restrictions were content neutral because they did not discriminate on the basis of viewpoint, the Court explained: "[I]t is well established that '[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.'" *Id.,* at 169 (quoting *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537 (1980)); accord, *e.g., Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 95 (1972) (explaining that "[t]he central problem" with a municipality's effort to exempt labor picketing from a prohibition on picketing near public schools was "that it describes permissible picketing in terms of its subject matter"); *Carey* v. *Brown*, 447 U. S. 455, 460–461 (1980) (subjecting a similar statute that "accord[ed] preferential treatment to the expression of views on one particular subject" to strict scrutiny).[4] Applying these principles, the Court reasoned that "a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. . . . For example, a law

[4] The concurrence in *Reed*, which spoke for three of the six Justices in the majority, similarly explained that "[c]ontent-based laws merit th[e] protection" of strict scrutiny "because they present, albeit sometimes in a subtler form, the same dangers as laws that regulate speech based on viewpoint. Limiting speech based on its 'topic' or 'subject' favors those who do not want to disturb the status quo. Such regulations may interfere with democratic self-government and the search for truth." 576 U. S., at 174 (ALITO, J., concurring) (quoting *Consolidated Edison Co. of N. Y.*, 447 U. S., at 537).

banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed." 576 U. S., at 169. By treating ideological messages more favorably than political messages, and both more favorably than temporary directional messages, "[t]he Town's Sign Code likewise single[d] out specific subject matter for differential treatment, even if it [did] not target viewpoints within that subject matter." *Ibid.*

In this case, enforcing the City's challenged sign code provisions requires reading a billboard to determine whether it directs readers to the property on which it stands or to some other, offsite location. Unlike the sign code at issue in *Reed*, however, the City's provisions at issue here do not single out any topic or subject matter for differential treatment. A sign's substantive message itself is irrelevant to the application of the provisions; there are no content-discriminatory classifications for political messages, ideological messages, or directional messages concerning specific events, including those sponsored by religious and nonprofit organizations. Rather, the City's provisions distinguish based on location: A given sign is treated differently based solely on whether it is located on the same premises as the thing being discussed or not. The message on the sign matters only to the extent that it informs the sign's relative location. The on-/off-premises distinction is therefore similar to ordinary time, place, or manner restrictions. *Reed* does not require the application of strict scrutiny to this kind of location-based regulation. Cf. *Frisby* v. *Schultz*, 487 U. S. 474, 482 (1988) (sustaining an ordinance that prohibited "only picketing focused on, and taking place in front of, a particular residence" as content neutral).

B

This Court's First Amendment precedents and doctrines have consistently recognized that restrictions on speech

may require some evaluation of the speech and nonetheless remain content neutral.

Most relevant here, the First Amendment allows for regulations of solicitation—that is, speech "requesting or seeking to obtain something" or "[a]n attempt or effort to gain business." Black's Law Dictionary 1677 (11th ed. 2019). To identify whether speech entails solicitation, one must read or hear it first. Even so, the Court has reasoned that restrictions on solicitation are not content based and do not inherently present "the potential for becoming a means of suppressing a particular point of view," so long as they do not discriminate based on topic, subject matter, or viewpoint. *Heffron* v. *International Soc. for Krishna Consciousness, Inc.*, 452 U. S. 640, 649 (1981).

Thus, in 1940, the Court invalidated a statute prohibiting solicitation for religious causes but observed that States were "free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience." *Cantwell* v. *Connecticut*, 310 U. S. 296, 306–307. Decades later, the Court reviewed just such a time, place, and manner regulation restricting all solicitation at the Minnesota State Fair, as well as all sale or distribution of merchandise, to a specific location. *Heffron*, 452 U. S., at 643–644. The State had applied the restriction against a religious practice that included "solicit[ing] donations for the support of the Krishna religion." *Id.,* at 645. As a result, members of the religion were free to roam the fairgrounds and discuss their beliefs, but they were prohibited from asking for donations for their cause outside of a designated location. *Id.,* at 646, 655. The Court upheld the State's application of this restriction as content neutral, emphasizing that it "applie[d] evenhandedly to all who wish[ed] . . . to solicit funds," whether for "commercial or charitable" reasons. *Id.,* at 649.

Consistent with these precedents, the Court has previously understood distinctions between on-premises and off-

premises signs, like the one at issue in this case, to be content neutral. In 1978, the Court summarily dismissed an appeal "for want of a substantial federal question" where a state court had approved of an on-/off-premises distinction as a permissible time, place, and manner restriction under the Free Speech Clause. *Suffolk Outdoor Advertising Co.* v. *Hulse*, 439 U. S. 808 (1978). Three years later, the Court upheld in relevant part an ordinance that prohibited all off-premises commercial advertising but allowed on-premises commercial advertising. *Metromedia, Inc.* v. *San Diego*, 453 U. S. 490, 503–512 (1981) (plurality opinion).[5] The *Metromedia* Court did not need to decide whether the off-premises prohibition was content based, as it regulated only commercial speech and so was subject to intermediate scrutiny in any event. See *id.,* at 507–512 (citing *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557 (1980)). Shortly thereafter, however, the Court applied the relevant portion of *Metromedia* and described the off-premises prohibition as "a *content-neutral* prohibition against the use of billboards." *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789, 807 (1984) (emphasis added).

Underlying these cases and others is a rejection of the view that *any* examination of speech or expression inherently triggers heightened First Amendment concern. Rather, it is regulations that discriminate based on "the topic discussed or the idea or message expressed" that are content based. *Reed*, 576 U. S., at 171. The sign code provisions challenged here do not discriminate on those bases.

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[5] Although the opinion in *Metromedia* was labeled a plurality for four Justices, the relevant portion of the opinion was also joined by a fifth. See 453 U. S., at 541 (Stevens, J., dissenting in part) ("join[ing] Parts I through IV of JUSTICE WHITE's opinion").

C

Reagan does not claim *Reed* expressly or implicitly overturned the precedents discussed above. Its argument relies primarily on one sentence in *Reed* recognizing that "[s]ome facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose." *Id.,* at 163. Seizing on this reference, Reagan asserts that the City's sign code "defines off-premises signs based on their 'function or purpose.'" Brief for Respondent Reagan 20 (quoting *Reed*, 576 U. S., at 163). It asks the Court to "reaffirm that, where a regulation 'define[s] regulated speech by its function or purpose,' it is content-based on its face and thus subject to strict scrutiny." Brief for Respondent Reagan 34 (quoting *Reed*, 576 U. S., at 163).

The argument stretches *Reed*'s "function or purpose" language too far. The principle the *Reed* Court articulated is more straightforward. While overt subject-matter discrimination is facially content based (for example, "'Ideological Sign[s],'" defined as those "'communicating a message or ideas for noncommercial purposes'"), so, too, are subtler forms of discrimination that achieve identical results based on function or purpose (for example, "'Political Sign[s],'" defined as those "'designed to influence the outcome of an election'"). *Id.,* at 159, 160, 163–164 (alterations in original). In other words, a regulation of speech cannot escape classification as facially content based simply by swapping an obvious subject-matter distinction for a "function or purpose" proxy that achieves the same result. That does not mean that any classification that considers function or purpose is *always* content based. Such a reading of "function or purpose" would contravene numerous precedents, including many of those discussed above. *Reed* did not purport to cast doubt on these cases.

Nor did *Reed* cast doubt on the Nation's history of regulating off-premises signs. Off-premises billboards of the sort that predominate today were not present in the founding era, but as large outdoor advertisements proliferated in the 1800s, regulation followed. As early as 1932, the Court had already approved a location-based differential for advertising signs. See *Packer Corp.*, 285 U. S., at 107, 110. Thereafter, for the last 50-plus years, federal, state, and local jurisdictions have repeatedly relied upon on-/off-premises distinctions to address the distinct safety and esthetic challenges posed by billboards and other methods of outdoor advertising. See *supra,* at 2. The unbroken tradition of on-/off-premises distinctions counsels against the adoption of Reagan's novel rule. See *Williams-Yulee* v. *Florida Bar*, 575 U. S. 433, 446 (2015) (recognizing "history and tradition of regulation" as relevant when considering the scope of the First Amendment).[6]

D

Tellingly, even today's dissent appears reluctant to embrace the read-the-sign rule adopted by the court below. In-

[6]The Court of Appeals, for its part, understood *Reed* to have deemed a regulation content based solely because "it 'single[d] out signs bearing a particular message: the time and location of a specific event.'" 972 F. 3d 696, 706 (CA5 2020) (quoting *Reed*, 576 U. S., at 171). Reagan does not rely as heavily on this language, and for good reason. As a preliminary matter, the *Reed* Court found that the provisions at issue in that case did not, in fact, "hinge on 'whether and when an event is occurring.'" *Id.,* at 170. More fundamentally, those provisions did not target all events generally, regardless of topic; they targeted "a specific event" (an election) "because of the topic discussed or the idea or message expressed" (political speech). *Id.,* at 171. The Court of Appeals' contrary reading would render the majority opinion in *Reed* irreconcilable with the concurrence, which recognized that "[r]ules imposing time restrictions on signs advertising a one-time event," which "do not discriminate based on topic or subject," would be content neutral. *Id.,* at 174, 175 (ALITO, J., concurring).

stead, the dissent attacks a straw man. Contrary to its accusations, we do not "nullif[y]" *Reed*'s protections, "resuscitat[e]" a decision that we do not cite, or fashion a novel "specificity test" simply by quoting the standard repeatedly enunciated in *Reed*. *Post,* at 9, 11, 21 (opinion of THOMAS, J.). Nor do we cast doubt on any of our precedents recognizing examples of topic or subject-matter discrimination as content based. See, *e.g., post,* at 9–10. We merely apply those precedents to reach the "commonsense" result that a location-based and content-agnostic on-/off-premises distinction does not, on its face, "singl[e] out specific subject matter for differential treatment." *Reed*, 576 U. S., at 163, 169.

It is the dissent that would upend settled understandings of the law. Where we adhere to the teachings of history, experience, and precedent, the dissent would hold that tens of thousands of jurisdictions have presumptively violated the First Amendment, some for more than half a century, and that they have done so by use of an on-/off-premises distinction this Court has repeatedly reviewed and never previously questioned. For the reasons we have explained, the Constitution does not require that bizarre result.

III

This Court's determination that the City's ordinance is facially content neutral does not end the First Amendment inquiry. If there is evidence that an impermissible purpose or justification underpins a facially content-neutral restriction, for instance, that restriction may be content based. See *Reed*, 576 U. S., at 164. Moreover, to survive intermediate scrutiny, a restriction on speech or expression must be "'narrowly tailored to serve a significant governmental interest.'" *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791 (1989).

The parties dispute whether the City can satisfy these requirements. This Court, however, is "a court of final review

and not first view," and it does not "[o]rdinarily . . . decide in the first instance issues not decided below." *Zivotofsky* v. *Clinton*, 566 U. S. 189, 201 (2012) (internal quotation marks omitted). "In particular, when we reverse on a threshold question, we typically remand for resolution of any claims the lower courts' error prevented them from addressing." *Ibid.* Because the Court of Appeals did not address these issues, the Court leaves them for remand and expresses no view on the matters.

* * *

For these reasons, the judgment of the Court of Appeals for the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 20–1029

CITY OF AUSTIN, TEXAS, PETITIONER *v.*
REAGAN NATIONAL ADVERTISING
OF AUSTIN, LLC, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April 21, 2022]

JUSTICE BREYER, concurring.

Reed v. *Town of Gilbert*, 576 U. S. 155 (2015), is binding precedent here. Given that precedent, I join the majority's opinion. I write separately because I continue to believe that the Court's reasoning in *Reed* was wrong. The Court there struck down a city's sign ordinance under the First Amendment. It wrote that the First Amendment requires strict scrutiny whenever a regulation "target[s] speech based on its communicative content." *Id.,* at 163. It therefore concluded that "[c]ontent-based laws . . . are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Ibid.*

But the First Amendment is not the Tax Code. Its purposes are often better served when judge-made categories (like "content discrimination") are treated, not as bright-line rules, but instead as rules of thumb. And, where strict scrutiny's harsh presumption of unconstitutionality is at issue, it is particularly important to avoid jumping to such presumptive conclusions without first considering "whether the regulation at issue works harm to First Amendment interests that is disproportionate in light of the relevant regulatory objectives." *Id.,* at 179 (BREYER, J., concurring in judgment); *Barr* v. *American Assn. of Political Consultants,*

Inc., 591 U. S. ___, ___–___ (2020) (BREYER, J., concurring in judgment and dissenting in part) (slip op., at 9–10); *Sorrell* v. *IMS Health Inc.*, 564 U. S. 552, 582 (2011) (BREYER, J., dissenting). Here, I would conclude that the City of Austin's (City's) regulation of off-premises signs works no such disproportionate harm. I therefore agree with the majority's conclusion that strict scrutiny and its attendant presumption of unconstitutionality are unwarranted. The majority reaches this conclusion by applying *Reed*'s formal framework, as *stare decisis* requires. I would add that *Reed*'s strict formalism can sometimes disserve the very First Amendment interests it was designed to protect.

I

The First Amendment helps to safeguard what Justice Holmes described as a marketplace of ideas. *Abrams* v. *United States,* 250 U. S. 616, 630 (1919) (dissenting opinion). A democratic people must be able to freely "generate, debate, and discuss both general and specific ideas, hopes, and experiences." *Barr*, 591 U. S., at ___ (opinion of BREYER, J.) (slip op., at 3). They "must then be able to transmit their resulting views and conclusions to their elected representatives, which they may do directly, or indirectly through the shaping of public opinion." *Ibid.* Those representatives can respond by turning the people's ideas into policies. The First Amendment, by protecting the "marketplace" and the "transmission" of ideas, thereby helps to protect the basic workings of democracy itself. See *Meyer* v. *Grant*, 486 U. S. 414, 421 (1988) ("The First Amendment was 'fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people'").

Courts help to protect these democratic values in part by strictly scrutinizing certain categories of laws that threaten to "'drive certain ideas or viewpoints from the marketplace.'" *R. A. V.* v. *St. Paul*, 505 U. S. 377, 387 (1992). We

have recognized, for example, that First Amendment values are in danger when the government imposes restrictions upon "'core political speech,'" *Buckley* v. *American Constitutional Law Foundation, Inc.*, 525 U. S. 182, 186–187 (1999); when it discriminates against "particular views taken by speakers on a subject," *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829–830 (1995); and, in some contexts, when it removes "an entire topic" of discussion from public debate, *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537–538 (1980).

But not all laws that distinguish between speech based on its content fall into a category of this kind. That is in part because many ordinary regulatory programs may well turn on the content of speech without posing any "realistic possibility that official suppression of ideas is afoot." *R. A. V.*, 505 U. S., at 390. Those regulations, rather than hindering the ability of the people to transmit their thoughts to their elected representatives, may constitute the very product of that transmission. *Barr*, 591 U. S., at ___ (opinion of BREYER, J.) (slip op., at 4).

The U. S. Code (as well as its state and local equivalents) is filled with regulatory laws that turn, often necessarily, on the content of speech. Consider laws regulating census reporting requirements, *e.g.,* 13 U. S. C. §224; securities-related disclosures, *e.g.,* 15 U. S. C. §78*l*; copyright infringement, *e.g.,* 17 U. S. C. §102; labeling of prescription drugs, *e.g.,* 21 U. S. C. §353(b)(4)(A), or consumer electronics, *e.g.,* 42 U. S. C. §6294; highway signs, *e.g.,* 23 U. S. C. §131(c); tax disclosures, *e.g.,* 26 U. S. C. §6039F; confidential medical records, *e.g.,* 38 U. S. C. §7332; robocalls, *e.g.,* 47 U. S. C. §227; workplace safety warnings, *e.g.,* 29 CFR §1910.145 (2021); panhandling, *e.g.,* Ala. Code §13A–11–9(a) (2022); solicitation on behalf of charities, *e.g.,* N. Y. Exec. Law Ann. §174–b (West 2019); signs at petting zoos, *e.g.,* N. Y. Gen. Bus. Law Ann. §399–ff(3) (West 2015); and many more.

If *Reed* is taken as setting forth a formal rule that courts must strictly scrutinize regulations simply because they refer to particular content, we have good reason to fear the consequences of that decision. One possibility is that courts will strike down "'entirely reasonable'" regulations that reflect the will of the people. *Reed*, 576 U. S., at 171; *e.g., Barr*, 591 U. S., at ___ (slip op., at 9) (striking down the Telephone Consumer Protection Act's exception allowing robocalls that collect government debt); *IMDB.com* v. *Becerra*, 962 F. 3d 1111, 1125–1127 (CA9 2020) (striking down a California law prohibiting certain websites from publishing the birthdates of entertainment professionals). If so, the Court's content-based line-drawing will "substitut[e] judicial for democratic decisionmaking" and threaten the ability of the people to translate their ideas into policy. *Sorrell*, 564 U. S., at 603 (BREYER, J., dissenting).

A second possibility is that courts instead will (perhaps unconsciously) dilute the stringent strict scrutiny standard in an effort to avoid striking down reasonable regulations. Doing so would "weaken the First Amendment's protection in instances where 'strict scrutiny' should apply in full force." *Reed*, 576 U. S., at 178 (opinion of BREYER, J.).

A third possibility is that courts will develop a matrix of formal subsidiary rules and exceptions that seek to distinguish between reasonable and unreasonable content-based regulations. Such a patchwork, however, may prove overly complex, unwieldy, or unworkable. And it may make it more difficult for ordinary Americans to understand the importance of First Amendment values and to live their lives in accord with those values.

For these reasons, as I have said before, I would reject *Reed's* approach, which too rigidly ties content discrimination to strict scrutiny (and, consequently, to "almost certain legal condemnation"). *Id.*, at 176. Instead, I would treat content discrimination as a rule of thumb to be applied with what JUSTICE KAGAN has called "a dose of common sense."

Id., at 183 (opinion concurring in judgment). Where content-based regulations are at issue, I would ask a more basic First Amendment question: Does "the regulation at issue wor[k] harm to First Amendment interests that is disproportionate in light of the relevant regulatory objectives"? *Id.,* at 179 (opinion of BREYER, J.). I believe we should answer that question by examining "the seriousness of the harm to speech, the importance of the countervailing objectives, the extent to which the law will achieve those objectives, and whether there are other, less restrictive ways of doing so." *Ibid.*

II

The regulation at issue in this case is the City of Austin's sign code, which regulates billboards and other "off-premises" signs. The City defines an "off-premises" sign as "a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site." Austin, Tex., City Code §25–10–3(11) (2016).

Some years ago, the City forbid construction of new off-premises signs. §25–10–102(1). At the same time, it grandfathered in existing off-premises signs, allowing them to remain but subjecting them to regulation. §§25–10–3(10), 25–10–152(A), (B). Owners of grandfathered off-premises signs are allowed to change the face of their signs, but not to digitize them. *Ibid.* In the case before us, owners who wanted to digitize their off-premises signs challenged the City's regulation on the ground that it violates the First Amendment.

The Court remands for the lower courts to assess the constitutionality of this regulation in the first instance, so I need not answer that question conclusively now. I wish only to illustrate why I believe a strong presumption of unlawfulness is out of place here.

Billboards and other roadside signs can generally be categorized as a form of outdoor advertising. Regulation of outdoor advertising in order to protect the public's interest in "avoiding visual clutter," *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789, 806 (1984), or minimizing traffic risks, *Metromedia, Inc.* v. *San Diego*, 453 U. S. 490, 507–508 (1981), is unlikely to interfere significantly with the "marketplace of ideas." In this case, for example, there is no evidence that the City regulated off-premises signs in order to censor a particular viewpoint or topic, or that its regulations have had that effect in practice. There is consequently little reason to apply a presumption of unconstitutionality to this kind of regulation.

Without such a presumption, I would weigh the First Amendment harms that a regulation imposes against the regulatory objectives that it serves. The City's regulation here appears to work at most a limited, niche-like harm to First Amendment interests. Respondents own a number of grandfathered off-premises signs. They can use those signs to communicate whatever messages they choose. They complain only that they cannot digitize the signs, which would allow them to display several messages in rapid succession. Perhaps digitization would enable them to make more effective use of their billboard space. But their inability to maximize the use of their space in this way is unlikely to meaningfully interfere with their participation in the "marketplace of ideas."

At the same time, the City has asserted a legitimate interest in maintaining the regulation. As I have said, the public has an interest in ensuring traffic safety and preserving an esthetically pleasing environment, *supra* this page, and the City here has reasonably explained how its regulation of off-premises signs in general, and digitization in particular, serves those interests. *Amici* tell us that billboards, especially digital ones, can distract drivers and cause accidents. See, *e.g.,* Brief for United States as *Amicus*

Curiae 21 (citing a study of 450 crashes in Alabama and Florida that "revealed that the presence of digital billboards increased the overall crash rates in areas of billboard influence"); Brief for National League of Cities et al. as *Amici Curiae* 22 ("'The Wisconsin Department of Transport found a 35% increase in collisions near a variable message sign'" (alteration omitted)). They add that on-premises signs are less likely to cause accidents. *Id.,* at 23 ("[A] 2014 study found no evidence that on premises digital signs led to an increase in crashes"). The City further says that billboards cause more visual clutter than on-premises signs because the latter are "typically 'small in size' and integrated into the premises." Reply Brief 19.

I would leave for the courts below to weigh these harms and interests, and any alternatives, in the first instance, without a strong presumption of unconstitutionality.

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[April 21, 2022]

JUSTICE ALITO, concurring in the judgment in part and dissenting in part.

I agree with the majority that we must reverse the decision of the Court of Appeals holding that the provisions of the Austin City Code regulating on- and off-premises signs are facially unconstitutional. *Ante*, at 6. The Court of Appeals reasoned that those provisions impose content-based restrictions and that they cannot satisfy strict scrutiny, but the Court of Appeals did not apply the tests that must be met before a law is held to be facially unconstitutional. "Normally, a plaintiff bringing a facial challenge must 'establish that no set of circumstances exists under which the [law] would be valid,' or show that the law lacks 'a plainly legitimate sweep.'" *Americans for Prosperity Foundation* v. *Bonta*, 594 U. S. ___, ___ (2021) (slip op., at 15) (citation omitted). A somewhat less demanding test applies when a law affects freedom of speech. Under our First Amendment "overbreadth" doctrine, a law restricting speech is unconstitutional "if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States* v. *Stevens*, 559 U. S. 460, 473 (2010) (internal quotation marks omitted).

In this case, the Court of Appeals did not apply either of those tests, and it is doubtful that they can be met. Many

(and possibly the great majority) of the situations in which the relevant provisions may apply involve commercial speech, and under our precedents, regulations of commercial speech are analyzed differently. See *Sorrell* v. *IMS Health Inc.*, 564 U. S. 552, 571–572 (2011).

It is also questionable whether those code provisions are unconstitutional as applied to most of respondents' billboards. It appears that most if not all of those billboards are located off-premises in both the usual sense of that term,[1] and in the sense in which the term is used in the Austin code. See Austin, Tex., City Code §25–10–3(11) (2016) (a sign is off-premises if it "advertis[es] a business, person, activity, goods, products, or services not located on the site where the sign is installed" or if it "directs persons to any location not on that site"). The record contains photos of some of these billboards, see App. 130–147, and all but one appears to be located on otherwise vacant land. Thus, they are clearly off-premises signs, and because they were erected before the enactment of the code provisions at issue, the only relevant restriction they face is that they cannot be digitized.[2] The distinction between a digitized and non-digitized sign is not based on content, topic, or subject matter. Even if the message on a billboard were written in a secret code, an observer would have no trouble determining whether it had been digitized.

Because the Court of Appeals erred in holding that the code provisions are facially unconstitutional, I agree that

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[1] In ordinary usage, a sign that is attached to or located in close proximity to a building is not described as located "off-premises." The distinction between on- and off-premises signs is based solely on location, and that is why such a classification is not content-based. See *Reed* v. *Town of Gilbert*, 576 U. S. 155, 175 (2015) (ALITO, J., concurring).

[2] A grandfathered sign can be maintained at its existing location, but the owner cannot "increase the degree of the existing nonconformity," "change the method or technology used to convey a message," or "increase the illumination of the sign." Austin, Tex., City Code §§25–10–152(A)–(B).

we should reverse that decision. On remand, the lower courts should determine whether those provisions are unconstitutional as applied to each of the billboards at issue.

Today's decision, however, goes further and holds flatly that "[t]he sign code provisions challenged here do not discriminate" on the basis of "'the topic discussed or the idea or message expressed,'" *ante*, at 10, and that categorical statement is incorrect. The provisions defining on- and off-premises signs clearly discriminate on those grounds, and at least as applied in some situations, strict scrutiny should be required.

As the Court notes, under the provisions in effect when petitioner's applications were denied, a sign was considered to be off-premises if it "advertis[ed]," among other things, a "person, activity, . . . or servic[e] not located on the site where the sign is installed" or if it "direct[ed] persons to any location not on that site." Austin, Tex., City Code §25–10–3(11). Consider what this definition would mean as applied to signs posted in the front window of a commercial establishment, say, a little coffee shop. If the owner put up a sign advertising a new coffee drink, the sign would be classified as on-premises, but suppose the owner instead mounted a sign in the same location saying: "Contribute to X's legal defense fund" or "Free COVID tests available at Y pharmacy" or "Attend City Council meeting to speak up about Z." All those signs would appear to fall within the definition of an off-premises sign and would thus be disallowed. See also *post*, at 3–4 (THOMAS, J., dissenting). Providing disparate treatment for the sign about a new drink and the signs about social and political matters constitutes discrimination on the basis of topic or subject matter. The code provisions adopted in 2017 are worded differently, but the new wording may not rule out similar results.[3]

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[3]The amended code now defines "off-premise[s] sign" as "a sign that

For these reasons, I would simply hold that the provisions at issue are not facially unconstitutional, and I would refrain from making any broader pronouncements.

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displays any message directing attention to a business, product, service, profession, commodity, activity, event, person, institution, or other commercial message which is generally conducted, sold, manufactured, produced, offered, or occurs elsewhere than on the premises where the sign is located," and defines an "on-premise[s] sign" as "a sign that is not an off-premise[s] sign." Austin, Tex., City Code §§25–10–4(9)–(10) (2021). It is not clear that the inclusion of "other commercial message" modifies the terms "activity," "event," "person," or "institution" such that the provision would not draw topic-based distinctions as applied to non-commercial speech.

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[April 21, 2022]

JUSTICE THOMAS, with whom JUSTICE GORSUCH and JUSTICE BARRETT join, dissenting.

In *Reed* v. *Town of Gilbert*, 576 U. S. 155 (2015), we held that a speech regulation is content based—and thus presumptively invalid—if it "draws distinctions based on the message a speaker conveys." *Id.*, at 163. Here, the city of Austin imposes special restrictions on "off-premise[s] sign[s]," defined as signs that "advertis[e] a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that direc[t] persons to any location not on that site." Austin, Tex., City Code §25–10–3(11) (2016). Under *Reed*, Austin's off-premises restriction is content based. It discriminates against certain signs based on the message they convey—*e.g.*, whether they promote an on- or off-site event, activity, or service.

The Court nevertheless holds that the off-premises restriction is content neutral because it proscribes a sufficiently broad category of communicative content and, therefore, does not target a specific "topic or subject matter." *Ante*, at 8. This misinterprets *Reed*'s clear rule for content-based restrictions and replaces it with an incoherent and malleable standard. In so doing, the majority's reasoning is reminiscent of this Court's erroneous decision in *Hill* v. *Colorado*, 530 U. S. 703 (2000), which upheld a blatantly

content-based prohibition on "counseling" near abortion clinics on the ground that it discriminated against "an extremely broad category of communications." *Id.*, at 723. Because I would adhere to *Reed* rather than echo *Hill*'s long-discredited approach, I respectfully dissent.

I

A

The First Amendment, applicable to the States through the Fourteenth, prohibits laws "abridging the freedom of speech." U. S. Const., Amdt. 1; see also *Stromberg* v. *California*, 283 U. S. 359, 368 (1931). "When enforcing this prohibition, our precedents distinguish between content-based and content-neutral regulations." *National Institute of Family and Life Advocates* v. *Becerra*, 585 U. S. ___, ___ (2018) (slip op., at 6). A content-based law is "presumptively invalid," *United States* v. *Playboy Entertainment Group*, *Inc.*, 529 U. S. 803, 817 (2000) (internal quotation marks omitted), and may generally be upheld only if the government proves that the regulation is narrowly tailored to serve compelling state interests, *R. A. V.* v. *St. Paul*, 505 U. S. 377, 395 (1992).[1]

In *Reed* v. *Town of Gilbert*, we held that courts should identify content-based restrictions by applying a "commonsense" test: A speech regulation is content based if it

[1] For several categories of historically unprotected speech, including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct, the government ordinarily may enact content-based restrictions without satisfying strict scrutiny. See *United States* v. *Stevens*, 559 U. S. 460, 468–469 (2010). This Court's precedents have also declined to apply strict scrutiny to several other types of content-based restrictions, including laws targeting "commercial speech." *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557, 561–566 (1980). But see *Lorillard Tobacco Co.* v. *Reilly*, 533 U. S. 525, 572 (2001) (THOMAS, J., concurring in part and concurring in judgment). As the Court recognizes, Austin's off-premises sign rule is not limited to any of these categories of speech. See *ante,* at 5, n. 3.

"target[s] speech based on its communicative content." 576 U. S., at 163. Put another way, a law is content based "'on its face' [if it] draws distinctions based on the message a speaker conveys." *Ibid.* While we noted that "[s]ome facial distinctions based on a message are obvious," we emphasized that others could be "more subtle, defining regulated speech by its function or purpose." *Ibid.* In all events, whether a law is characterized as targeting a "topic," "idea," "subject matter," or "communicative content," the law is content based if it draws distinctions based in any way "on the message a speaker conveys." *Id.*, at 163–164.[2]

Applying this standard, we held that the town of Gilbert's sign code was "a paradigmatic example of content-based discrimination" because it classified "various categories of signs based on the type of information they convey[ed], [and] then subject[ed] each category to different restrictions." *Id.*, at 169, 159. For instance, Gilbert defined "'Temporary Directional Signs'" as any sign that "convey[ed] the message of directing the public to [a] 'qualifying event,'" and permitted their display for no more than 12 hours before and 1 hour after the event occurred. *Id.*, at 164, 161. Meanwhile, "'Ideological Sign[s],'" defined as any sign (not covered by another category) that "'communicat[ed] a message or ideas for noncommercial purposes,'" were subject to no temporal limitations. *Id.*, at 159–160. In short, the restrictions on any given sign depended "on the communicative content of the sign." *Id.*, at 164. Gilbert's

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[2] In *Reed*, we acknowledged that some prior decisions had skipped over this facial analysis and applied a justification-focused test. See 576 U. S., at 165–167. But we explained that the justification-focused test implicated a "separate and additional category of laws that, though facially content neutral, [are] content-based regulations [because they] cannot be '"justified without reference to the content of the regulated speech,"' or . . . were adopted by the government 'because of disagreement with the message [the speech] conveys.'" *Id.,* at 164 (quoting *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791 (1989)). All agree that this second type of content-based regulation is not at issue here.

sign code was thus facially content based and presumptively unlawful. See *id.*, at 159.

In contrast to *Reed*'s "commonsense" test, Gilbert urged us to define "content based" as a "term of art that 'should be applied flexibly' with the goal of protecting 'viewpoints and ideas from government censorship or favoritism.'" *Id.*, at 168. Such a functionalist test, Gilbert argued, could ferret out illicit government motives while obviating the need to subject reasonable laws to strict scrutiny. See *ibid.* We rejected Gilbert's attempt to cast the phrase "content based" as a "term of art" because "[i]nnocent motives do not eliminate the danger of censorship presented by a facially content-based statute." *Id.*, at 167. We noted that "one could easily imagine a Sign Code compliance manager who disliked [a] Church's substantive teachings deploying the Sign Code to make it more difficult for the Church to inform the public of the location of its services." *Id.*, at 167–168. Thus, we concluded that "a clear and firm rule governing content neutrality is an essential means of protecting the freedom of speech, even if laws that might seem entirely reasonable will sometimes be struck down because of their content-based nature." *Id.*, at 171 (internal quotation marks omitted).

We also rejected the Ninth Circuit's reasoning that Gilbert's sign restrictions were content neutral because they depended on "the content-neutral elements of . . . whether and when an event is occurring." *Id.*, at 169 (internal quotation marks omitted). That is, whether a temporary directional sign was permissible depended, in part, on its temporal proximity to a "'qualifying event.'" *Id.*, at 164. This partial dependence on content-neutral elements was immaterial, we explained, because the restrictions also depended on the signs' communicative content. Gilbert officials still had to examine a sign's message to determine what type of sign it was, and this "obvious content-based inquiry d[id] not evade strict scrutiny simply because an

event [was] involved." *Id.*, at 170.

B

Under *Reed*'s approach for identifying content-based regulations, Austin's off-premises sign restriction is content based. As relevant to this suit, Austin's sign code imposes stringent restrictions on a category of "off-premise[s] sign[s]." §25–10–3(11). The code defines "off-premise[s] sign[s]" as those "advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed," or as signs "direct[ing] persons to any location not on that site." *Ibid.* This broad definition sweeps in a wide swath of signs, from 14- by 48-foot billboards to 24- by 18-inch yard signs. The sign code prohibits new off-premises signs and makes it difficult (or impossible) to change existing off-premises signs, including by digitizing them. See *ante*, at 3.

Like the town of Gilbert in *Reed*, Austin has identified a "categor[y] of signs based on the type of information they convey, [and] then subject[ed that] category to different restrictions." 576 U. S., at 159. A sign that conveys a message about off-premises activities is restricted, while one that conveys a message about on-premises activities is not. See *id.*, at 171 (regulating signs based on "a particular message" about "the time and location of a specific event" is content based). And, per *Reed*, it does not matter that Austin's code "defin[es] regulated speech by its function or purpose"—*i.e.*, advertising or directing passersby elsewhere. *Id.*, at 163. Again, all that matters is that the regulation "draws distinctions based on" a sign's "communicative content," which the off-premises restriction plainly does. *Ibid.*

This conclusion is not undermined because the off-premises sign restriction depends in part on a content-neutral element: the location of the sign. Much like in *Reed*, that an Austin official applying the sign code must know

where the sign is does not negate the fact that he also must know *what* the sign says. Take, for instance, a sign outside a Catholic bookstore. If the sign says, "Visit the Holy Land," it is likely an off-premises sign because it conveys a message directing people elsewhere (unless the name of the bookstore is "Holy Land Books"). But if the sign instead says, "Buy More Books," it is likely a permissible on-premises sign (unless the sign also contains the address of another bookstore across town). Finally, suppose the sign says, "Go to Confession." After examining the sign's message, an official would need to inquire whether a priest ever hears confessions at that location. If one does, the sign could convey a permissible "on-premises" message. If not, the sign conveys an impermissible off-premises message. Because enforcing the sign code in any of these instances "requires [Austin] officials to determine whether a sign" conveys a particular message, the sign code is content based under *Reed*. *Id.*, at 170.

In sum, the off-premises rule is content based and thus invalid unless Austin can satisfy strict scrutiny. See *Playboy Entertainment Group*, 529 U. S., at 813. Because Austin has offered nothing to make that showing, the Court of Appeals did not err in holding that the off-premises rule violates the First Amendment.

II

To reach the opposite result, the majority implicitly rewrites *Reed*'s bright-line rule for content-based restrictions. In the majority's view, the off-premises restriction is not content based because it does not target a specific "topic or subject matter." *Ante*, at 8. The upshot of the majority's reasoning appears to be that a regulation based on a sufficiently general or broad category of communicative content is not actually content based.

Such a rule not only conflicts with *Reed* and many pre-*Reed* precedents but is also incoherent and unworkable.

Tellingly, the only decision that even remotely supports the majority's rule is one it does not cite: *Hill* v. *Colorado*. There, the Court held that an undeniably content-based law was nonetheless content neutral because it discriminated against "an extremely broad category of communications," supposedly without regard to "subject matter." 530 U. S., at 723. The majority's decision today is erroneous for the same reasons that *Hill* is an aberration in our case law.

A

The majority concedes that "[t]he message on the sign matters" when applying Austin's sign code. *Ante*, at 8. That concession should end the inquiry under *Reed*. But the majority nonetheless finds the sign code to be content neutral by recasting facially content-based restrictions as only those that target sufficiently specific categories of communicative content and not as those that depend on communicative content *simpliciter*.

For example, while *Reed* defined content-based restrictions as those that "dra[w] distinctions based on the *message* a speaker conveys," 576 U. S., at 163 (emphasis added), the majority decides that Austin's sign code is not content based because it draws no distinctions based on "[a] sign's *substantive* message," *ante*, at 8 (emphasis added). Elsewhere, the majority speaks not of "substantive message[s]" but of "topic[s] or subject matter[s]," which the majority thinks are sufficiently *specific* categories of communicative content. *Ibid.* As a result, the majority contends that a law targeting directional messages concerning "events generally, regardless of topic," would not be content based, but one targeting "directional messages concerning *specific* events" (*e.g.*, "religious" or "political" events) would be. *Ante*, at 12, n. 6, 8 (emphasis added).[3] Regardless of the

[3] On this point, the majority's analysis tracks the position advanced by

label, the majority today excises, without a word of explanation, a subset of supposedly non-substantive or unspecific messages from the First Amendment's protection against content-based restrictions.

This understanding of content-based restrictions contravenes *Reed*, which held that a law is content based if it "target[s] speech based on its communicative content"—not "specific" or "substantive" categories of communicative content. 576 U. S., at 163; see also, *e.g.*, *Norton* v. *Springfield*, 806 F. 3d 411, 412 (CA7 2015) ("*Reed* effectively abolishes any distinction between content regulation and subject-matter regulation. Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification"). Only by jettisoning *Reed*'s "commonsense" definition of what it means to be content based can the majority assert that the off-premises rule is strictly "location-based" and "agnostic as to content," *ante*, at 6, even though the law undeniably depends on *both* location *and* communicative content, *supra*, at 5–6.

Moreover, the majority's suggestion that laws targeting broad categories of communicative content are not content based is hard to square with the sign categories that *Reed* invalidated. For instance, we found Gilbert's expansive definition of "Ideological Sign[s]" to be content based even though it broadly covered any "sign communicating a message or ideas for noncommercial purposes" that did not already fall into one of the other categories. 576 U. S., at 159 (internal quotation marks omitted). Nor did we suggest that the outcome in *Reed* would have been different if the sign categories were defined even more generally.

The majority answers that it is not "fashion[ing] a novel

Austin, which asserted that content neutrality was a "question of generality." Tr. of Oral Arg. 14; see also *id.,* at 19 (explaining that whether a law is content based turns on the "level of specificity" at which the government regulates speech).

'specificity test,'" but instead "simply" "quoting the standard repeatedly enunciated in *Reed*." *Ante*, at 13. The majority finds this alleged specificity test in a paragraph near the end of *Reed*, where we noted that a law "targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter," and then affirmed that Gilbert's sign code "single[d] out specific subject matter for differential treatment." 576 U. S., at 169.

These statements never purported to endorse a specificity test of the sort now suggested by the majority. Read in context, *Reed*'s two references to "specific subject matter" naturally address laws that target a "subject matter," however broadly defined, as opposed to some other subject matter; they did not refer only to laws targeting some sufficiently "specific" category of "subject matter." Moreover, the concept of "specificity" or "generality" appears nowhere in the part of *Reed* that set forth its "commonsense" test for content neutrality. See *id.*, at 163–164. If *Reed*'s content-neutrality test turned on specificity, we would have said so explicitly when stating the test. Finally, even crediting the majority's strained reading of *Reed*'s passing references to "specific subject matter," the paragraph where they appear made clear that it was describing only "a paradigmatic *example* of content-based discrimination." *Id.*, at 169 (emphasis added). That part of *Reed* never professed to announce a comprehensive rule with respect to all laws targeting speech based on its communicative content.

Our pre-*Reed* precedents likewise foreclose a construction of "content based" that applies only to some content. We have held many capacious speech regulations to be content based, including restrictions on "'advice or assistance derived from scientific, technical or other specialized knowledge,'" *Holder* v. *Humanitarian Law Project*, 561 U. S. 1, 12–13 (2010); "'advertising, promotion, or any activity . . . used to influence sales or the market share of a

prescription drug,'" *Sorrell* v. *IMS Health Inc.*, 564 U. S. 552, 559 (2011); "editorializing," *FCC* v. *League of Women Voters of Cal.*, 468 U. S. 364, 382–383, and n. 14 (1984); "'[publication] for philatelic, numismatic, educational, historical, or newsworthy purposes,'" *Regan* v. *Time*, *Inc.*, 468 U. S. 641, 644 (1984); and "anonymous speech," *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334, 348, 357 (1995). These speech categories are no more "specific" or "substantive" than messages regarding off-premises activities. And some of these examples, like "editorializing" or publishing "newsworthy" information, are clearly *less* so. What unites these speech restrictions is that their application turns "on the nature of the message being conveyed," *Carey* v. *Brown*, 447 U. S. 455, 461 (1980), not whether they regulate specific or general categories of speech, or whether they address substantive or non-substantive categories of speech.

We have defined content-based restrictions to include *all* content-based distinctions because any other rule would be incoherent. After all, off-premises advertising could be considered a "subject" or a "topic" as those words are ordinarily used. See *L. D. Management Co.* v. *Gray*, 988 F. 3d 836, 839 (CA6 2021) (off-premises billboard restriction "turns on the '*topic* discussed'" (emphasis added)). And, in any event, there is no principled way to decide whether a category of communicative content is "substantive" or "specific" enough for the majority to deem it a "topic" or "subject" worthy of heightened protection. Although off-premises advertising is a more general category of speech than some (*e.g.*, off-premises advertising of religious events), it is a more specific category than others (*e.g.*, advertising generally). The majority offers only its own *ipse dixit* to explain why off-premises advertising is insufficiently specific to qualify as content based under *Reed*. Worse still, the majority does not explain how courts should draw the line between a sufficiently substantive or specific content-based classification and one that is insufficiently substantive or specific.

On this point, Austin suggests there is no need to worry because our cases provide "guideposts" from which one can divine what "level of generality" renders a speech regulation content based. Tr. of Oral Arg. 18, 24. To be sure, that is the sort of inquiry the majority's opaque test invites. But *Reed* directed us elsewhere—to the text of the law in question and whether that law "'on its face' draws distinctions based on the message a speaker conveys." 576 U. S., at 163. The majority's holding that some rules based on content are not, as it turns out, content based nullifies *Reed*'s clear test.

B

The majority offers several reasons why its approach is consistent with *Reed* and other cases. None of these arguments is persuasive. Instead, they only serve to underscore the Court's ill-advised departure from our doctrine.

1

The majority first suggests that deeming Austin's sign code content based would require us to adopt an "extreme" reinterpretation of *Reed*. *Ante*, at 6. Specifically, the majority faults the Court of Appeals for concluding that Austin's regulation was content based because, to enforce the off-premises rule, "'[a] reader must ask: who is the speaker and what is the speaker saying'"? *Ibid.* (quoting 972 F. 3d 696, 706 (CA5 2020)). In the majority's view, *Reed* cannot stand for such a simplistic read-the-sign test.

The majority's skepticism is misplaced. We have often acknowledged that the need to examine the content of a message is a strong indicator that a speech regulation is content based. One year before *Reed*, for example, we stated that an abortion clinic buffer-zone law "would be content based if it required enforcement authorities to examine the content of the message that is conveyed to determine whether a violation has occurred." *McCullen* v. *Coakley*, 573 U. S. 464, 479 (2014) (internal quotation

marks omitted). That statement was not an outlier. See, *e.g.*, *Arkansas Writers' Project*, *Inc.* v. *Ragland*, 481 U. S. 221, 230 (1987) (tax exemption for periodicals "uniformly devoted to religion or sports" was content based because it required state officials to "examine the content of the message" (internal quotation marks omitted)); *Forsyth County* v. *Nationalist Movement*, 505 U. S. 123, 134 (1992) (regulation requiring parade organizers to pay a fee depending on the security costs anticipated for the event was content based because "[i]n order to assess accurately the cost of security for parade participants, the administrator must necessarily examine the content of the message that is conveyed" (internal quotation marks omitted)); *League of Women Voters*, 468 U. S., at 366, 383 (law forbidding public broadcasting stations from "engag[ing] in editorializing" was content based because it required "enforcement authorities [to] necessarily examine the content of the message that is conveyed" (internal quotation marks omitted)).

Ultimately, the majority's objection to the Court of Appeals' reliance on a read-the-sign test is a red herring; its real objection is to *Reed*'s rule that any law that draws distinctions based on communicative content is content based.

2

The majority next argues that Austin's sign code is content neutral under our precedents. See *ante*, at 8–10. But none of the cases the majority cites supports its crabbed view of what constitutes a content-based restriction.

First, in *Heffron* v. *International Soc. for Krishna Consciousness*, *Inc.*, 452 U. S. 640 (1981), the Court upheld, as content neutral, an ordinance providing that the "[s]ale or distribution of any merchandise, including printed or written material," could occur only from certain booths at the fairgrounds. *Id.*, at 643 (internal quotation marks omitted). Such a statute is facially content neutral under *Reed* because it does not "'on its face' dra[w] distinctions

based on the message a speaker conveys" when selling or distributing merchandise subject to the ordinance. 576 U. S., at 163. True, the Court construed the ordinance also to limit "fund solicitation operations," 452 U. S., at 644, but that was not, as the majority claims, a prohibition on "asking for donations," *ante*, at 9. Rather, anyone was free to "as[k] for donations" wherever he liked, because the ordinance did "not prevent respondents from wandering throughout the fairgrounds and directing interested donors or purchasers to their booth." 452 U. S., at 664, n. 2 (Blackmun, J., concurring in part and dissenting in part). Then, once "at the booth," the donor could "make a contribution." *Ibid.*

Second, in *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940), the Court invalidated a licensing system for religious and charitable solicitation while acknowledging in dicta that a State could regulate the time, place, and manner of solicitation. *Id.*, at 304, 307. But here, we are not faced with a true time, place, or manner restriction, as even the majority concedes. See *ante*, at 8.[4] And, in any event, *Cantwell* did not suggest that a content-based restriction could be sustained as a time, place, or manner restriction; its analysis focused predominantly on the plaintiff's free exercise claim; and the case predated our modern content-neutrality doctrine by nearly three decades. Thus, nothing in *Heffron* or *Cantwell* supports the majority's narrow approach to identifying content-based restrictions.

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[4] The majority says only that Austin's sign code is "similar" to a time-place-manner restriction, citing *Frisby* v. *Schultz*, 487 U. S. 474 (1988). *Ante,* at 8. But *Frisby* upheld an ordinance that regulated only *where* picketing may take place and not *what* message the picketers could communicate. See 487 U. S., at 477 (ordinance made it "unlawful for any person to engage in picketing before or about the residence or dwelling of any individual" (internal quotation marks omitted)); cf. *Hill* v. *Colorado*, 530 U. S. 703, 766 (2000) (Kennedy, J., dissenting) ("[n]o examination of the content of a speaker's message is required to determine whether an individual is picketing").

Finally, the majority argues that we have "previously understood distinctions between on-premises and off-premises signs . . . to be content neutral." *Ante*, at 9–10. To be sure, in both *Suffolk Outdoor Adv. Co.* v. *Hulse*, 439 U. S. 808 (1978), and *Metromedia, Inc.* v. *San Diego*, 453 U. S. 490, 503–512 (1981) (plurality opinion), this Court suggested that some restrictions on off-premises advertising were constitutional. And later, in *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789 (1984), the Court described *Metromedia* as upholding "a *content-neutral* prohibition against the use of billboards." 466 U. S., at 807 (emphasis added). But the statement in *Vincent* was dictum, and, as the majority concedes, both our summary decision in *Suffolk* and the plurality opinion in *Metromedia* sanctioned off-premises restrictions only insofar as they applied to *commercial* speech. *Ante*, at 10. That is, the "Court did not need to decide"—and did not decide—"whether the off-premises prohibition was content based" because restrictions on commercial speech are "subject to intermediate scrutiny in any event." *Ibid.*

3

The majority also claims that finding Austin's sign code to be content based "would render the majority opinion in *Reed* irreconcilable with" JUSTICE ALITO's *Reed* concurrence. *Ante*, at 12, n. 6. In particular, JUSTICE ALITO identified nine different types of sign regulations that he believed "would not be content based," including "[r]ules distinguishing between on-premises and off-premises signs" and "[r]ules imposing time restrictions on signs advertising a one-time event." 576 U. S., at 174–175. The majority evidently believes that these two types of sign regulations necessarily turn on a sign's communicative content, like the off-premises sign restriction at issue here.

That reading of the *Reed* concurrence makes little sense.

First, there is no reason to interpret the concurrence as referring to off-premises or one-time-event rules that turn on a sign's communicative content. Doing so would make those two rules categorically different from the other seven, none of which would ever turn on message content. See, *e.g.*, *id.*, at 174 ("Rules distinguishing between lighted and unlighted signs"). And although off-premises and one-time-event rules *could* be drafted in terms of a sign's communicative content, as is true here, they need not be. "There might be many formulations of an on/off-premises distinction that are content-neutral." *Thomas* v. *Bright*, 937 F. 3d 721, 733 (CA6 2019); see also *ante*, at 2, n. 1 (ALITO, J., concurring in judgment in part and dissenting in part) (explaining that "[i]n ordinary usage" an "off-premises" sign is one that is not "attached to or located in close proximity to a building"). For instance, a city could define "'an o[n]-premise[s] sign as any sign within 500 feet of a building,'" 937 F. 3d, at 732, or a sign that is installed by "'a business . . . licensed to occupy . . . the premises where the sign is located,'" Brief for Summus Outdoor as *Amicus Curiae* 10. As for regulations of one-time-event signs, Austin itself amended its sign code, at the behest of its lawyers, specifically to make its ordinance content neutral. See Austin, Tex., City Code §25–10–102(D) (2021); App. 152. Thus, interpreting JUSTICE ALITO's concurrence as referring to rules that turn on communicative content, as opposed to rules that are content neutral, is unwarranted.

Second, it would be strange to interpret the concurrence as proclaiming that *all* off-premises sign restrictions are content neutral considering the longstanding dispute over that question. In fact, 20 years before *Reed*, then-Judge Alito opined that there was "no easy answer to [the] question" whether "exceptions for 'for sale' signs and signs relating to on-site activities" would render a sign code content based. *Rappa* v. *New Castle County*, 18 F. 3d 1043, 1080

(CA3 1994) (concurring opinion); see also, *e.g.*, *Ackerly Communications of Mass., Inc.* v. *Cambridge*, 88 F. 3d 33, 36, n. 7 (CA1 1996) ("In 'commonsense' terms, the distinction surely is content-based because determining whether a sign must stay up or must come down requires consideration of the message it carries"); *Norton Outdoor Adv., Inc.* v. *Arlington Heights*, 69 Ohio St. 2d 539, 541, 433 N. E. 2d 198, 200 (1982) ("In prohibiting all forms of offsite billboard advertising, the ordinance is thus inescapably directed to the content of protected speech"). Ultimately, it seems quite unlikely that JUSTICE ALITO's quick recital of some content-neutral rules purported to pre-emptively decide an issue that had long perplexed federal and state courts.

4

Near the end of its analysis, the majority invokes an allegedly "unbroken tradition of on-/off-premises distinctions" that it claims "counsels against" faithful application of *Reed*. *Ante*, at 12. To be sure, history and tradition are relevant to identifying and defining those "few limited areas" where, "[f]rom 1791 to the present," "the First Amendment has permitted restrictions upon the content of speech." *Brown* v. *Entertainment Merchants Assn.*, 564 U. S. 786, 791 (2011) (internal quotation marks omitted); see *supra*, at 2, n. 1. But the majority openly admits that off-premises regulations "were not present [at] the founding." *Ante*, at 12. And while it asserts that "large outdoor advertisements proliferated in the 1800s," *ibid.*, it offers no evidence of any content-based restrictions from that period, let alone off-premises restrictions on *noncommercial* speech. The *earliest* example of an off-premises restriction that the majority cites arose in *Packer Corp.* v. *Utah*, 285 U. S. 105 (1932), but that case involved a restriction on *commercial* advertising and did not even feature a First Amendment claim. See *id.*, at 108–112.

Ultimately, the majority's only "historical" support is that

regulations like Austin's "proliferated following the enactment of the Highway Beautification Act of 1965." *Ante*, at 2. The majority's suggestion that the First Amendment should yield to a speech restriction that "proliferated"—under pressure from the Federal Government—some two centuries after the founding is both "startling and dangerous." *United States* v. *Stevens*, 559 U. S. 460, 470 (2010). This Court has never hinted that the government can, with a few decades of regulation, subject "new categories of speech" to less exacting First Amendment scrutiny. *Id.*, at 472.

Regardless, even if this allegedly "unbroken tradition" did not fall short by a century or two, the majority offers no explanation why historical regulation is relevant to the question whether the off-premises restriction is content based under *Reed* and our modern content-neutrality jurisprudence. If Austin had met its burden of identifying a historical tradition of analogous regulation—as can be done, say, for obscenity or defamation—that would not make the off-premises rule content neutral. It might simply mean that the off-premises rule is a constitutional form of content-based discrimination. But content neutrality under *Reed* is an empirical question, not a historical one. Thus, the majority's historical argument is not only meritless but misguided.

C

Despite asserting that the Court of Appeals' analysis under *Reed* would "contravene numerous precedents," *ante*, at 11, the majority identifies no decision of this Court supporting the idea that a speech restriction is not content based so long as it regulates a sufficiently broad or nonsubstantive category of communicative content. In fact, there is only one case that could possibly validate the majority's aberrant analysis: *Hill* v. *Colorado*. That *Hill* is the majority's only support underscores the danger that today's

decision poses to the First Amendment.

Hill involved a law that prohibited persons outside abortion clinics from knowingly approaching within eight feet of another person without consent "for the purpose of . . . engaging in oral protest, education, or counseling." 530 U. S., at 707 (internal quotation marks omitted). *Hill* concluded, implausibly, that this regulation was content neutral.

The majority's reasoning in this case is just as implausible. The majority asserts that the off-premises rule is not content based because it does not target a sufficiently "specific" or "substantive" category of communications. *Ante*, at 8. *Hill* correspondingly held that restrictions on "protest, education, or counseling" were not content-based classifications because they cover "an extremely broad category of communications." 530 U. S., at 723. The majority also tries to disguise its redefinition of content neutrality by characterizing Austin's rule as a "neutral, location-based" restriction. *Ante*, at 6. So too did *Hill* try to conceal its doctrinal innovation by characterizing the buffer-zone law as a neutral "place restriction." 530 U. S., at 723. Finally, the majority finds it immaterial that Austin's rule can be enforced only by "reading a [sign] to determine whether it" contains an off-premises message. *Ante*, at 8. *Hill* likewise found it irrelevant that "the content of the oral statements" would need to "be examined to determine whether" the prohibition applied. 530 U. S., at 720.

The parallel between the majority's opinion and *Hill* should be discomforting given that *Hill* represented "an unprecedented departure" from this Court's First Amendment jurisprudence. *Id.*, at 772 (Kennedy, J., dissenting). Its content-neutrality analysis was, as Justice Scalia explained, "absurd" given that the buffer-zone law was "obviously and undeniably content based." *Id.*, at 742–743 (dissenting opinion). First Amendment scholars from across the ideological spectrum agree. See, *e.g.*, M.

McConnell, Professor Michael W. McConnell's Response, in K. Sullivan, Sex, Money, and Groups: Free Speech and Association Decisions in the October 1999 Term, 28 Pepperdine L. Rev. 723, 748 (2001) ("The Court said that this statute is content-neutral. I just literally cannot see how they could possibly come to that conclusion"); Colloquium, *id.*, at 750 (Laurence Tribe stating *Hill* "was slam-dunk simple and slam-dunk wrong"); R. Fallon, Strict Judicial Scrutiny, 54 UCLA L. Rev. 1267, 1298, and n. 174 (2007) (*Hill* "unconvincingly . . . maintain[ed] that a content-based restriction on speech [was] not really content-based"). And, since *Hill*, this Court has all but interred its flawed content-neutrality analysis in both *McCullen*, see *supra*, at 11, and *Reed*. See *Price* v. *Chicago*, 915 F. 3d 1107, 1118 (CA7 2019) ("In the wake of *McCullen* and *Reed*, it's not too strong to say that what *Hill* explicitly rejected is now prevailing law").

The majority's refusal to acknowledge *Hill* simply underscores the decision's defunct status. Again, *Hill* is the only case that could support the majority's ill-conceived content-neutrality analysis, and yet the majority disclaims reliance on it. Lower courts should take the majority's disclaimer at face value: *Hill* is "a decision that we do not cite." *Ante*, at 13. And today's decision amounts to little more than an ad hoc exemption for the "location-based" and supposedly "content-agnostic on-/off-premises distinction." *Ibid*.

Even so, the majority's approach should offer little comfort because arbitrary carveouts from *Reed* undermine the "clear and firm rule governing content neutrality" that we understood to be "an essential means of protecting the freedom of speech." 576 U. S., at 171. The majority's deviation from that "clear and firm rule" poses two serious threats to the First Amendment's protections.

First, transforming *Reed*'s clear definition of "content based regulation" back into an opaque and malleable "term

of art" turns the concept of content neutrality into a "vehicl[e] for the implementation of individual judges' policy preferences." *Tennessee* v. *Lane*, 541 U. S. 509, 556 (2004) (Scalia, J., dissenting). *Hill* exemplifies this danger. See 530 U. S., at 742 (Scalia, J., dissenting) ("I have no doubt that this regulation would be deemed content based *in an instant* if the case before us involved antiwar protesters, or union members seeking to 'educate' the public about the reasons for their strike"). The majority's approach in this case is cut from the same cloth. As the majority transparently admits, it seeks to "apply [our] precedents to reach the 'commonsense' *result*" and avoid what it perceives as a "bizarre *result*." *Ante*, at 13 (emphasis added). But *Reed* mandates a "commonsense" test for content neutrality even if the *result* is that "laws that might seem entirely reasonable will sometimes be struck down." 576 U. S., at 163, 171 (internal quotation marks omitted).

Second, sanctioning certain content-based classifications but not others ignores that even seemingly reasonable content-based restrictions are ready tools for those who would "suppress disfavored speech." *Id*., at 167; see also *Hill*, 530 U. S., at 743 (Scalia, J., dissenting) ("'The vice of content-based legislation . . . is not that it is always used for invidious, thought-control purposes, but that it lends itself to use for those purposes'"). This is because "the responsibility for distinguishing between" permissible and impermissible content "carries with it the potential for invidious discrimination of disfavored subjects." *Cincinnati* v. *Discovery Network*, *Inc.*, 507 U. S. 410, 423–424, n. 19 (1993). That danger only grows when the content-based distinctions are "by no means clear," giving more leeway for government officials to punish disfavored speakers and ideas. *Ibid.*

The content-based distinction drawn by Austin's off-premises speech restriction is "by no means clear," *ibid.*, and plainly lends itself "to suppress[ing] disfavored

speech," *Reed*, 576 U. S., at 167. As the Court of Appeals noted, Austin's "prepared counsel" "struggled to answer whether" signs conveying messages like "'God Loves You,'" "'Vote for Kathy,'" or "'Sally makes quilts here and sells them at 3200 Main Street'" would be regulated as off-premises signs. 972 F. 3d, at 706. Before us, Austin's counsel had similar difficulties, and *amici* have proposed dozens of religious and political messages that would be next to impossible to categorize under Austin's rule. See, *e.g.*, Brief for Alliance Defending Freedom et. al. as *Amici Curiae* 15–19; Brief for Institute for Justice as *Amicus Curiae* 3–9. These pervasive ambiguities offer enforcement officials ample opportunity to suppress disfavored views. And they underscore *Reed*'s warning that "[i]nnocent motives do not eliminate the danger of censorship presented by a facially content-based statute." 576 U. S., at 167.

* * *

Because *Reed* provided a clear and neutral rule that protected the freedom of speech from governmental caprice and viewpoint discrimination, I would adhere to that precedent rather than risk resuscitating *Hill*. I respectfully dissent.

KeyCite Yellow Flag - Negative Treatment
Not Followed as Dicta Harbourside Place, LLC v. Town of Jupiter, Florida, 11th Cir.(Fla.), May 14, 2020

135 S.Ct. 2218
Supreme Court of the United States

Clyde REED, et al., Petitioners
v.
TOWN OF GILBERT, ARIZONA, et al.

No. 13–502
|
Argued Jan. 12, 2015.
|
Decided June 18, 2015.

Synopsis
Background: Church and pastor seeking to place temporary signs announcing services filed suit claiming that town's sign ordinance, restricting size, duration, and location of temporary directional signs violated the right to free speech. The United States District Court for the District of Arizona, Susan R. Bolton, J., denied church's motion for preliminary injunction barring enforcement of ordinance. Church appealed. The United States Court of Appeals for the Ninth Circuit, M. Margaret McKeown, Circuit Judge, 587 F.3d 966, affirmed in part and remanded in part. On remand, the District Court, Bolton, J., 832 F.Supp.2d 1070, granted town summary judgment. Church and pastor appealed. The Court of Appeals, Callahan, Circuit Judge, 707 F.3d 1057, affirmed. Certiorari was granted.

Holdings: The Supreme Court, Justice Thomas, held that:

[1] sign code was subject to strict scrutiny, and

[2] sign code violated free speech guarantees.

Reversed and remanded.

Justice Alito filed concurring opinion in which Justices Kennedy and Sotomayor joined.

Justice Breyer filed opinion concurring in the judgment.

Justice Kagan filed opinion concurring in the judgment, in which Justices Ginsburg and Breyer joined.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (21)

[1] **Constitutional Law** Viewpoint or idea discrimination

Constitutional Law Content-Based Regulations or Restrictions

Under the First Amendment, 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. U.S.C.A. Const.Amend. 1.

63 Cases that cite this headnote

[2] **Constitutional Law** Content-Based Regulations or Restrictions

Constitutional Law Strict or exacting scrutiny; compelling interest test

Content-based laws, that is, those that target speech based on its communicative content, are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. U.S.C.A. Const.Amend. 1.

405 Cases that cite this headnote

[3] **Constitutional Law** Content-Based Regulations or Restrictions

Government regulation of speech is "content based," and thus presumptively unconstitutional, if a law applies to particular speech because of the topic discussed or the idea or message expressed, and this commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech on its face draws distinctions based on the message a speaker conveys. U.S.C.A. Const.Amend. 1.

524 Cases that cite this headnote

[4] **Constitutional Law** Strict or exacting scrutiny; compelling interest test

Constitutional Law Strict or exacting scrutiny; compelling interest test

Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose, but both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny. U.S.C.A. Const.Amend. 1.

91 Cases that cite this headnote

[5] **Constitutional Law** Governmental disagreement with message conveyed

Constitutional Law Strict or exacting scrutiny; compelling interest test

Laws that, though facially content neutral, cannot be justified without reference to the content of the regulated speech, or that were adopted by the government because of disagreement with the message the speech conveys, like those laws that are content based on their face, must satisfy strict scrutiny. U.S.C.A. Const.Amend. 1.

291 Cases that cite this headnote

[6] **Constitutional Law** Temporary signs

Town's sign code, which subjected ideological signs to certain restrictions, subjected political signs to greater restrictions, and subjected temporary directional signs relating to events to even greater restrictions, was content based on its face, and thus was subject to strict scrutiny in free speech challenge by church seeking to place temporary signs announcing its services; any innocent motives on part of town did not eliminate danger of censorship, sign code singled out specific subject matter for differential treatment even if it did not target viewpoints within that subject matter, and sign code singled out signs bearing a particular message, i.e., the time and location of a particular event. U.S.C.A. Const.Amend. 1.

26 Cases that cite this headnote

[7] **Constitutional Law** Content-Neutral Regulations or Restrictions

The crucial first step in the content-neutrality analysis in a free speech challenge is determining whether the law is content neutral on its face. U.S.C.A. Const.Amend. 1.

16 Cases that cite this headnote

[8] **Constitutional Law** Strict or exacting scrutiny; compelling interest test

A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech. U.S.C.A. Const.Amend. 1.

100 Cases that cite this headnote

[9] **Constitutional Law** Freedom of Speech, Expression, and Press

Constitutional Law Censorship

Illicit legislative intent is not the sine qua non of a violation of the First Amendment's free speech guarantee, and a party opposing the government need adduce no evidence of an improper censorial motive. U.S.C.A. Const.Amend. 1.

10 Cases that cite this headnote

[10] **Constitutional Law** Strict or exacting scrutiny; compelling interest test

Although a content-based purpose may be sufficient in certain circumstances to show that a regulation of speech is content based and thus subject to strict scrutiny, it is not necessary. U.S.C.A. Const.Amend. 1.

106 Cases that cite this headnote

[11] **Constitutional Law** Strict or exacting scrutiny; compelling interest test

An innocuous justification cannot transform a facially content-based law regulating speech into one that is content neutral and thus subject to a lower level of scrutiny than strict scrutiny. U.S.C.A. Const.Amend. 1.

295 Cases that cite this headnote

[12] **Constitutional Law** Content-Neutral Regulations or Restrictions

Constitutional Law Strict or exacting scrutiny; compelling interest test

Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny in a free speech challenge. U.S.C.A. Const.Amend. 1.

81 Cases that cite this headnote

[13] **Constitutional Law** Content-Based Regulations or Restrictions

Government discrimination among viewpoints, or the regulation of speech based on the specific motivating ideology or the opinion or perspective of the speaker, is a more blatant and egregious form of content discrimination, but the First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic. U.S.C.A. Const.Amend. 1.

100 Cases that cite this headnote

[14] **Constitutional Law** Strict or exacting scrutiny; compelling interest test

A speech regulation targeted at specific subject matter is content based, and thus subject to strict scrutiny, even if it does not discriminate among viewpoints within that subject matter. U.S.C.A. Const.Amend. 1.

80 Cases that cite this headnote

[15] **Constitutional Law** Content-Neutral Regulations or Restrictions

The fact that a speech-related distinction is speaker based does not automatically render the distinction content neutral and thus subject to a lower level of scrutiny than strict scrutiny. U.S.C.A. Const.Amend. 1.

14 Cases that cite this headnote

[16] **Constitutional Law** Strict or exacting scrutiny; compelling interest test

Because speech restrictions based on the identity of the speaker are all too often simply a means to control content, laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference. U.S.C.A. Const.Amend. 1.

27 Cases that cite this headnote

[17] **Constitutional Law** Content-Neutral Regulations or Restrictions

The fact that a speech-related distinction is event based does not render it content neutral and thus subject to a lower level of scrutiny than strict scrutiny. U.S.C.A. Const.Amend. 1.

7 Cases that cite this headnote

[18] **Constitutional Law** Strict or exacting scrutiny; compelling interest test

Strict scrutiny requires the Government to prove that a restriction on speech furthers a compelling interest and is narrowly tailored to achieve that interest. U.S.C.A. Const.Amend. 1.

156 Cases that cite this headnote

[19] **Constitutional Law** Temporary signs

Municipal Corporations Billboards, signs, and other structures or devices for advertising purposes

Town's content-based sign code, which subjected ideological signs to certain restrictions, subjected political signs to greater restrictions, and

subjected temporary directional signs relating to events to even greater restrictions, did not survive strict scrutiny, and thus violated free speech guarantees; even if town had compelling government interests in preserving town's aesthetic appeal and traffic safety, sign code's distinctions were underinclusive, and thus were not narrowly tailored to achieve that end, in that temporary directional signs were no greater an eyesore than ideological or political ones, and there was no reason to believe that directional signs posed a greater threat to safety than ideological or political signs. U.S.C.A. Const.Amend. 1.

30 Cases that cite this headnote

[20] **Constitutional Law** Freedom of Speech, Expression, and Press

A law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited. U.S.C.A. Const.Amend. 1.

13 Cases that cite this headnote

[21] **Constitutional Law** Strict or exacting scrutiny; compelling interest test

Constitutional Law Content-Neutral Regulations or Restrictions

Constitutional Law Strict or exacting scrutiny; compelling interest test

Not all speech-related distinctions are subject to strict scrutiny, only content-based ones are; laws that are content neutral are instead subject to lesser scrutiny. U.S.C.A. Const.Amend. 1.

127 Cases that cite this headnote

****2221** *Syllabus* *

***155** Gilbert, Arizona (Town), has a comprehensive code (Sign Code or Code) that prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including three relevant here. "Ideological Signs," defined as signs "communicating a message or ideas" that do not fit in any other Sign Code category, may be up to 20 square feet and have no placement or time restrictions. "Political Signs," defined as signs "designed to influence the outcome of an election," may be up to 32 square feet and may only be displayed during an election season. "Temporary Directional Signs," defined as signs directing the public to a church or other "qualifying event," have even greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the "qualifying event" and 1 hour after.

Petitioners, Good News Community Church (Church) and its pastor, Clyde Reed, whose Sunday church services are held at various temporary locations in and near the Town, posted signs early each Saturday bearing the Church name and the time and location of the next service and did not remove the signs until around ****2222** midday Sunday. The Church was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. Unable to reach an accommodation with the Town, petitioners filed suit, claiming that the Code abridged their freedom of speech. The District Court denied their motion for a preliminary injunction, and the Ninth Circuit affirmed, ultimately concluding that the Code's sign categories were content neutral, and that the Code satisfied the intermediate scrutiny accorded to content-neutral regulations of speech.

Held : The Sign Code's provisions are content-based regulations of speech that do not survive strict scrutiny. Pp. 2226 – 2233.

(a) Because content-based laws target speech based on its communicative content, they are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *E.g., R.A.V. v. St. Paul,* 505 U.S. 377, 395, 112 S.Ct. 2538, 120 L.Ed.2d 305. Speech regulation is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g., Sorrell v. IMS Health, Inc.,* 564 U.S. ——, —— – ——, 131 S.Ct. 2653, 2663–2664, 180 L.Ed.2d 544. ***156** And courts are required to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. *Id.,* at ——, 131 S.Ct., at 2664. Whether laws define regulated speech by particular subject matter or by its function

or purpose, they are subject to strict scrutiny. The same is true for laws that, though facially content neutral, cannot be " 'justified without reference to the content of the regulated speech,' " or were adopted by the government " because of disagreement with the message" conveyed. *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661. Pp. 2226 – 2227.

(b) The Sign Code is content based on its face. It defines the categories of temporary, political, and ideological signs on the basis of their messages and then subjects each category to different restrictions. The restrictions applied thus depend entirely on the sign's communicative content. Because the Code, on its face, is a content-based regulation of speech, there is no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny. P. 2227.

(c) None of the Ninth Circuit's theories for its contrary holding is persuasive. Its conclusion that the Town's regulation was not based on a disagreement with the message conveyed skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained" in the regulated speech. *Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 429, 113 S.Ct. 1505, 123 L.Ed.2d 99. Thus, an innocuous justification cannot transform a facially content-based law into one that is content neutral. A court must evaluate each question—whether a law is content based on its face and whether the purpose and justification for the law are content based—before concluding that a law is content neutral. *Ward* does not require otherwise, for its framework applies only to a content-neutral statute.

The Ninth Circuit's conclusion that the Sign Code does not single out any idea or viewpoint for discrimination conflates two distinct but related limitations that the First Amendment places on government ****2223** regulation of speech. Government discrimination among viewpoints is a "more blatant" and "egregious form of content discrimination," *Rosenberger v. Rector and Visitors of Univ. of Va.,* 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700, but "[t]he First Amendment's hostility to content-based regulation [also] extends ... to prohibition of public discussion of an entire topic," *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N. Y.,* 447 U.S. 530, 537, 100 S.Ct. 2326, 65 L.Ed.2d 319. The Sign Code, a paradigmatic example of content-based discrimination, singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter.

***157** The Ninth Circuit also erred in concluding that the Sign Code was not content based because it made only speaker-based and event-based distinctions. The Code's categories are not speaker-based—the restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. And even if the sign categories were speaker based, that would not automatically render the law content neutral. Rather, "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Turner Broadcasting System, Inc. v. FCC,* 512 U.S. 622, 658, 114 S.Ct. 2445, 129 L.Ed.2d 497. This same analysis applies to event-based distinctions. Pp. 2227 – 2231.

(d) The Sign Code's content-based restrictions do not survive strict scrutiny because the Town has not demonstrated that the Code's differentiation between temporary directional signs and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end. See *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett,* 564 U.S. ——, ——, 131 S.Ct. 2806, 2817, 180 L.Ed.2d 664. Assuming that the Town has a compelling interest in preserving its aesthetic appeal and traffic safety, the Code's distinctions are highly underinclusive. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town when other types of signs create the same problem. See *Discovery Network, supra,* at 425, 113 S.Ct. 1505. Nor has it shown that temporary directional signs pose a greater threat to public safety than ideological or political signs. Pp. 2231 – 2232.

(e) This decision will not prevent governments from enacting effective sign laws. The Town has ample content-neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability. And the Town may be able to forbid postings on public property, so long as it does so in an evenhanded, content-neutral manner. See *Members of City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 817, 104 S.Ct. 2118, 80 L.Ed.2d 772. An ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—*e.g.,* warning signs marking hazards on private property or signs directing traffic —might also survive strict scrutiny. Pp. 2232 – 2233.

707 F.3d 1057, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C.J., and SCALIA, KENNEDY, ALITO, and SOTOMAYOR, JJ., joined. ALITO, J., filed a concurring opinion, in which KENNEDY and SOTOMAYOR, JJ., joined. BREYER, J., filed an opinion concurring in the judgment. KAGAN, J., filed an opinion concurring in the judgment, in which GINSBURG and BREYER, JJ., joined.

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Opinion

Justice THOMAS delivered the opinion of the Court.

***159** The town of Gilbert, Arizona (or Town), has adopted a comprehensive code governing the manner in which people may display outdoor signs. Gilbert, Ariz., Land Development Code (Sign Code or Code), ch. 1, § 4.402 (2005).[1] The Sign Code identifies various categories of signs based on the type of information they convey, then subjects each category to different restrictions. One of the categories is "Temporary Directional Signs Relating to a Qualifying Event," loosely defined as signs directing the public to a meeting of a nonprofit group. § 4.402(P). The Code imposes more stringent restrictions on these signs than it does on signs conveying other messages. We hold that these provisions are content-based regulations of speech that cannot survive strict scrutiny.

I

A

The Sign Code prohibits the display of outdoor signs anywhere within the Town without a permit, but it then exempts 23 categories of signs from that requirement. These exemptions include everything from bazaar signs to flying banners. Three categories of exempt signs are particularly relevant here.

The first is "Ideological Sign[s]." This category includes any "sign communicating a message or ideas for noncommercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event, Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency." Sign Code, Glossary of General Terms (Glossary), p. 23 (emphasis deleted). Of the three categories discussed here, the Code treats ideological signs most favorably, allowing them to be up to 20 ***160** square feet in area and to be placed in all "zoning districts" without time limits. § 4.402(J).

The second category is "Political Sign[s]." This includes any "temporary sign designed to influence the outcome of an election called by a public body." Glossary 23.[2] The Code treats these signs less favorably than ideological signs. The Code allows the placement of political signs up to 16 square feet on residential property and up to 32 square feet on nonresidential property, undeveloped municipal property, and "rights-of-way." ****2225** § 4.402(I).[3] These signs may be displayed up to 60 days before a primary election and up to 15 days following a general election. *Ibid.*

The third category is "Temporary Directional Signs Relating to a Qualifying Event." This includes any "Temporary Sign intended to direct pedestrians, motorists, and other passersby to a 'qualifying event.' " Glossary 25 (emphasis deleted). A "qualifying event" is defined as any "assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization." *Ibid.* The Code treats temporary directional signs even less favorably than political signs.[4] Temporary directional signs may be ***161** no larger than six square feet. § 4.402(P). They may be placed on private property or on a public right-of-way, but no more than four signs may be placed on a single property at any time. *Ibid.*

And, they may be displayed no more than 12 hours before the "qualifying event" and no more than 1 hour afterward. *Ibid.*

B

Petitioners Good News Community Church (Church) and its pastor, Clyde Reed, wish to advertise the time and location of their Sunday church services. The Church is a small, cash-strapped entity that owns no building, so it holds its services at elementary schools or other locations in or near the Town. In order to inform the public about its services, which are held in a variety of different locations, the Church began placing 15 to 20 temporary signs around the Town, frequently in the public right-of-way abutting the street. The signs typically displayed the Church's name, along with the time and location of the upcoming service. Church members would post the signs early in the day on Saturday and then remove them around midday on Sunday. The display of these signs requires little money and manpower, and thus has proved to be an economical and effective way for the Church to let the community know where its services are being held each week.

This practice caught the attention of the Town's Sign Code compliance manager, who twice cited the Church for violating the Code. The first citation noted that the Church exceeded the time limits for displaying its temporary directional signs. The second citation referred to the same problem, along with the Church's failure to include the date of the event on the signs. Town officials even confiscated one of the Church's signs, which Reed had to retrieve from the municipal offices.

Reed contacted the Sign Code Compliance Department in an attempt to reach an accommodation. His efforts proved unsuccessful. The Town's Code compliance manager informed the Church that there ****2226** would be "no leniency under the Code" and promised to punish any future violations.

***162** Shortly thereafter, petitioners filed a complaint in the United States District Court for the District of Arizona, arguing that the Sign Code abridged their freedom of speech in violation of the First and Fourteenth Amendments. The District Court denied petitioners' motion for a preliminary injunction. The Court of Appeals for the Ninth Circuit affirmed, holding that the Sign Code's provision regulating temporary directional signs did not regulate speech on the basis of content. 587 F.3d 966, 979 (2009). It reasoned that, even though an enforcement officer would have to read the sign to determine what provisions of the Sign Code applied to it, the " 'kind of cursory examination' " that would be necessary for an officer to classify it as a temporary directional sign was "not akin to an officer synthesizing the expressive content of the sign." *Id.,* at 978. It then remanded for the District Court to determine in the first instance whether the Sign Code's distinctions among temporary directional signs, political signs, and ideological signs nevertheless constituted a content-based regulation of speech.

On remand, the District Court granted summary judgment in favor of the Town. The Court of Appeals again affirmed, holding that the Code's sign categories were content neutral. The court concluded that "the distinctions between Temporary Directional Signs, Ideological Signs, and Political Signs ... are based on objective factors relevant to Gilbert's creation of the specific exemption from the permit requirement and do not otherwise consider the substance of the sign." 707 F.3d 1057, 1069 (C.A.9 2013). Relying on this Court's decision in *Hill v. Colorado,* 530 U.S. 703, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000), the Court of Appeals concluded that the Sign Code is content neutral. 707 F.3d, at 1071–1072. As the court explained, "Gilbert did not adopt its regulation of speech because it disagreed with the message conveyed" and its "interests in regulat[ing] temporary signs are unrelated to the content of the sign." *Ibid.* Accordingly, the court believed that the Code was ***163** "content-neutral as that term [has been] defined by the Supreme Court." *Id.,* at 1071. In light of that determination, it applied a lower level of scrutiny to the Sign Code and concluded that the law did not violate the First Amendment. *Id.,* at 1073–1076.

We granted certiorari, 573 U.S. ——, 134 S.Ct. 2900, 189 L.Ed.2d 854 (2014), and now reverse.

II

A

[1] **[2]** 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. 1. 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." *Police Dept. of Chicago v. Mosley,* 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d

212 (1972). Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *R.A.V. v. St. Paul,* 505 U.S. 377, 395, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992); *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.,* 502 U.S. 105, 115, 118, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991).

2227 **[3] **[4]** Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g., Sorrell v. IMS Health, Inc.,* 564 U.S. ——, —— – ——, 131 S.Ct. 2653, 2663–2664, 180 L.Ed.2d 544 (2011); *Carey v. Brown,* 447 U.S. 455, 462, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980); *Mosley, supra,* at 95, 92 S.Ct. 2286. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. *Sorrell, supra,* at ——, 131 S.Ct., at 2664. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions *165 drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

[5] Our precedents have also recognized a separate and additional category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that cannot be " 'justified without reference to the content of the regulated speech,' " or that were adopted by the government "because of disagreement with the message [the speech] conveys," *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). Those laws, like those that are content based on their face, must also satisfy strict scrutiny.

B

[6] The Town's Sign Code is content based on its face. It defines "Temporary Directional Signs" on the basis of whether a sign conveys the message of directing the public to church or some other "qualifying event." Glossary 25. It defines "Political Signs" on the basis of whether a sign's message is "designed to influence the outcome of an election." *Id.,* at 24. And it defines "Ideological Signs" on the basis of whether a sign "communicat [es] a message or ideas" that do not fit within the Code's other categories. *Id.,* at 23. It then subjects each of these categories to different restrictions.

The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government. More to the point, the Church's signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas. On its face, the Sign Code is a content-based regulation of speech. We thus have no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny.

C

In reaching the contrary conclusion, the Court of Appeals offered several theories to explain why the Town's Sign Code should be deemed content neutral. None is persuasive.

1

The Court of Appeals first determined that the Sign Code was content neutral because the Town "did not adopt its regulation of speech [based on] disagree [ment] with the message conveyed," and its justifications for regulating temporary directional signs were "unrelated to the content of the sign." 707 F.3d, at 1071–1072. **2228 In its brief to this Court, the United States similarly contends that a sign regulation is content neutral—even if it expressly draws distinctions based on the sign's communicative content—if those distinctions can be " 'justified without reference to the content of the regulated speech.' " Brief for United States as *Amicus Curiae* 20, 24 (quoting *Ward, supra,* at 791, 109 S.Ct. 2746; emphasis deleted).

[7] **[8]** **[9]** **[10]** **[11]** But this analysis skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained"

in the regulated speech. *Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 429, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993). We have thus made clear that " '[i]llicit legislative intent is not the *sine qua non* of a violation of the First Amendment,' " and a party opposing the government "need adduce 'no evidence of an improper censorial motive.' " *Simon & Schuster, supra,* at 117, 112 S.Ct. 501. Although "a content-based purpose may be sufficient in certain circumstances to show that a regulation is content based, it is not necessary." ***166** *Turner Broadcasting System, Inc. v. FCC,* 512 U.S. 622, 642, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994). In other words, an innocuous justification cannot transform a facially content-based law into one that is content neutral.

[12] That is why we have repeatedly considered whether a law is content neutral on its face *before* turning to the law's justification or purpose. See, *e.g., Sorrell, supra,* at ——— – ———, 131 S.Ct., at 2663–2664 (statute was content based "on its face," and there was also evidence of an impermissible legislative motive); *United States v. Eichman,* 496 U.S. 310, 315, 110 S.Ct. 2404, 110 L.Ed.2d 287 (1990) ("Although the [statute] contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the Government's asserted *interest* is related to the suppression of free expression" (internal quotation marks omitted)); *Members of City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 804, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984) ("The text of the ordinance is neutral," and "there is not even a hint of bias or censorship in the City's enactment or enforcement of this ordinance"); *Clark v. Community for Creative Non–Violence,* 468 U.S. 288, 293, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984) (requiring that a facially content-neutral ban on camping must be "justified without reference to the content of the regulated speech"); *United States v. O'Brien,* 391 U.S. 367, 375, 377, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968) (noting that the statute "on its face deals with conduct having no connection with speech," but examining whether the "the governmental interest is unrelated to the suppression of free expression"). Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny.

The Court of Appeals and the United States misunderstand our decision in *Ward* as suggesting that a government's purpose is relevant even when a law is content based on its face. That is incorrect. *Ward* had nothing to say about facially content-based restrictions because it involved ***167** a facially content-*neutral* ban on the use, in a city-owned music venue, of sound amplification systems not provided by the city. 491 U.S., at 787, and n. 2, 109 S.Ct. 2746. In that context, we looked to ****2229** governmental motive, including whether the government had regulated speech "because of disagreement" with its message, and whether the regulation was " 'justified without reference to the content of the speech.' " *Id.,* at 791, 109 S.Ct. 2746. But *Ward* 's framework "applies only if a statute is content neutral." *Hill,* 530 U.S., at 766, 120 S.Ct. 2480 (KENNEDY, J., dissenting). Its rules thus operate "to protect speech," not "to restrict it." *Id.,* at 765, 120 S.Ct. 2480.

The First Amendment requires no less. Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech. That is why the First Amendment expressly targets the operation of the laws—*i.e.,* the "abridg[ement] of speech"—rather than merely the motives of those who enacted them. U.S. Const., Amdt. 1. " 'The vice of content-based legislation ... is not that it is always used for invidious, thought-control purposes, but that it lends itself to use for those purposes.' " *Hill, supra,* at 743, 120 S.Ct. 2480 (SCALIA, J., dissenting).

For instance, in *NAACP v. Button,* 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963), the Court encountered a State's attempt to use a statute prohibiting " 'improper solicitation' " by attorneys to outlaw litigation-related speech of the National Association for the Advancement of Colored People. *Id.,* at 438, 83 S.Ct. 328. Although *Button* predated our more recent formulations of strict scrutiny, the Court rightly rejected the State's claim that its interest in the "regulation of professional conduct" rendered the statute consistent with the First Amendment, observing that "it is no answer ... to say ... that the purpose of these regulations was merely to insure high professional standards and not to curtail free expression." *Id.,* at 438–439, 83 S.Ct. 328. Likewise, one could easily imagine a Sign Code compliance manager ***168** who disliked the Church's substantive teachings deploying the Sign Code to make it more difficult for the Church to inform the public of the location of its services. Accordingly, we have repeatedly "rejected the argument that 'discriminatory ... treatment is suspect under the First Amendment only when the legislature intends to suppress certain ideas.' " *Discovery Network,* 507 U.S., at 429, 113 S.Ct. 1505. We do so again today.

2

The Court of Appeals next reasoned that the Sign Code was content neutral because it "does not mention any idea or viewpoint, let alone single one out for differential treatment." 587 F.3d, at 977. It reasoned that, for the purpose of the Code provisions, "[i]t makes no difference which candidate is supported, who sponsors the event, or what ideological perspective is asserted." 707 F.3d, at 1069.

The Town seizes on this reasoning, insisting that "content based" is a term of art that "should be applied flexibly" with the goal of protecting "viewpoints and ideas from government censorship or favoritism." Brief for Respondents 22. In the Town's view, a sign regulation that "does not censor or favor particular viewpoints or ideas" cannot be content based. *Ibid*. The Sign Code allegedly passes this test because its treatment of temporary directional signs does not raise any concerns that the government is "endorsing or suppressing 'ideas or viewpoints,' " *id.,* at 27, and the provisions for political signs and ideological signs "are neutral as to particular ideas or viewpoints" within those categories. *Id.,* at 37.

[13] This analysis conflates two distinct but related limitations that the First ****2230** Amendment places on government regulation of speech. Government discrimination among viewpoints—or the regulation of speech based on "the specific motivating ideology or the opinion or perspective of the speaker"—is a "more blatant" and "egregious form of content discrimination." ***169** *Rosenberger v. Rector and Visitors of Univ. of Va.,* 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). But it is well established that "[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N. Y.,* 447 U.S. 530, 537, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980).

[14] Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. *Ibid.* For example, a law banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed. See *Discovery Network, supra,* at 428, 113 S.Ct. 1505. The Town's Sign Code likewise singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter. Ideological messages are given more favorable treatment than messages concerning a political candidate, which are themselves given more favorable treatment than messages announcing an assembly of like-minded individuals. That is a paradigmatic example of content-based discrimination.

3

Finally, the Court of Appeals characterized the Sign Code's distinctions as turning on " 'the content-neutral elements of who is speaking through the sign and whether and when an event is occurring.' " 707 F.3d, at 1069. That analysis is mistaken on both factual and legal grounds.

To start, the Sign Code's distinctions are not speaker based. The restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. If a local business, for example, sought to put up signs advertising the Church's meetings, those signs would be subject to the same limitations as such signs placed by the Church. And if Reed had decided to display signs in support of a particular candidate, he could have made those signs far ***170** larger—and kept them up for far longer—than signs inviting people to attend his church services. If the Code's distinctions were truly speaker based, both types of signs would receive the same treatment.

[15] **[16]** In any case, the fact that a distinction is speaker based does not, as the Court of Appeals seemed to believe, automatically render the distinction content neutral. Because "[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content," *Citizens United v. Federal Election Comm'n,* 558 U.S. 310, 340, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010), we have insisted that "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference," *Turner,* 512 U.S., at 658, 114 S.Ct. 2445. Thus, a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based. Likewise, a content-based law that restricted the political speech of all corporations would not become content neutral just because it singled out corporations as a class of speakers. See *Citizens United, supra,* at 340–341, 130 S.Ct. 876. Characterizing a distinction ****2231** as speaker based is only the beginning—not the end—of the inquiry.

Nor do the Sign Code's distinctions hinge on "whether and when an event is occurring." The Code does not permit citizens to post signs on any topic whatsoever within a set period leading up to an election, for example. Instead, come election time, it requires Town officials to determine whether a sign is "designed to influence the outcome of an election" (and thus "political") or merely "communicating a message or ideas for noncommercial purposes" (and thus "ideological"). Glossary 24. That obvious content-based inquiry does not evade strict scrutiny review simply because an event (*i.e.,* an election) is involved.

[17] And, just as with speaker-based laws, the fact that a distinction is event based does not render it content neutral. The Court of Appeals cited no precedent from this Court ***171** supporting its novel theory of an exception from the content-neutrality requirement for event-based laws. As we have explained, a speech regulation is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed. *Supra,* at 2226 – 2227. A regulation that targets a sign because it conveys an idea about a specific event is no less content based than a regulation that targets a sign because it conveys some other idea. Here, the Code singles out signs bearing a particular message: the time and location of a specific event. This type of ordinance may seem like a perfectly rational way to regulate signs, but a clear and firm rule governing content neutrality is an essential means of protecting the freedom of speech, even if laws that might seem "entirely reasonable" will sometimes be "struck down because of their content-based nature." *City of Ladue v. Gilleo,* 512 U.S. 43, 60, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994) (O'Connor, J., concurring).

III

[18] **[19]** Because the Town's Sign Code imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny, " 'which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest,' " *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett,* 564 U.S. ——, ——, 131 S.Ct. 2806, 2817, 180 L.Ed.2d 664 (2011) (quoting *Citizens United,* 558 U.S., at 340, 130 S.Ct. 876). Thus, it is the Town's burden to demonstrate that the Code's differentiation between temporary directional signs and other types of signs, such as political signs and ideological signs, furthers a compelling governmental interest and is narrowly tailored to that end. See *ibid.*

The Town cannot do so. It has offered only two governmental interests in support of the distinctions the Sign Code draws: preserving the Town's aesthetic appeal and traffic safety. Assuming for the sake of argument that those are compelling governmental interests, the Code's distinctions fail as hopelessly underinclusive.

***172** Starting with the preservation of aesthetics, temporary directional signs are "no greater an eyesore," *Discovery Network,* 507 U.S., at 425, 113 S.Ct. 1505, than ideological or political ones. Yet the Code allows unlimited proliferation of larger ideological signs while strictly limiting the number, size, and duration of smaller directional ones. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town while at the same time allowing unlimited numbers of other types of signs that create the same problem.

****2232** The Town similarly has not shown that limiting temporary directional signs is necessary to eliminate threats to traffic safety, but that limiting other types of signs is not. The Town has offered no reason to believe that directional signs pose a greater threat to safety than do ideological or political signs. If anything, a sharply worded ideological sign seems more likely to distract a driver than a sign directing the public to a nearby church meeting.

[20] In light of this underinclusiveness, the Town has not met its burden to prove that its Sign Code is narrowly tailored to further a compelling government interest. Because a " 'law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited,' " *Republican Party of Minn. v. White,* 536 U.S. 765, 780, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002), the Sign Code fails strict scrutiny.

IV

[21] Our decision today will not prevent governments from enacting effective sign laws. The Town asserts that an " 'absolutist' " content-neutrality rule would render "virtually all distinctions in sign laws ... subject to strict scrutiny," Brief for Respondents 34–35, but that is not the case. Not "all distinctions" are subject to strict scrutiny, only *content-based* ones are. Laws that are *content neutral* are instead subject to lesser scrutiny. See *Clark,* 468 U.S., at 295, 104 S.Ct. 3065.

***173** The Town has ample content-neutral options available to resolve problems with safety and aesthetics. For example, its current Code regulates many aspects of signs that have nothing to do with a sign's message: size, building materials, lighting, moving parts, and portability. See, *e.g.,* § 4.402(R). And on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner. See *Taxpayers for Vincent,* 466 U.S., at 817, 104 S.Ct. 2118 (upholding content-neutral ban against posting signs on public property). Indeed, some lower courts have long held that similar content-based sign laws receive strict scrutiny, but there is no evidence that towns in those jurisdictions have suffered catastrophic effects. See, *e.g., Solantic, LLC v. Neptune Beach,* 410 F.3d 1250, 1264–1269 (C.A.11 2005) (sign categories similar to the town of Gilbert's were content based and subject to strict scrutiny); *Matthews v. Needham,* 764 F.2d 58, 59–60 (C.A.1 1985) (law banning political signs but not commercial signs was content based and subject to strict scrutiny).

We acknowledge that a city might reasonably view the general regulation of signs as necessary because signs "take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation." *City of Ladue,* 512 U.S., at 48, 114 S.Ct. 2038. At the same time, the presence of certain signs may be essential, both for vehicles and pedestrians, to guide traffic or to identify hazards and ensure safety. A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses—well might survive strict scrutiny. The signs at issue in this case, including political and ideological signs and signs for events, are far removed from those purposes. As discussed above, they are facially content based and are neither justified by traditional safety concerns nor narrowly tailored.

* * *

****2233** ***174** We reverse the judgment of the Court of Appeals and remand the case for proceedings consistent with this opinion.

It is so ordered.

Justice ALITO, with whom Justice KENNEDY and Justice SOTOMAYOR join, concurring.

I join the opinion of the Court but add a few words of further explanation.

As the Court holds, what we have termed "content-based" laws must satisfy strict scrutiny. Content-based laws merit this protection because they present, albeit sometimes in a subtler form, the same dangers as laws that regulate speech based on viewpoint. Limiting speech based on its "topic" or "subject" favors those who do not want to disturb the status quo. Such regulations may interfere with democratic self-government and the search for truth. See *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N. Y.,* 447 U.S. 530, 537, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980).

As the Court shows, the regulations at issue in this case are replete with content-based distinctions, and as a result they must satisfy strict scrutiny. This does not mean, however, that municipalities are powerless to enact and enforce reasonable sign regulations. I will not attempt to provide anything like a comprehensive list, but here are some rules that would not be content based:

Rules regulating the size of signs. These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.

Rules regulating the locations in which signs may be placed. These rules may distinguish between free-standing signs and those attached to buildings.

Rules distinguishing between lighted and unlighted signs.

Rules distinguishing between signs with fixed messages and electronic signs with messages that change.

***175** Rules that distinguish between the placement of signs on private and public property.

Rules distinguishing between the placement of signs on commercial and residential property.

Rules distinguishing between on-premises and off-premises signs.

Rules restricting the total number of signs allowed per mile of roadway.

Rules imposing time restrictions on signs advertising a one-time event. Rules of this nature do not discriminate based

on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed. *

In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. See *Pleasant Grove City v. Summum,* 555 U.S. 460, 467–469, 129 S.Ct. 1125, 172 L.Ed.2d 853 (2009). They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.

Properly understood, today's decision will not prevent cities from regulating signs in a way that fully protects public ****2234** safety and serves legitimate esthetic objectives.

Justice BREYER, concurring in the judgment.

I join Justice KAGAN's separate opinion. Like Justice KAGAN I believe that categories alone cannot satisfactorily resolve the legal problem before us. The First Amendment requires greater judicial sensitivity both to the Amendment's expressive objectives and to the public's legitimate need for regulation than a simple recitation of categories, such as ***176** "content discrimination" and "strict scrutiny," would permit. In my view, the category "content discrimination" is better considered in many contexts, including here, as a rule of thumb, rather than as an automatic "strict scrutiny" trigger, leading to almost certain legal condemnation.

To use content discrimination to trigger strict scrutiny sometimes makes perfect sense. There are cases in which the Court has found content discrimination an unconstitutional method for suppressing a viewpoint. *E.g., Rosenberger v. Rector and Visitors of Univ. of Va.,* 515 U.S. 819, 828–829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995); see also *Boos v. Barry,* 485 U.S. 312, 318–319, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988) (plurality opinion) (applying strict scrutiny where the line between subject matter and viewpoint was not obvious). And there are cases where the Court has found content discrimination to reveal that rules governing a traditional public forum are, in fact, not a neutral way of fairly managing the forum in the interest of all speakers. *Police Dept. of Chicago v. Mosley,* 408 U.S. 92, 96, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) ("Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say"). In these types of cases, strict scrutiny is often appropriate, and content discrimination has thus served a useful purpose.

But content discrimination, while helping courts to identify unconstitutional suppression of expression, cannot and should not *always* trigger strict scrutiny. To say that it is not an automatic "strict scrutiny" trigger is not to argue against that concept's use. I readily concede, for example, that content discrimination, as a conceptual tool, can sometimes reveal weaknesses in the government's rationale for a rule that limits speech. If, for example, a city looks to litter prevention as the rationale for a prohibition against placing newsracks dispensing free advertisements on public property, why does it exempt other newsracks causing similar litter? Cf. *Cincinnati v. Discovery Network, Inc.,* 507 U.S. 410, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993). I also concede that, whenever government disfavors ***177** one kind of speech, it places that speech at a disadvantage, potentially interfering with the free marketplace of ideas and with an individual's ability to express thoughts and ideas that can help that individual determine the kind of society in which he wishes to live, help shape that society, and help define his place within it.

Nonetheless, in these latter instances to use the presence of content discrimination automatically to trigger strict scrutiny and thereby call into play a strong presumption against constitutionality goes too far. That is because virtually all government activities involve speech, many of which involve the regulation of speech. Regulatory programs almost always require content discrimination. And to hold that such content discrimination triggers strict scrutiny is to write a recipe for judicial management of ordinary government regulatory activity.

Consider a few examples of speech regulated by government that inevitably involve ****2235** content discrimination, but where a strong presumption against constitutionality has no place. Consider governmental regulation of securities, *e.g.,* 15 U.S.C. § 78*l* (requirements for content that must be included in a registration statement); of energy conservation labeling-practices, *e.g.,* 42 U.S.C. § 6294 (requirements for content that must be included on labels of certain consumer electronics); of prescription drugs, *e.g.,* 21 U.S.C. § 353(b)(4)(A) (requiring a prescription drug label to bear the symbol "Rx only"); of doctor-patient confidentiality, *e.g.,* 38 U.S.C. § 7332 (requiring confidentiality of certain medical records, but allowing a physician to disclose that the patient has HIV to the patient's spouse or sexual partner); of income tax statements, *e.g.,* 26 U.S.C. § 6039F (requiring taxpayers to furnish information about foreign gifts received if the aggregate amount exceeds $10,000); of commercial airplane briefings,

e.g., 14 CFR § 136.7 (2015) (requiring pilots to ensure that each passenger has been briefed on flight procedures, such as seatbelt fastening); of signs at petting zoos, ***178** *e.g.,* N.Y. Gen. Bus. Law Ann. § 399–ff(3) (West Cum. Supp. 2015) (requiring petting zoos to post a sign at every exit " 'strongly recommend[ing] that persons wash their hands upon exiting the petting zoo area' "); and so on.

Nor can the majority avoid the application of strict scrutiny to all sorts of justifiable governmental regulations by relying on this Court's many subcategories and exceptions to the rule. The Court has said, for example, that we should apply less strict standards to "commercial speech." *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). But I have great concern that many justifiable instances of "content-based" regulation are noncommercial. And, worse than that, the Court has applied the heightened "strict scrutiny" standard even in cases where the less stringent "commercial speech" standard was appropriate. See *Sorrell v. IMS Health Inc.,* 564 U.S. ——, ——, 131 S.Ct. 2653, 2664, 180 L.Ed.2d 544 (2011) (BREYER, J., dissenting). The Court has also said that "government speech" escapes First Amendment strictures. See *Rust v. Sullivan,* 500 U.S. 173, 193–194, 111 S.Ct. 1759, 114 L.Ed.2d 233 (1991). But regulated speech is typically private speech, not government speech. Further, the Court has said that, "[w]hen the basis for the content discrimination consists entirely of the very reason the entire class of speech at issue is proscribable, no significant danger of idea or viewpoint discrimination exists." *R.A.V. v. St. Paul,* 505 U.S. 377, 388, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992). But this exception accounts for only a few of the instances in which content discrimination is readily justifiable.

I recognize that the Court could escape the problem by watering down the force of the presumption against constitutionality that "strict scrutiny" normally carries with it. But, in my view, doing so will weaken the First Amendment's protection in instances where "strict scrutiny" should apply in full force.

The better approach is to generally treat content discrimination as a strong reason weighing against the constitutionality of a rule where a traditional public forum, or where ***179** viewpoint discrimination, is threatened, but elsewhere treat it as a rule of thumb, finding it a helpful, but not determinative legal tool, in an appropriate case, to determine the strength of a justification. I would use content discrimination as a supplement to a more basic analysis, which, tracking most of our First Amendment cases, asks whether the regulation at issue works harm to First Amendment interests that is disproportionate in light of ****2236** the relevant regulatory objectives. Answering this question requires examining the seriousness of the harm to speech, the importance of the countervailing objectives, the extent to which the law will achieve those objectives, and whether there are other, less restrictive ways of doing so. See, *e.g., United States v. Alvarez,* 567 U.S. ——, —— – ——, 132 S.Ct. 2537, 2551–2553, 183 L.Ed.2d 574 (2012) (BREYER, J., concurring in judgment); *Nixon v. Shrink Missouri Government PAC,* 528 U.S. 377, 400–403, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000) (BREYER, J., concurring). Admittedly, this approach does not have the simplicity of a mechanical use of categories. But it does permit the government to regulate speech in numerous instances where the voters have authorized the government to regulate and where courts should hesitate to substitute judicial judgment for that of administrators.

Here, regulation of signage along the roadside, for purposes of safety and beautification is at issue. There is no traditional public forum nor do I find any general effort to censor a particular viewpoint. Consequently, the specific regulation at issue does not warrant "strict scrutiny." Nonetheless, for the reasons that Justice KAGAN sets forth, I believe that the Town of Gilbert's regulatory rules violate the First Amendment. I consequently concur in the Court's judgment only.

Justice KAGAN, with whom Justice GINSBURG and Justice BREYER join, concurring in the judgment.

Countless cities and towns across America have adopted ordinances regulating the posting of signs, while exempting ***180** certain categories of signs based on their subject matter. For example, some municipalities generally prohibit illuminated signs in residential neighborhoods, but lift that ban for signs that identify the address of a home or the name of its owner or occupant. See, *e.g.,* City of Truth or Consequences, N. M., Code of Ordinances, ch. 16, Art. XIII, §§ 11–13–2.3, 11–13–2.9(H)(4) (2014). In other municipalities, safety signs such as "Blind Pedestrian Crossing" and "Hidden Driveway" can be posted without a permit, even as other permanent signs require one. See, *e.g.,* Code of Athens–Clarke County, Ga., Pt. III, § 7–4–7(1) (1993). Elsewhere, historic site markers—for example, "George Washington Slept Here"—are also exempt from general regulations. See, *e.g.,* Dover, Del., Code of Ordinances, Pt. II, App. B, Art. 5, § 4.5(F) (2012). And

similarly, the federal Highway Beautification Act limits signs along interstate highways unless, for instance, they direct travelers to "scenic and historical attractions" or advertise free coffee. See 23 U.S.C. §§ 131(b), (c)(1), (c)(5).

Given the Court's analysis, many sign ordinances of that kind are now in jeopardy. See *ante,* at 2231 (acknowledging that "entirely reasonable" sign laws "will sometimes be struck down" under its approach (internal quotation marks omitted)). Says the majority: When laws "single[ ] out specific subject matter," they are "facially content based"; and when they are facially content based, they are automatically subject to strict scrutiny. *Ante,* at 2230, 2232 – 2233. And although the majority holds out hope that some sign laws with subject-matter exemptions "might survive" that stringent review, *ante,* at 2232 – 2233, the likelihood is that most will be struck down. After all, it is the "rare case[ ] in which a speech restriction withstands strict scrutiny." *Williams–Yulee v. Florida Bar,* 575 U.S. ——, ——, 135 S.Ct. 1656, 1666, ——L.Ed.2d —— (2015). To clear that high bar, the government must show that a content-based distinction "is necessary to serve a compelling state interest and is narrowly drawn to achieve that end." ***181** ****2237** *Arkansas Writers' Project, Inc. v. Ragland,* 481 U.S. 221, 231, 107 S.Ct. 1722, 95 L.Ed.2d 209 (1987). So on the majority's view, courts would have to determine that a town has a compelling interest in informing passersby where George Washington slept. And likewise, courts would have to find that a town has no other way to prevent hidden-driveway mishaps than by specially treating hidden-driveway signs. (Well-placed speed bumps? Lower speed limits? Or how about just a ban on hidden driveways?) The consequence—unless courts water down strict scrutiny to something unrecognizable—is that our communities will find themselves in an unenviable bind: They will have to either repeal the exemptions that allow for helpful signs on streets and sidewalks, or else lift their sign restrictions altogether and resign themselves to the resulting clutter. *

Although the majority insists that applying strict scrutiny to all such ordinances is "essential" to protecting First Amendment freedoms, *ante,* at 2231, I find it challenging to understand why that is so. This Court's decisions articulate two important and related reasons for subjecting content-based speech regulations to the most exacting standard of review. The first is "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *McCullen v. Coakley,* 573 U.S. ——, —— – ——, 134 S.Ct. 2518, 2529, 189 L.Ed.2d 502 (2014) (internal quotation marks omitted). The second is to ensure that the government has not regulated speech "based on hostility—or favoritism—towards the underlying message expressed." *R.A.V. v. St. Paul,* 505 U.S. 377, 386, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992). Yet the ***182** subject-matter exemptions included in many sign ordinances do not implicate those concerns. Allowing residents, say, to install a light bulb over "name and address" signs but no others does not distort the marketplace of ideas. Nor does that different treatment give rise to an inference of impermissible government motive.

We apply strict scrutiny to facially content-based regulations of speech, in keeping with the rationales just described, when there is any "realistic possibility that official suppression of ideas is afoot." *Davenport v. Washington Ed. Assn.,* 551 U.S. 177, 189, 127 S.Ct. 2372, 168 L.Ed.2d 71 (2007) (quoting *R.A.V.,* 505 U.S., at 390, 112 S.Ct. 2538). That is always the case when the regulation facially differentiates on the basis of viewpoint. See *Rosenberger v. Rector and Visitors of Univ. of Va.,* 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). It is also the case (except in non-public or limited public forums) when a law restricts "discussion of an entire topic" in public debate. *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N. Y.,* 447 U.S. 530, 537, 539–540, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980) (invalidating a limitation on speech about nuclear power). We have stated that "[i]f the marketplace of ideas is to remain free and open, governments must not be allowed to choose 'which issues are worth discussing or debating.' " *Id.,* at 537–538, 100 S.Ct. 2326 (quoting ****2238** *Police Dept. of Chicago v. Mosley,* 408 U.S. 92, 96, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972)). And we have recognized that such subject-matter restrictions, even though viewpoint-neutral on their face, may "suggest[ ] an attempt to give one side of a debatable public question an advantage in expressing its views to the people." *First Nat. Bank of Boston v. Bellotti,* 435 U.S. 765, 785, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978); accord, *ante,* at 2233 (ALITO, J., concurring) (limiting all speech on one topic "favors those who do not want to disturb the status quo"). Subject-matter regulation, in other words, may have the intent or effect of favoring some ideas over others. When that is realistically possible—when the restriction "raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace"—we insist that the law pass the most demanding ***183** constitutional test. *R.A.V.,* 505 U.S., at 387, 112 S.Ct. 2538 (quoting *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.,* 502 U.S. 105, 116, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991)).

But when that is not realistically possible, we may do well to relax our guard so that "entirely reasonable" laws imperiled by strict scrutiny can survive. *Ante,* at 2231. This point is by no means new. Our concern with content-based regulation arises from the fear that the government will skew the public's debate of ideas—so when "that risk is inconsequential, ... strict scrutiny is unwarranted." *Davenport,* 551 U.S., at 188, 127 S.Ct. 2372; see *R.A.V.,* 505 U.S., at 388, 112 S.Ct. 2538 (approving certain content-based distinctions when there is "no significant danger of idea or viewpoint discrimination"). To do its intended work, of course, the category of content-based regulation triggering strict scrutiny must sweep more broadly than the actual harm; that category exists to create a buffer zone guaranteeing that the government cannot favor or disfavor certain viewpoints. But that buffer zone need not extend forever. We can administer our content-regulation doctrine with a dose of common sense, so as to leave standing laws that in no way implicate its intended function.

And indeed we have done just that: Our cases have been far less rigid than the majority admits in applying strict scrutiny to facially content-based laws—including in cases just like this one. See *Davenport,* 551 U.S., at 188, 127 S.Ct. 2372 (noting that "we have identified numerous situations in which [the] risk" attached to content-based laws is "attenuated"). In *Members of City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984), the Court declined to apply strict scrutiny to a municipal ordinance that exempted address numbers and markers commemorating "historical, cultural, or artistic event[s]" from a generally applicable limit on sidewalk signs. *Id.,* at 792, n. 1, 104 S.Ct. 2118 (listing exemptions); see *id.,* at 804–810, 104 S.Ct. 2118 (upholding ordinance under intermediate scrutiny). After all, we explained, the law's enactment and enforcement revealed "not even a hint of bias or censorship." ***184** *Id.,* at 804, 104 S.Ct. 2118; see also *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 48, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986) (applying intermediate scrutiny to a zoning law that facially distinguished among movie theaters based on content because it was "designed to prevent crime, protect the city's retail trade, [and] maintain property values ..., not to suppress the expression of unpopular views"). And another decision involving a similar law provides an alternative model. In *City of Ladue v. Gilleo,* 512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994), the Court assumed *arguendo* that a sign ordinance's exceptions for address ****2239** signs, safety signs, and for-sale signs in residential areas did not trigger strict scrutiny. See *id.,* at 46–47, and n. 6, 114 S.Ct. 2038 (listing exemptions); *id.,* at 53, 114 S.Ct. 2038 (noting this assumption). We did not need to, and so did not, decide the level-of-scrutiny question because the law's breadth made it unconstitutional under any standard.

The majority could easily have taken *Ladue* 's tack here. The Town of Gilbert's defense of its sign ordinance—most notably, the law's distinctions between directional signs and others—does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test. See *ante,* at 2231 – 2232 (discussing those distinctions). The Town, for example, provides no reason at all for prohibiting more than four directional signs on a property while placing no limits on the number of other types of signs. See Gilbert, Ariz., Land Development Code, ch. I, §§ 4.402(J), (P)(2) (2014). Similarly, the Town offers no coherent justification for restricting the size of directional signs to 6 square feet while allowing other signs to reach 20 square feet. See §§ 4.402(J), (P)(1). The best the Town could come up with at oral argument was that directional signs "need to be smaller because they need to guide travelers along a route." Tr. of Oral Arg. 40. Why exactly a smaller sign better helps travelers get to where they are going is left a mystery. The absence of any sensible basis for these and other distinctions dooms the Town's ordinance under even the intermediate scrutiny that the Court typically applies to "time, place, or manner" speech regulations. ***185** Accordingly, there is no need to decide in this case whether strict scrutiny applies to every sign ordinance in every town across this country containing a subject-matter exemption.

I suspect this Court and others will regret the majority's insistence today on answering that question in the affirmative. As the years go by, courts will discover that thousands of towns have such ordinances, many of them "entirely reasonable." *Ante,* at 2231. And as the challenges to them mount, courts will have to invalidate one after the other. (This Court may soon find itself a veritable Supreme Board of Sign Review.) And courts will strike down those democratically enacted local laws even though no one—certainly not the majority—has ever explained why the vindication of First Amendment values requires that result. Because I see no reason why such an easy case calls for us to cast a constitutional pall on reasonable regulations quite unlike the law before us, I concur only in the judgment.

All Citations

576 U.S. 155, 135 S.Ct. 2218, 192 L.Ed.2d 236, 83 USLW 4444, 15 Cal. Daily Op. Serv. 6239, 2015 Daily Journal D.A.R. 6831, 25 Fla. L. Weekly Fed. S 383

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 The Town's Sign Code is available online at http://www. gilbertaz.gov/departments/development-service/planning-development/land-development-code (as visited June 16, 2015, and available in Clerk of Court's case file).

2 A "Temporary Sign" is a "sign not permanently attached to the ground, a wall or a building, and not designed or intended for permanent display." Glossary 25.

3 The Code defines "Right–of–Way" as a "strip of publicly owned land occupied by or planned for a street, utilities, landscaping, sidewalks, trails, and similar facilities." *Id.,* at 18.

4 The Sign Code has been amended twice during the pendency of this case. When litigation began in 2007, the Code defined the signs at issue as "Religious Assembly Temporary Direction Signs." App. 75. The Code entirely prohibited placement of those signs in the public right-of-way, and it forbade posting them in any location for more than two hours before the religious assembly or more than one hour afterward. *Id.,* at 75–76. In 2008, the Town redefined the category as "Temporary Directional Signs Related to a Qualifying Event," and it expanded the time limit to 12 hours before and 1 hour after the "qualifying event." *Ibid.* In 2011, the Town amended the Code to authorize placement of temporary directional signs in the public right-of-way. *Id.,* at 89.

* Of course, content-neutral restrictions on speech are not necessarily consistent with the First Amendment. Time, place, and manner restrictions "must be narrowly tailored to serve the government's legitimate, content-neutral interests." *Ward v. Rock Against Racism,* 491 U.S. 781, 798, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). But they need not meet the high standard imposed on viewpoint- and content-based restrictions.

* Even in trying (commendably) to limit today's decision, Justice ALITO's concurrence highlights its far-reaching effects. According to Justice ALITO, the majority does not subject to strict scrutiny regulations of "signs advertising a one-time event." *Ante,* at 2233 (ALITO, J., concurring). But of course it does. On the majority's view, a law with an exception for such signs "singles out specific subject matter for differential treatment" and "defin[es] regulated speech by particular subject matter." *Ante,* at 2227, 2230 (majority opinion). Indeed, the precise reason the majority applies strict scrutiny here is that "the Code singles out signs bearing a particular message: the time and location of a specific event." *Ante,* at 2231.

TOWN OF NEW CASTLE, COLORADO
ORDINANCE NO. TC 2023-5

AN ORDINANCE OF THE TOWN OF NEW CASTLE, COLORADO AMENDING CHAPTER 17.18 OF THE NEW CASTLE MUNICIPAL CODE, ALSO KNOWN AS THE NEW CASTLE SIGN CODE.

WHEREAS, Chapter 17.18 of the New Castle Municipal Code ("Code") provides regulations for signs within the Town of New Castle ("Town"); and

WHEREAS, on June 18, 2015, the United States Supreme Court issued its decision in the case of *Reed, et al. v. Town of Gilbert*, which imposed new standards under the First Amendment to the United States Constitution regarding municipal regulation of signs across the nation; and

WHEREAS, in light of the *Town of Gilbert* decision, Town Council directed the Town Attorney and Planning Staff to recommend any revisions to Chapter 17.18 of the Code in order to ensure compliance with the First Amendment as well as taking the opportunity to update and improve sign regulation and enforcement generally for the Town; and

WHEREAS, on June 28, 2023, the New Castle Planning Commission held a duly-noticed public hearing to consider revisions to Chapter 17.18 and make its recommendations to Town Council regarding same; and

WHEREAS, Town Council finds and determines that amendments are necessary and desirable and desires to amend Chapter 17.18 of the Code as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEW CASTLE, COLORADO:

1. Recitals. The foregoing recitals are incorporated herein as findings and determinations of Town Council.

2. Amendment. Town Council hereby repeals Chapter 17.18 of the Code and reenacts the same as set forth in Exhibit A, attached hereto and incorporated by reference herein.

3. Severability. Each section of this Ordinance is an independent section and a holding of any section or part thereof to be unconstitutional, void, or ineffective for any cause or reason shall not be deemed to affect the validity or constitutionality of any other section or part thereof, the intent being that the provisions hereof are severable.

4. Effective Date. This Ordinance shall become effective 30 days after final publication as provided in C.R.S. 31-16-105.

INTRODUCED on September 19, 2023, at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading,

and ordered published in full and posted in at least two public places within the Town as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the Town of New Castle, Colorado, on October 3, 2023, read by title and number, passed without amendment, approved, and ordered published as required by the Charter.

TOWN COUNCIL OF THE TOWN OF
NEW CASTLE, COLORADO

By:_____
Art Riddile, Mayor

ATTEST:

_____
Mindy Andis, Town Clerk

Exhibit A

Chapter 17.18 SIGN CODE

Sections:

17.18.010 Title.

This chapter shall be known and cited as the New Castle Sign Code.

17.18.020 Purposes.

A. The regulations in this chapter are intended to coordinate the use, placement, physical dimensions, and design of all signs within the Town of New Castle while preserving the right to free speech and expression. The purpose for these regulations include providing a balanced and fair legal framework for design, construction, and placement of signs that:

1. Recognizes that signs are a necessary means of visual communication for the convenience of the public and provides fair and consistent permitting and enforcement;
2. Recognizes and ensures the right of those concerned to identify businesses, services, and other activities by the use of signs;
3. Provides a reasonable balance between the right of an individual to identify their business and the right of the public to be protected against the visual discord resulting from the unrestricted proliferation of signs and similar devices;
4. Protects the public from damage or injury caused by signs that are poorly designed or maintained and from distractions or hazards to pedestrians or motorists caused by the indiscriminate placement or use of signs;
5. Conserves energy by supporting use of lighting elements that utilize light emitting diodes (LED), florescent bulbs, and other low energy consuming lighting devices, thereby reducing energy demands;
6. Minimizes light pollution by reducing or eliminating the over-lighting of signs and use of inefficient lighting systems;
7. Supports use of materials in structures that include recycled products and other materials that are designed for longevity and that minimize environmental impacts;
8. Ensures signs are well designed and contribute in a positive way to the Town's visual environment, express local character, and help develop a distinctive image for the Town;
9. Encourages signs which are responsive to the aesthetics and character of their particular location, adjacent buildings and uses, and the surrounding neighborhood;
10. Ensures signs are compatible and integrated with a building's architectural design and with other signs on and near the property, and prevents the construction of signs that are a nuisance to occupants of adjacent and contiguous property due to brightness, reflectivity, bulk, or height;
11. Prevents unnecessary or excessive competition between signs in the Town;
12. Provides mechanisms for bringing nonconforming signs into compliance with these regulations as a result of changing use, abandonment, or other legal mechanisms;

13. Establishes sign districts that differentiate the types of signs allowed in specific areas based upon characteristics particular to that district.

17.18.030 Definitions.

As used in this chapter, the following words have the following meanings:

"Above-roof sign" means a sign displayed above the peak or parapet of a building.

"Administrator" or "code administrator" means the town administrator or his or her designee.

"Animation" or "animated" *(See also "changeable copy" and "movement")* means the movement or the illusion of movement of any part of a sign's structure, design, or pictorial or text segment(s), including the movement of any illumination or the flashing or varying of light intensity; the automatic changing of all or any part of the facing of a sign.

"Architectural detail" *(See also "sign area," "wall sign" and "roof sign")* means any projection, relief, cornice, column, change of building material, window, or door opening on any building.

"Architectural, historic, or scenic area" means an area that contains unique architectural, historic, or scenic characteristics that require additional regulations to ensure that signs enhance the visual character and are compatible with the area.

"Auxiliary sign" means a sign in addition to other signs associated with a business or use. The sign area of any auxiliary sign is calculated in the sum of total square footage for all signs. For example, an awning sign may be considered an auxiliary sign when used in conjunction with a wall sign for a business.

"Awning" means a cloth, plastic, or other nonstructural covering that either is not moveable and permanently attached to a building or can be raised or retracted to a position against the building when not in use.

"Banner" means a sign on a lightweight material that may be temporarily but not permanently affixed to a building or other structure and that may be affected by the movement of air.

"Bare-bulb illumination" means a light source that consists of light bulbs with a twenty-watt maximum wattage for each bulb.

"Building" means a structure having a roof supported by columns or walls.

"Bulletin board" means a type of changeable copy sign located on a premises used for temporary posting of bulletins or notices. Bulletin boards may be open or enclosed, and/or protected by glass, Plexiglas or a similar clear protective cover.

"Canopy" means a structure other than an awning which is made of cloth, wood, metal, or other material with frames affixed to a building and carried by a frame.

"Changeable copy" means copy that changes automatically at intervals of more than once every one hundred eighty (180) seconds.

"Changeable copy—manual" means copy that is changed manually in the field.

"Clearance" means the smallest vertical distance between the grade of the adjacent street or street curb and the lowest point of any sign, including framework and embellishments, extending over that grade.

"Copy" means text, wording or numbers in either permanent or removable form.

"Double-faced" means a sign with two faces.

"External illumination" means illumination of a sign that is affected by an artificial source of light not contained within the sign itself.

"Facade" means the entire building front including the parapet and any other architectural details which faces and is parallel to or nearly parallel to a public or private street. There can be only one building facade for each street upon which a building faces.

"Face" means the area of a sign on which copy or graphics are placed.

"Flashing illumination" means illumination in which the artificial source of light is not maintained stationary or constant in intensity, color, or focus when a sign is illuminated.

"Frontage" means the length of the property line of any premises along a public right-of-way.

"Graphics" means the presentation of information, logos, or symbols in the form of diagrams and illustrations instead of as words or numbers.

"Ground sign" means a sign supported by one (1) or more uprights, posts, or bases placed upon or affixed in the ground and not attached to any part of a building. It includes a pole sign and a monument sign.

"Height" means the vertical distance measured from the highest point of the sign, excluding decorative embellishment, to the grade of the adjacent street or the surface grade beneath the sign, whichever is lowest in elevation.

"Illumination" or "illuminated" means a source of any artificial or reflected light, either directly from a source of light incorporated in, or indirectly from an artificial source, so shielded that no direct illumination is visible elsewhere than on and in the immediate vicinity of the sign.

"Indirect illumination" means a source of external illumination, located away from the sign, that lights the sign, but which is itself not visible to persons viewing the sign from any street, sidewalk or adjacent property.

"Internal illumination" means a light source that is concealed or contained within the sign and becomes visible through a translucent surface.

"Item of information" means a word, logo, abbreviation, symbol, or geometric shape.

"Legal nonconforming sign" means a sign that was lawfully constructed or installed prior to the adoption or amendment of this chapter and was in compliance with all of the provisions of the sign code then in effect, but which does not presently comply with this chapter. If a premises lawfully has more signs than this chapter would otherwise allow, any sign in excess of that number is nonconforming.

"Lot" means a parcel of land legally defined on a subdivision map recorded with the clerk and recorder or a parcel of land defined by a legal record or survey map.

"Marquee" means a permanent structure other than a roof, awning, or canopy which is attached to, supported by, and projecting from a building. Marquees are often, but not always, designed to accept the placement of changeable copy, typically for the purpose of announcing current or upcoming events at the premises.

"Monument sign" means a ground sign permanently affixed to the ground at its base, supported entirely by a continuous base structure, and not mounted on a pole or system of poles.

"Movement" *(See also "animation")* means physical redirection or revolution up or down, around, or sideways that completes a cycle of change at set intervals.

"Multi-tenant building" or "multi-building complex" means a grouping of two or more business establishments that either share common parking on the lot where they are located, or that occupy a single structure or separate structures that are physically or functionally related or attached.

"Multi-use building" means a building consisting of more than one separate commercial use.

"Neon tube illumination" means a source of light for externally lit signs supplied by a tube filled with neon or other inert gas and which is bent to form letters, symbols, or other shapes.

"Occupancy" means the portion of a building or premises owned, leased, rented or otherwise occupied for a given use.

"Occupant" means a use or tenant located in a building and includes multi-use/multi-tenant buildings, or shopping centers.

"Off-premises sign" means a sign which is not related in manner to the property upon which it is located or which directs attention to a person, business, profession, or activity not conducted on the property in which it is located (see “Premises” below).

“Open space” means any interest in real property purchased or leased by the Town, or any interest in real property dedicated to the Town, for open space purposes, including but not limited to lawns, landscaped areas, natural areas, parks and public or private trails and recreation areas.

"Owner" means the person with legal title to all or a portion of a piece of property as evidenced by official records such as a deed or assessor's record. The owner of property on which a sign is located is presumed to be the owner of the sign unless facts to the contrary are officially recorded or otherwise brought to the attention of the administrator, e.g., a sign leased from a sign company.

"Painted wall sign" means any sign that is applied with paint or similar substance on the face of a wall.

"Parapet" means the extension of a false front or wall above a roofline.

"Pole cover" means the cover enclosing or decorating a pole or other structural support of a sign.

"Peak" means the highest point on a roof or the highest point on another architectural element that blocks the rear view of a sign.

"Pole sign" means a freestanding sign that is permanently supported in a fixed location by a structure of poles, uprights, or braces from the ground and not supported by a building or a continuous base structure.

"Portable sign" means a sign designed to be transported and not permanently attached to the ground or a building nor designed to be permanently attached to the ground or a building including, but not limited to, menu and sandwich board signs.

"Premises" means the lot or lots, plots, portions, or parcels of land considered as a unit for a single use or development, whether owned or leased.

"Projecting sign" means a sign attached to and projecting from the wall of a building not in the same plane as the wall.

"Public right-of-way" means all streets, roadways, sidewalks and alleys, and all other areas reserved for present or future use by the public as a matter of right for the purpose of vehicular or pedestrian travel.

"Roof sign" *(See also "above-roof sign")* means a sign painted, erected, constructed, or maintained on the roof of a building; a sign that is displayed above the eaves and under the peak of a building.

"Shopping center" means a commercial development under unified control consisting of four or more separate commercial establishments sharing a common building, or which are in separate buildings that share a common entranceway or parking area.

"Sign" means a lettered, numbered, symbolic, pictorial, or illuminated visual display of copy and/or graphics designed to identify, announce, direct, or inform and that is visible from a public right-of-way. The term "sign" includes banners, pennants, streamers, moving mechanisms, and lights, whether or not the device contains copy or graphics. For the purposes of this Chapter, side-walk chalk art, graffiti art, murals, or similar artistic expressions are not considered signs.

"Sign area" means the surface area that describes the largest square, rectangle, triangle, parallelogram, polygon or sphere as further defined under sign area calculations.

"Sign area calculations."

1. Awning, banner, bulletin board, canopy, changeable copy, marquee, off-premises, portable, suspended, or similar two-dimensional signs: The area of the sign face within a continuous perimeter composed of a single rectangle, circle, triangle, or parallelogram enclosing the extreme limits of characters, lettering, illustrations, ornamentations, or other figures shall be counted in calculating sign area.

2. Pole and monument signs:

    a. Signs composed of one (1) or two (2) individual sign faces: The area of the single largest sign face (if the sign faces are different sizes) shall be counted in calculating sign area by using the following formula. The area enclosing the perimeter shall be summed to determine total sign area. The perimeter of measurable area shall not include embellishments such as pole covers, framing, decorative roofing, etc., provided that there is not written advertising copy on such embellishments.

    b. Signs composed of more than two (2) sign faces: The area enclosing the entire perimeter of each sign face shall be calculated and shall be summed with all other sign faces and divided by one-half to determine total sign area. The perimeter of measurable area shall not include embellishments such as pole covers, framing, decorative roofing, etc., provided that there is not written advertising copy on such embellishments.

3. Projecting signs: The area of the single largest sign face (if the sign faces are different sizes) within a continuous perimeter composed of a single rectangle, circle, triangle, or parallelogram enclosing the extreme limits of characters, lettering, illustrations, ornamentations, or other figures shall be counted in calculating sign area.

4. Wall signs: The area of the sign face free of architectural details on the facade of a building or part of a building within a continuous perimeter composed of a single rectangle, circle, triangle, or parallelogram enclosing the extreme limits of characters, lettering, illustrations, ornamentations, or other figures shall be counted in calculating sign area.

5. Other signs: Other signs that do not fall into any single sign area calculation category due to geometry, design or other characteristics shall be calculated using one (1) or more of the most applicable aforementioned methodologies and based upon the more restrictive area calculation method as determined by Town staff.

"Sign district map" means the map accompanying and to be used with these regulations that identifies the boundaries of each sign district enumerated in these regulations. The official sign district map shall be kept on file in the Town Clerk’s office.

"Size" means the total area of the face used to display a sign, not including its supporting poles or structures. If a sign has two faces that are parallel, not more than two feet apart and supported by the same poles or structures, the size of the sign is one-half the area of the two faces. Spherical sign area shall be the entire surface of the sphere. The total area of multi-faced signs (more than two faces) shall be one-half the area of the two smallest faces plus the total area of all faces greater than the two smallest.

"Structure" means anything which is built or constructed, an edifice or building of any kind or any piece of work artificially built or composed of parts joined together in some definite manner. This term includes a building.

"Suspended sign" means a sign that is suspended from the underside of a horizontal plane surface of a building or structure such as a canopy, porch ceiling or portico and is typically used as a pedestrian scale sign.

"Temporary sign" means a non-permanent sign subject to the requirements of section 17.18.040(B) and 17.18.050(B.14).

"Temporary window sign" means a temporary sign displayed in a window.

"Town" means the Town of New Castle, Colorado.

"Unified sign band" means a coordinated arrangement of signs on a structure with the same design style, font type, sign face, height and similar characteristics that create a unified appearance.

"Use" means the purpose for which a building, lot, sign or structure is intended, designed, occupied or maintained.

"Wall sign" means a sign painted on or attached directly to an exterior wall of a building or that which is dependent upon a building for support, with the exposed face of the sign located in a place substantially parallel to the exterior building wall to which the sign is attached or which supports the sign.

"Window sign" means a sign applied, painted or affixed to or in the window of a building. A window sign may be temporary or permanent.

17.18.040 Sign permits and administration.

A. Sign Permit Required. To ensure compliance with the regulations of this chapter, a sign permit shall be required in order to erect, move, alter, reconstruct or repair any permanent or temporary sign, except signs that are exempt as set forth in section 17.18.050 (Exempt Signs). In multitenant buildings, a separate permit shall be required for each business entity's sign(s). Separate building and electrical permits may be required for signs and will be determined on a case-by-case basis. Changing or replacing the copy or graphics on an existing lawful sign shall not require a permit, provided the change does not result in a violation of this chapter.

B. Temporary Banners. The Town may approve temporary sign permits subject to the following:

1. Temporary banners displaying a one-time event may only be displayed for a period not to exceed two (2), fourteen (14) day periods within any consecutive three hundred sixty-five (365) days. Such banners shall only be permitted as fourteen (14) day timeframes and may not be further subdivided or prorated.

2. A temporary banner shall be securely attached to the wall of the establishment, other freestanding signs or properly designed and structurally sound poles or posts on private property.

3. One (1) temporary banner per street frontage per establishment shall be permitted unless more than one (1) business occupies the same building. In that case, each business may be allowed to display a temporary banner. However, the other limitations of this section shall not be increased by the number of businesses at a location.

4. A temporary banner shall not be placed within the public right of way nor off the premises granted the permit.

5. A temporary banner shall be limited to the height and size provisions of this chapter.

C. Application for a Sign Permit.

1. Sign Permit Application Requirements. Applications for sign permits shall be made in writing on forms furnished by Town staff. The application shall contain:

a. The location by street number and the legal description of the property upon which the proposed sign structure is to be located;

b. Names and addresses of the property owner, applicant (if different from the property owner), sign contractor and erectors;

c. Evidence of a current New Castle contractor's license may be required at the sole discretion of the Town Administrator depending on the nature of the sign;

d. Legible accurately scaled plan which includes the specific location of the sign and setbacks to adjacent property lines and buildings;

e. A detailed accurately scaled drawing indicating the dimensions, materials, and colors of the proposed sign structure. A certification by a structural engineer may be required by staff for a freestanding or projecting sign;

f. A graphic drawing or photograph of the sign;

g. A description of the lighting to be used including a listing of the energy conservation measures incorporated in sign (light fixture type(s), materials used etc.), fixture specifications, bulb type, wattage and placement, and an estimate of energy consumption by the sign;

h. Proof of premises liability insurance covering freestanding, projecting and wall signs;

i. If the sign is to be located off the premises listed in the application, a written lease or permission from the property owner of the site on which the sign will be located; and

j. Payment of a nonrefundable sign permit fee as established by the current fee schedule. The applicant shall pay all costs billed by the Town of New Castle relative to the review of the application including review fees by any outside consultants. Approved sign permit applications shall expire six (6) months from the date of issuance if installation of the sign has not been completed. A single six (6) month extension may be granted administratively upon completion of an extension application including a written narrative by the applicant explaining the basis for the extension request and payment of an extension application fee.

2. Sign Permit Application Review of Completion. Within fifteen (15) business days of the date of submission of an application, the Town Administrator or their designee shall determine whether the application is complete. If the application is deemed incomplete, the Town Administrator shall give written notice of the deficiency to the applicant. The applicant shall have fifteen (15) business days, or such other additional time as the Town Administrator may grant in their sole discretion, to correct the deficiency or the Town Administrator may deny the application.

3. Review and Approval. When the application has been determined to be complete, the Town Administrator or their designee shall review the sign permit in accordance with the established review criteria. Within fifteen (15) business days of the determination of completeness, the Town Administrator must issue a written decision on the application. The Town Administrator may approve, approve with conditions or deny the sign permit. Upon approval of the sign permit, the sign permit and any building permits required for the sign must be obtained by the applicant prior to construction. Electrical permits, if required, shall be obtained from the state electrical inspector and evidence of an approved permit shall be provided to the Town prior to construction.

D. Sign Permit Review Criteria. The following review criteria will be used by Town staff to evaluate all sign permit applications:

1. Sign meets the requirements of this chapter;

2. Sign conforms to the requirements of all applicable codes, including, but not limited to, building and electrical codes;

3. Sign conforms to the applicable zoning requirements, including but not limited to, size, height, material and location for the zoning and sign district in which it is located;

4. Sign would not create visual obstructions which adversely impact public safety and/or that otherwise interfere with pedestrian or vehicular safety;

5. Sign would not detract from the character of an architectural, historic, or scenic area;

6. Sign would not be located so as to have a negative impact on adjacent residential property including, but not limited to, impacts from excessive lighting, shading of or impairment of solar access, visibility of or from public rights-of-way and similar adverse impacts;

7. Sign would not impair pedestrian access of a street or area;

8. Sign would not add to an over-proliferation of signs on a particular property or area; and

9. Sign does not contain hateful, obscene, or threatening speech.

E. Appeals.

1. An applicant may file an appeal of the Town Administrator's decision on a sign permit application to the Town Council for any of the reasons set forth below. Sign application appeals to the Town Council shall be filed with the Town Clerk no later than ten (10) calendar days after the date of action by the Town Administrator. The following items constitute a basis upon which an applicant may file an appeal. Notice of appeal shall be in writing and shall state specifically any action appealed from and the grounds for such appeal.

a. Failure of the Town Administrator to provide a written response concerning completion of an application within fifteen (15) calendar days of the Town's receipt of the sign permit application.

b. Any written decision rendered by the Town Administrator concerning a permit or an interpretation of this chapter.

2. The action being appealed shall be held in abeyance pending the decision of the Town Council. The appeal shall be heard by the Town Council at the next available meeting, as determined by the Town Clerk. The Town Council shall review the decision of the Town Administrator under the same criteria applied by the Town Administrator. The Town Council is not bound by the findings and determinations of the Town Administrator, but may give such findings deference as determined by Town Council.

F. Variances. Any variance requested in association with a sign shall be processed pursuant to the provisions of Chapter 17.12 of the New Castle Municipal Code.

17.18.050 Exemptions and exceptions.

A. Sign Permit Exemptions. This chapter does not apply to the following types of signs:

1. Signs of any type that are installed or posted, or required to be installed or posted, by the Town of New Castle, Garfield County, State of Colorado, Federal Government, or a School District, including but not limited to signs posted in Town open space.

2. Required signs, posted in accordance with applicable law and regulations.

B. Sign Permit Exceptions. The following types of signs may be displayed, constructed, installed, erected, or altered in any zoning/sign district without a sign permit. Such signs shall otherwise be in conformance with all applicable requirements contained in this chapter. All such signs (except government signs) shall be located outside of the public right of way. Signs shall not interfere with traffic signs or the sight distance triangle at intersections. Evidence of owner's permission to install sign may be required. All other signs shall be allowed only with permit and upon proof of compliance with this chapter.

1. Address. Non-illuminated signs not to exceed two (2) square feet in area that identify the address and/or occupants of a building.

2. Building Identification, Historical Markers. Non-illuminated signs not exceeding four (4) square feet, constructed of metal, wood or masonry that are permanently affixed to buildings or structures for the purpose of identifying the name of a building, date of erection or other historical information as approved by Town staff.

3. Bumper Stickers. Bumper stickers on vehicles.
4. Carried Signs. Signs that are being carried by people or by service animals recognized under the Americans with Disabilities Act, provided that such signs are not set down or propped on objects.
5. Temporary Site Signs. Temporary site signs installed in association with an active building permit that are removed upon issuance of a certificate of occupancy or expiration of the building permit, provided that:
    a. Such signs shall have a maximum sign area of twelve (12) square feet.
    b. Such signs shall be oriented toward the street.
    c. Such signs shall not be illuminated.
    d. Such signs shall only be installed on the private property on which the construction activity is located.
    e. Such signs shall be removed within seven (7) days after issuance of a certificate of occupancy or expiration of the building permit.
6. Directional. On-premises directional and instructional signs not exceeding four (4) square feet in area apiece.
7. Flags. Flags that do not exceed thirty (30) square feet in area that are affixed to permanent flagpoles or flagpoles that are mounted to buildings (either temporary or permanent).
8. Holiday or Seasonal Decorations.
9. Private Property Signs. Signs erected on private property that do not exceed two (2) square feet per face, or four (4) square feet in total surface area, limited to four (4) such signs per use or per building, whichever is the greater number. 10. "Sandwich Board" Signs. A single, temporary, portable sign not exceeding four (4) square feet per face and no more than eighteen (18) inches wide placed in front of the business and only during business hours on sidewalk in a manner that does not present a risk to public safety, accessibility (including handicap) or visibility.
11. Scoreboards. Scoreboards for athletic fields.
12. Signs with De Minimus Area. Signs that are affixed to a building or structure (even if wall signs are not permitted) that do not exceed one (1) square foot in sign area, provided that only one (1) such sign is present on each elevation that is visible from public rights-of-way or neighboring properties, and signs that are less than three-fourths of a square foot in area that are affixed to machines, equipment, fences, gates, walls, gasoline pumps, public telephones or utility cabinets.
13. Strings of Light Bulbs. Displays of string lights, provided that:
    a. They are steady burning, clear, non-colored bulb lights. No blinking, flashing, intermittent changes in intensity or rotating shall be permitted.
    b. They are no greater in intensity than five (5) watts.
    c. They shall not be placed on or used to outline signs, sign supports, awnings and/or canopies.
    d. They shall not be assembled or arranged to convey messages, words, commercial advertisements, slogans and/or logos.
    e. They shall not create a safety hazard with respect to placement, location of electrical cords or connection to power supply.
    f. They shall be placed only on private property.

g. They shall be maintained and repaired so that no individual light bulb is inoperative. In the event the bulbs are not maintained or repaired, the string lights may be removed at the expense of the owner after giving notice to the owner pursuant to this chapter.

14. Temporary Yard Signs. Temporary yard signs are allowed without a sign permit pursuant to the following:

a. In Residential Zoning Districts.

i. Shall not exceed more than four (4) signs per property at any one (1) time;

ii. Shall not exceed twenty-four (24) square feet total yard signage on any property;

iii. Shall not exceed a height of forty-two (42) inches;

iv. Shall not be located in the public right-of-way;

v. Shall be located at least five (5) feet from any property line; and

vi. Shall not be displayed for a period of more than ninety (90) days per calendar year.

b. In Non-Residential Zoning Districts.

i. Shall not exceed more than four (4) signs per property at any one (1) time;

ii. Shall not exceed twenty-four (24) square feet total yard signage on any property;

iii. Shall not exceed a height of six (6) feet, or forty-two (42) inches if placed within a sight distance triangle;

iv. Shall not be located in the public right-of-way; and

v. Shall not be displayed for a period of more than ninety (90) days per calendar year.

15. Text. No permit shall be required for text or copy changes on conforming or legal nonconforming signs specifically designed to permit changes of the text or copy, provided that there are no structural changes, changes to sign area, change in illumination or other modifications.

16. Vehicular Signs. Signs displayed on trucks, buses, trailers or other vehicles that are regularly being operated or stored in the normal course of a business, such as signs indicating the name of the owner or business that are located on moving vans, delivery trucks, rental trucks and trailers and the like, shall be exempt from the provisions of this chapter, provided that the primary purpose of such vehicles is not for the display of signs and that the vehicles are parked or stored in areas appropriate to their use as vehicles for periods that do not exceed thirty (30) days.

17. Window Sign. Signs affixed, painted on, or otherwise attached to door glass.

17.18.060 Prohibited signs.

A. Prohibited Signs. The following signs are inconsistent with the purposes and standards in this chapter and are prohibited in all zoning districts within the Town:

1. Signs located in the public right-of-way subject to the exemptions in section 17.18.050.

2. Animated signs or signs that flash, rotate, blink or moving signs, signs with moving, rotating or flashing lights or signs that create the illusion of movement, except for time and temperature devices.

3. Any sign that is erected in such a location as to cause visual obstruction or interference with motor vehicle traffic, or traffic-control devices including any sign that obstructs clear vision in any direction from any street intersection or driveway.

4. Mechanical or electrical appurtenances, such as "revolving beacons," that are designed to attract attention.
5. Off-premises signs.
6. Any sign that interferes with free passage from or obstructs any fire escape, downspout, window, door, stairway, ladder or opening intended as a means of ingress or egress or providing light or air.
7. Any sign located in such a way as to intentionally deny an adjoining property owner visual access to an existing sign.
8. Vehicle-mounted signs, including but not limited to, signs painted on or attached to semi-trailers or cargo containers when exhibited on private property adjacent to public right-of-way for the purpose of advertising the business or services offered on the property. Vehicle-mounted signs used in connection with a special event are exempted from the requirements of this section during the duration of the special event only and not exceeding seventy-two (72) hours. Upon the conclusion of the special event, such signs must be dismantled.
9. Portable signs or signs not permanently affixed or attached to the ground or to any structure, except as permitted by this chapter.
10. Searchlights.
11. Signs with optical illusion of movement by means of a design which presents a pattern capable of reversible perspective, giving the illusion of motion or changing of copy.
12. Inflatable freestanding signs or tethered balloons or other inflatable figures or devices installed with the primary purpose of attracting attention.
13. Stationery or portable electronic message boards, except governmental signs.
14. Wind signs designed or installed to be activated by movement of the atmosphere.
15. Any sign or sign structure that:
    a. Is structurally unsafe;
    b. Constitutes a hazard to safety or health by reason of inadequate maintenance or dilapidation;
    c. Is not kept in good repair; or
    d. Is capable of causing electrical shocks.
16. Any sign or sign structure that:
    a. In any other way obstructs the view of, may be confused with or purports to be an official traffic sign, signal or device or any other official sign;
    b. Uses any words, phrases, symbols or characters implying the existence of danger or the need for stopping or maneuvering a motor vehicle;
    c. Creates in any other way an unsafe distraction for motor vehicle operators or obstructs the view of motor vehicle operators entering a public roadway from any parking area, service drive, private driveway, alley or other thoroughfare.

17.18.070 Removal, enforcement, and penalties.

A. Removal of Signs.

1. Discontinued Establishments. Whenever a business, industry, service or other use is discontinued, the sign(s) pertaining to the use shall be removed by the person or entity owning or having possession over the property within ninety (90) days after the discontinuance of such use.
2. Removal of Illegal Signs in the Public Right-of-Way. The Town may cause the removal of any sign within the public right-of-way or on property that is otherwise abandoned that has been placed there without first complying with the requirements of this chapter.
3. Storage of Removed Signs. Signs removed by the Town or its designee in compliance with this chapter shall be stored by the Town for thirty (30) days, during which they may be recovered by the owner only upon payment to the Town for costs of removal and storage. If not recovered within the thirty (30) day period, the sign and supporting structure shall be declared abandoned and title shall vest with the Town. The costs of removal and storage, up to thirty (30) days, may be billed to the owner. If not paid, the applicable costs may be imposed as a tax lien against the property.

B. Enforcement. The provisions of this chapter shall be enforced by the Town Administrator.

C. Penalties. Violations of this chapter shall be subject to the penalties of the Town of New Castle Municipal Code Chapter 17.96.

17.18.080 Measurement of sign area and height.

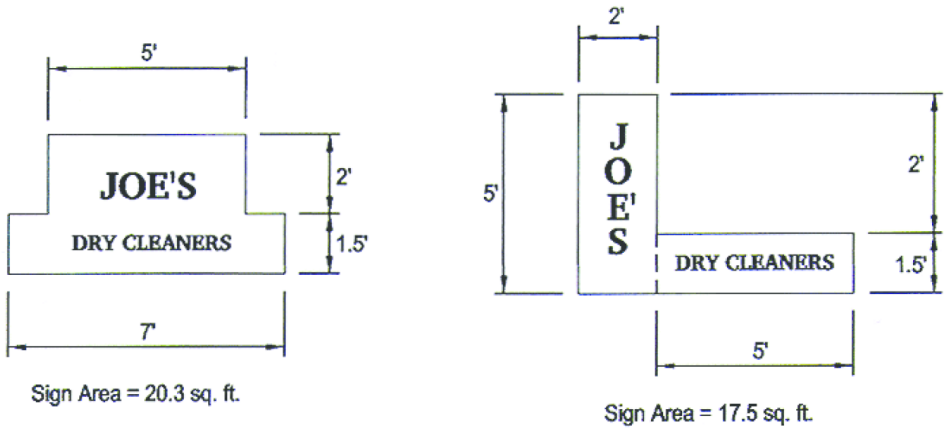


Figure 7-1

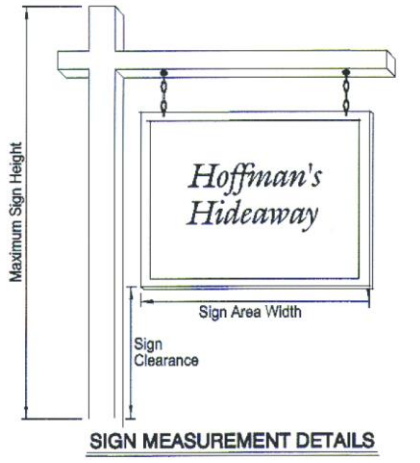
A. Sign Surface Area. The area of a geometric shape enclosing any message, logo, symbol, name, photograph or display face shall be measured using standard mathematical formulas. Time and temperature devices shall not be included within the measurement of maximum sign area.

B. Sign Support. Supporting framework or bracing that is clearly incidental to the display itself and does not include logos, advertising text or similar commercial messages shall not be computed as sign area.

C. Back-to-Back (Double-Faced) Signs. Back-to-back signs shall be regarded as a single sign only if mounted on a single structure, and the distance between each sign face does not exceed two feet at any point.

D. Three-Dimensional Signs. Where a sign consists of one (1) or more three-dimensional objects (i.e., balls, cubes, clusters of objects, sculpture), the sign area shall be measured as their maximum projection upon a vertical plane. Signs with three-dimensional objects that exceed a projection of six (6) inches from the sign face may be approved in compliance with section 7.18.120 (Creative Signs).

E. Wall Signs. The area of a rectangle or geometric shape that most closely outlines the sign face or letters of the sign shall be the calculated sign area. F. Sign Height. The height of a sign shall be measured from the highest point of a sign, excluding decorative embellishment, to the grade of the adjacent street or the surface grade beneath the sign, whichever is lower in elevation. When berms are used in conjunction with signage, the height of the sign shall be measured from the mean elevation of the fronting street.



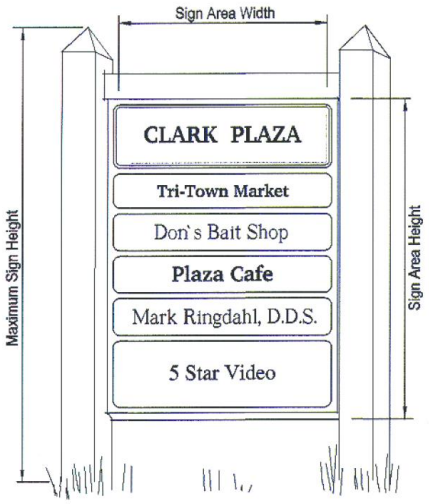


Figure 7-2

17.18.090 Sign design.

A. Design Compatibility.

1. Creative Design Encouraged. Signs shall make a positive contribution to the general appearance of the street and commercial area in which they are located. A well-designed sign can be a major asset to a building. The Town of New Castle encourages imaginative and innovative sign design. The creative sign application procedure (section 7.18.120) is specifically designed for artistic and unusual signs that might not fit the standard sign regulations and categories.
2. Proportionate Size and Scale. The scale of signs shall be appropriate for the building on which they are placed and the area in which they are located. Building signs shall be compatible in scale and proportion to the building facade upon which they are mounted.
3. Sign Location and Placement.
    a. Visibility. Signs shall not visually overpower nor obscure architectural features.
    b. Integration With the Building and Landscaping. Signs shall be carefully coordinated with the architectural design, overall color scheme and landscaping. Signs shall be designed to complement or enhance the other signs for a building.
    c. Unified Sign Band. Whenever possible, signs located on buildings with the same block-face shall be placed at the same height, in order to create a unified sign band. Wall signs for retail uses may only be located at the first floor level.
    d. Monument Signs. Monument signs should be located in a planter setting within a landscaped area at the primary entries to residential, commercial and industrial subdivisions to provide an overall project identity.
    e. Pedestrian-Oriented Signs. Pedestrian-oriented signs are encouraged. It is desirable to include a pedestrian-oriented sign as one of the permitted signs for a business. These signs are designed for and directed toward pedestrians so they can easily and comfortably read the sign as they stand on a sidewalk or location adjacent to the business.
    f. Signs near or within the public right-of-way. The provisions of sections 17.18.050-17.18.060 notwithstanding, no sign shall be erected near the intersection of any road(s) or driveways in such a manner as to obstruct free and clear vision of motorists or pedestrians or at any location where, by reason of the position, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device. Signs located at an intersection must be outside of the sight distance triangle.

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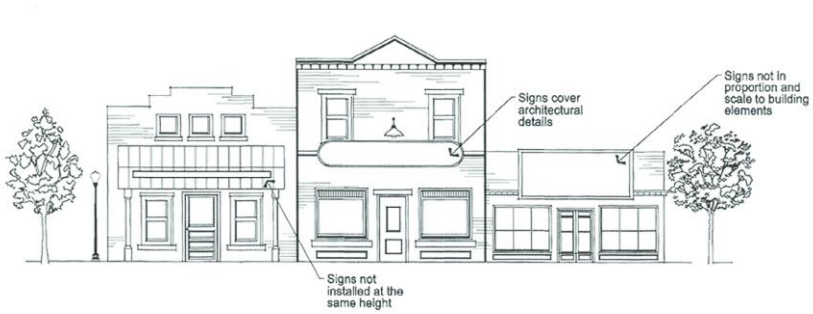

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Figure 7-3

4. Landscaping. Freestanding signs shall be landscaped at their base in a way harmonious with the landscape concept for the whole site. Landscaping shall form an attractive, dense cluster at the base of the sign that is equally attractive in winter and summer.

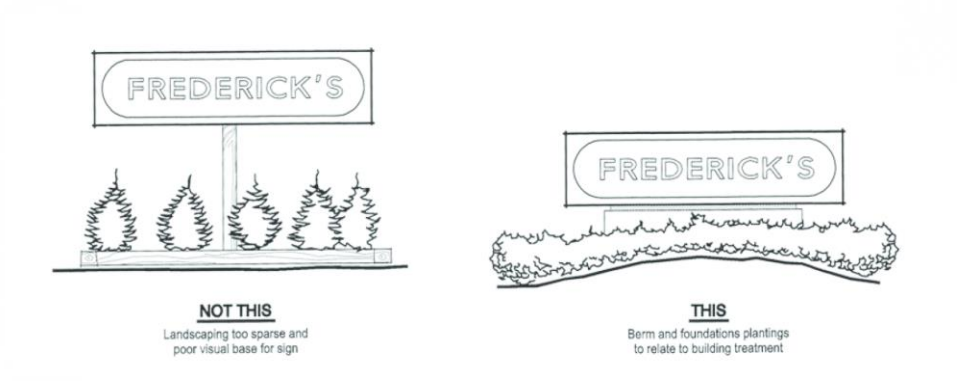
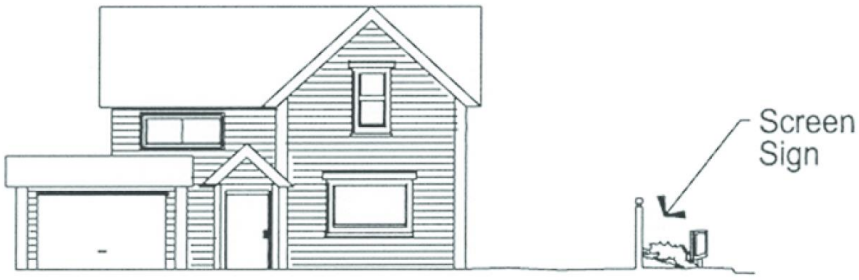


Figure 7-4

5. Low Impact Signs. Signs adjacent residential neighborhoods shall be designed and located so that they have little or no impact on residential areas. Small-scale signs are encouraged.



REDUCE SIGN IMPACT

Figure 7-5

B. Color.

1. Color Selection. Colors shall be selected to contribute to legibility and design integrity. Sign colors shall complement the colors used on the structures and the project as a whole. Colors or combinations of colors that are harsh and disrupt the visual harmony and order of the street are unacceptable.

2. Contrasting Colors. Substantial contrast between the color and the material of the background and the letters or symbols will make the sign easier to read during both the day and night. Light letters on a dark background or dark letters on a light background are most legible.

3. Excessive Colors. Colors or color combinations that interfere with legibility of the sign copy or that interfere with viewer identification of other signs shall be avoided.

C. Materials.

1. Signs shall be constructed of durable, high quality architectural materials. The sign package must use materials, colors and designs that are compatible with the building facade. Sign materials must be of proven durability. Treated wood, manufactured composite products with ingredients that use recycled materials, painted/treated/patina metal, stone, brick and stucco are the preferred materials for signs.

D. Legibility.

1. Signs shall be adequately legible under the circumstances in which they are primarily seen. The legibility of signs is related to:

a. The speed at which they are viewed;

b. Distance from the edge of the right-of-way;

c. The context and surroundings in which they are seen; and

d. The design, colors and contrast of the sign copy and sign face.

e. The design of the sign including copy, lettering size and style, and colors shall logically relate to the average speed of the traffic which will see it. Signs shall legibly convey their messages

without being distracting or unsafe to motorists reading them. Symbols and logos can be used in place of words whenever appropriate.

E. Sign Illumination.

1. Unnecessary lighting is to be avoided.

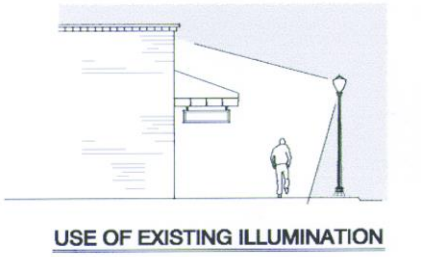


Figure 7-6

2. Sign illumination shall complement, not overpower, the overall composition of the site.
3. All lighted signs incorporating a direct light source shall be designed to direct lighting to illuminate only the face of the sign. External light sources aimed at a sign shall be concealed from pedestrians' and motorists' lines of sight.
4. Signs must be illuminated in a way that does not cause lighting trespass, illumination of adjacent properties, over-lighting or glare onto the street and adjacent properties. Signs shall be lighted only to the minimum level for nighttime readability.

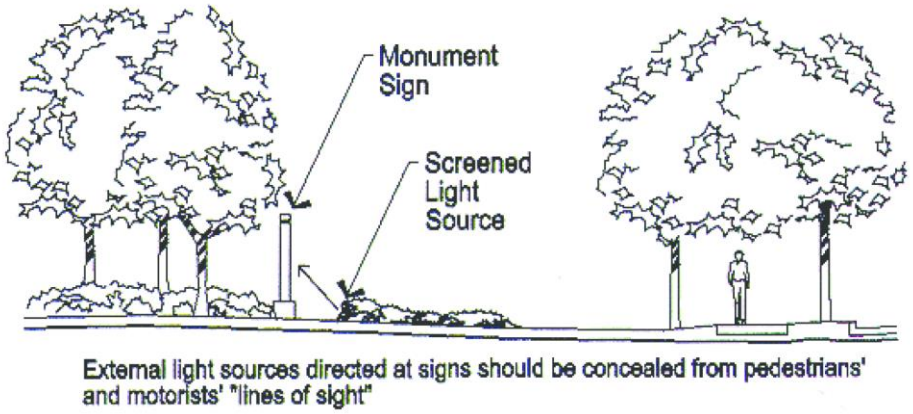


Figure 7-7

5. All lighted signs shall meet all applicable electrical codes and the electrical components used shall bear the label of an approval agency. Additionally, electrical permits shall be obtained for electric signs.
6. Flashing, moving, blinking, chasing or other animation effects shall be prohibited on all signs except time and temperature signs.
7. Neon tubing is an acceptable method of sign illumination for window signs in commercial districts.
8. The use of individually cut, back-lit letter signs is encouraged.
9. The use of solar electric lighting devices to illuminate signs is encouraged.

17.18.100 Sign installation and maintenance.

A. Projecting signs shall be mounted so they generally align with others in the block.

B. Owners of signs extending over public right-of-way shall be required to maintain public liability insurance in an amount to be determined appropriate by the Town, in which the Town is named as an "other or named insured."

C. All signs and all components thereof, including sign structures and sign faces, shall be kept neatly painted, in a good state of repair and in compliance with all building and electrical codes so they do not constitute a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence.

D. The owner of a sign and the owner of the premises on which such sign is located shall be jointly and severally liable to maintain such sign, including any illumination sources in neat and orderly condition, and in a good working order at all times, and to prevent the development of any rust, corrosion, rotting or other deterioration in the physical appearance or safety of such sign. The sign must also be in compliance with all building and electrical codes.

E. The owner of any sign regulated by this chapter shall be required to keep signs and supporting hardware structurally safe, clean, free of visible defects and functioning properly at all times. Repairs to signs shall be equal to or better in quality of materials and design than the original sign.

F. The Town may inspect any sign governed by this chapter and shall have the authority to order the painting, repair, alteration, or removal of a sign which constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence.

17.18.110 Standards for specific types of signs.

A. Awning Signs. An awning sign is a wall sign which is painted, stitched, sewn or stained onto the exterior of an awning. An awning is a movable shelter supported entirely from the exterior wall of a building and composed of non-rigid materials except for the supporting framework.

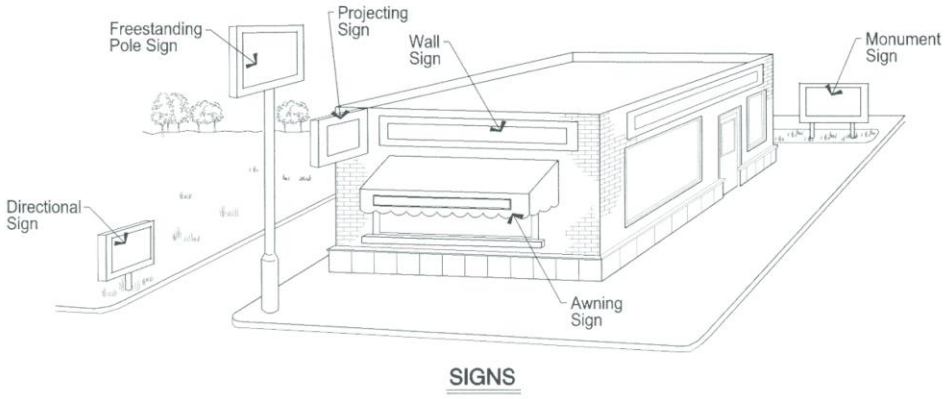


Figure 7-8

1. Location. Signs may be placed only on awnings that are located on first- and second-story building frontages, including those fronting a parking lot or pedestrian way. No awning sign shall project beyond, above or below the face of an awning.

2. Maximum Area and Height. Sign area shall comply with the requirements established by section 17.18.130, Sign Matrices. No structural element of an awning shall be located less than eight feet above finished grade. Awnings on which awning signs are mounted may extend over a public right-of-way no more than seven (7) feet from the face of a supporting building but in no case shall extend over a roadway or parking area. No awning, with or without signage, shall extend above the roof line of any building.

3. Lighting. Awnings shall not be internally illuminated except as part of a creative sign. Lighting directed downwards that does not illuminate the awning is allowed.

4. Required Maintenance. Awnings shall be regularly cleaned and kept free of dust and visible defects.

B. Canopy Signs. A canopy sign is a wall sign that is permanently affixed to a roofed shelter attached to and supported by a building, by columns extending from the ground or by a combination of a building and columns.

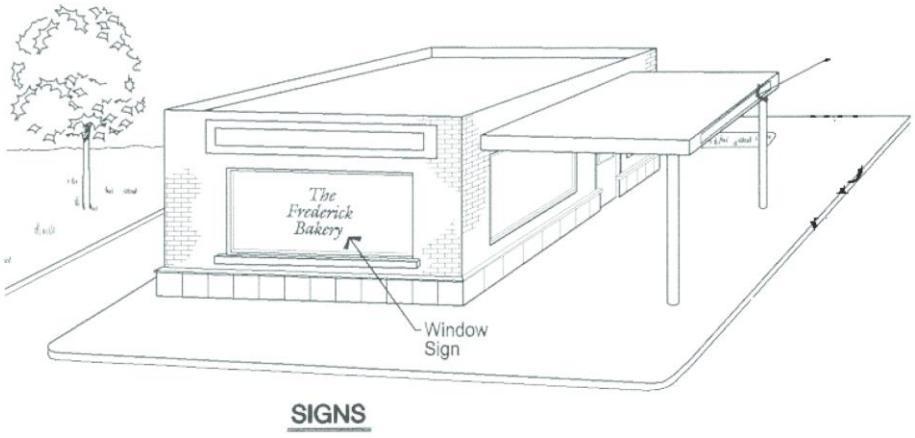


Figure 7-9

1. Maximum Area and Height. Sign area shall comply with the requirements established by section 17.18.130, Sign Matrices. No canopy, with or without signage, shall extend above the roof line of any building. No canopy sign shall project above the top of the canopy upon which it is mounted. However, such signs may project horizontally from the face of a canopy the distance necessary to accommodate the letter thickness and required electrical equipment, but not more than twelve (12) inches (measured from the bottom of the sign). Under-canopy signs which are perpendicular to the face of the building shall be deemed to be projecting wall signs. Under-canopy signs which are parallel to the face of the building shall be a minimum of eight feet above grade and shall be deemed to be flush wall signs.
2. Required Maintenance. Canopies shall be regularly cleaned and kept free of dust and visible defects.

C. Freestanding Signs. A freestanding sign is a sign which is supported by one (1) or more columns, uprights, poles or braces extended from the ground, or which is erected on the ground and shall also include a monument sign and pole signs but does not include a sign attached to a structure.

1. Location. The sign may be located only on a site frontage adjoining a public street. No freestanding sign in any zoning/sign district can be erected closer than eight feet from any curbline, nor closer than four feet to any building. No freestanding signs in business and industrial districts may be located less than twenty-five (25) feet from any property line adjacent to a residential zoning district line.
2. Maximum Area and Height. The sign shall comply with the height and area requirements established in section 17.18.130, Sign Matrices.
3. Sign Mounting. The sign shall be mounted on one (1) or more posts or have a solid monument-type base. Posts shall not have a diameter greater than twelve (12) inches. Pole bases shall be protected by concrete or a similar sturdy structure to prevent damage. Pole base structures may be used as landscaping planters.
4. Pole Signs. Pole signs should not be so large as to obscure the patterns of front facades and yards.

D. Monument Signs. A monument sign is a permanent sign where the entire bottom of the sign is affixed to the ground, not to a building.

1. Location. The sign may be located only along a site frontage adjoining a public street.

2. Maximum Area and Height. The sign shall comply with the height and area requirements established in section 17.18.130, Sign Matrices.

3. Design. The design of a monument sign shall be consistent with the overall scale of the building. The design and placement of the sign shall not obstruct traffic safety sight distance areas. Project monument signs shall contain only the name and address of the project which it identifies.

4. Landscaping Requirements. Landscaping shall be provided at the base of the supporting structure equal to twice the area of one face of the sign. For example, twenty (20) square feet of sign area equals forty (40) square feet of landscaped area. The planning commission may reduce or waive this requirement if it is determined that the additional landscaping would not contribute significantly to the overall aesthetic character of the project.

E. Projecting Signs. A projecting sign is any sign supported by a building wall and projecting therefrom at least twelve (12) inches or more horizontally beyond the surface of the building to which the sign is attached, but shall not extend more than four feet from the building face.

1. Location. Projecting signs shall be placed only on a ground floor facade, except for businesses located above the ground level with direct exterior pedestrian access. Projecting signs shall generally align with other projecting signs in the block to create a "canopy line" that gives scale to the sidewalk.

2. Maximum Area and Height. Projecting signs shall not be higher than the wall from which the sign projects if attached to a single story building, or the height of the bottom of any second story window if attached to a multi-story building. Projecting signs must have eight feet clearance and may not extend more than four feet from the building wall except where the sign is an integral part of an approved canopy or awning. The size of projecting signs is limited to three feet wide and six square feet.

3. Sign Structure. Sign supports and brackets shall be compatible with the design and scale of the sign.

4. Quantity. The number of projecting signs is limited to one per business.

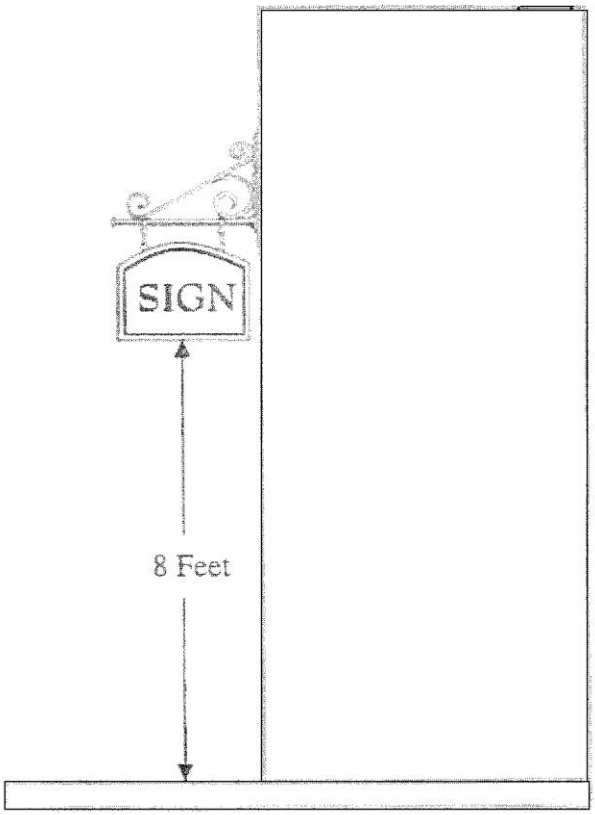


Figure 7-10

F. Standard Brand-Name Signs. A standard brand-name sign is any sign devoted to the advertising of any standard brand-name commodity or service which is not the principal commodity or service being sold or rendered on the premises, or are not a part of the name or business concern involved.

1. Maximum Area. Not more than twenty (20) percent of the total allowable sign area for any permitted use shall be devoted to the advertising of any standard brand-name commodity or service.

G. Wall Signs. A wall sign is any sign painted on, incorporated in or affixed to the building wall, or any sign consisting of cut-out letters or devices affixed to the building wall with no background defined on the building wall.

1. Location. The sign shall not be placed to obstruct any portion of a window, doorway or other architectural detail. Locate wall signs on buildings at the first floor level only for retail uses. No part of a wall sign shall be located more than twenty-five (25) feet above grade level nor shall it extend above the building eave.

2. Maximum Area and Height. Wall signs shall not be higher than the eave line of the principal building. The sign shall comply with the height and area requirements established in section 17.18.130, Sign Matrices.

3. Projection from Wall. No sign part, including cut-out letters may project from the surface upon which it is attached more than required for construction purposes and in no case more than twelve (12) inches.

4. Design. Wall signs shall identify the individual business, building or building complex by name or trademark only.

H. Window Signs. A window sign is a sign that is painted on, applied or attached to a window or that can be read through the window from the public right-of-way and may be placed at or below the second story above grade.

1. Maximum Area. When a sign is displayed in a window and is visible beyond the boundaries of the lot upon which the sign is displayed, the total area of such sign shall not exceed twenty-five (25) percent of the window or door area at the ground floor level; and twenty-five (25) percent of the total allowable sign area for the premises.

2. Lighting. All illuminated window signs shall be included in the total allowable sign area for the premises.

3. Temporary Window Signs. Temporary signs or posters displayed for periods not exceeding fourteen (14) days shall be exempt from limitations for window signs.

17.18.120 Creative signs.

A. Purpose. This section establishes standards and procedures for the design, review and approval of creative signs. The purposes of this creative sign program are to:

1. Encourage signs of unique design, and that exhibit a high degree of thoughtfulness, imagination, inventiveness, and spirit; and

2. Provide a process for the application of sign regulations in ways that will allow creatively designed signs that make a positive visual contribution to the overall image of the Town of New Castle, while mitigating the impacts of large or unusually designed signs.

B. Applicability. An applicant may request approval of a sign permit under the creative sign program to authorize on-site signs that employ standards that differ from the other provisions of this chapter but comply with the provisions of this section.

C. Approval Authority. A sign permit application for a creative sign shall be subject to approval by the planning commission.

D. Application Requirements. A sign permit application for a creative sign shall include all information and materials required by the Town of New Castle, and the filing fee based on the same fee schedule as a building permit.

E. Design Criteria. In approving an application for a creative sign, the planning commission shall ensure that a proposed sign meets the following design criteria:

1. Design Quality. The sign shall:

a. Constitute a substantial aesthetic improvement to the site and shall have a positive visual impact on the surrounding area;

b. Be of unique design, and exhibit a high degree of thoughtfulness, imagination, inventiveness, and spirit;

c. Provide strong graphic character through the imaginative use of graphics, color, texture, quality materials, scale, and proportion.

2. Style Criteria. The sign shall contain at least one of the following elements:

a. Classic historic design style;

b. Creative image reflecting current or historic character of the Town of New Castle;

c. Creative symbols or imagery compatible with the classic historic design style; or

d. Inventive representation of the use, name or logo of the structure or business.

3. Architectural Criteria. The sign shall:

a. Utilize and/or enhance the architectural elements of the building;

b. Be placed in a logical location in relation to the overall composition of the building's facade;

c. Not cover any key architectural features/details of the facade.

17.18.130 Sign matrices.

The following section of these regulations corresponds to the following sign districts identified on the sign district map.

1. Residential district;
2. Gateway district;
3. Downtown and mixed-use district; and
4. Industrial district.

This section includes a series of sign matrices that address permitted, exempt or prohibited signs, sign area, sign illumination and sign height. These tables are intended to assist the user in understanding the type, size, illumination and height of various signs in each sign district. This information is intended to be used in conjunction with the sign district map and other sections of these regulations.

17.18.131 Sign standards matrix—Permitted, exempt or prohibited.

Sign Type	Residential District	Gateway District	Downtown & Mixed-Use District	Industrial District
Awning Sign	Prohibited	Permitted	Permitted	Permitted
Banner	Prohibited	Permitted	Permitted	Permitted
Bulletin Board	Exempt	Exempt	Exempt	Exempt
Canopy Sign	Prohibited	Permitted	Permitted	Prohibited
Changeable Copy Sign	Prohibited	Permitted	Prohibited	Permitted
Creative Sign	Prohibited	Permitted	Permitted	Permitted
Marquee Sign	Prohibited	Permitted	Permitted	Permitted
Monument Sign	Permitted	Permitted	Prohibited	Permitted
Off-Premises Sign	Prohibited	Prohibited	Prohibited	Prohibited
Painted Wall Sign	Prohibited	Permitted	Permitted	Permitted
Pole Sign	Prohibited	Permitted	Prohibited	Permitted

Portable Sign	Prohibited[a]	Permitted	Permitted	Prohibited
Projecting Sign	Permitted	Permitted	Permitted	Permitted
Roof Sign	Prohibited	Prohibited	Prohibited	Prohibited
Suspended Sign	Permitted	Permitted	Permitted	Permitted
Temporary Sign	Permitted	Permitted	Permitted	Permitted
Wall Sign	Permitted	Permitted	Permitted	Permitted
Window Sign	Prohibited	Permitted	Permitted	Permitted

(a)Portable signs shall be permitted within the residential zone provided all the following conditions are met:

- The portable sign shall be an on-premises sign.

- The portable sign shall be stored inside the establishment after hours of operation.

- The portable sign shall not cause visual interference with motor vehicle traffic, pedestrian traffic, or traffic control devices.

17.18.132 Sign area matrix.

Sign Type	Residential District Sq. Ft.	Gateway District Sq. Ft.	Downtown & Mixed-Use District Sq. Ft.	Industrial District Sq. Ft.
Awning Sign	0	Sum of all signs on a given wall shall not exceed 5% of the side of the wall area, but shall not exceed 150 ft.[(a)]	10 if main business sign; 4 if it is an auxiliary business sign	Sum of all signs on a given wall shall not exceed 5% of the side of the wall area, but shall not exceed 150 ft.[(a)]
Banner	0	24	24	60
Bulletin Board	15	15	15	15
Canopy Sign	0	Sum of all signs on a given wall shall not exceed 5% of the side of the wall area, but shall not exceed 150 ft.[(a)]	10 if main business sign; 4 if it is an auxiliary business sign	0
Changeable Copy Sign	0	15	15	15
Creative Sign	0	Sum of all signs on a given wall shall not exceed 5% of the side of the wall area,	10 if main business sign; 4 if it is an auxiliary business sign	Sum of all signs on a given wall shall not exceed 5% of the side of the wall area,

		but shall not exceed 150 ft.[a]		but shall not exceed 150 ft.[a]
Directional Sign	4	4	4	4
Marquee Sign	0	See "Wall Sign"	See "Wall Sign"	See "Wall Sign"
Monument Sign	64[b]	120[c]	0	120[c]
Painted Wall Sign	0	See "Wall Sign"	See "Wall Sign"	See "Wall Sign"
Pole Sign	0	128[e]	0	128[e]
Portable Sign	0	4	4	0
Projecting Sign	6[g]	6[f]	6[f]	6[f]
Suspended Sign	6[g]	6[f]	6[f]	6[f]
Temporary Site Sign	12	12	12	12
Wall Sign	6[g]	6[f]	6[f]	6[f]
Window Sign	0	25% window area[i], [j]	25% window area[i], [j]	25% window area[i], [j]

[a] Allowed in place of a wall sign and one per individual building tenant.

[b] Downward and direct illumination only; when placed on subdivision entry features, only the sign face shall be used to calculate the sign area.

[c] Minimum horizontal distance between signs on the same property is seventy-five (75) feet.

[d] In place of project monument sign; not allowed on local or collector streets. Minimum horizontal distance between signs on the same property is seventy-five (75) feet.

[f] One per individual tenant building frontage. The sum of all wall signs on a given wall shall not exceed five percent of the wall area, but shall not exceed one hundred fifty (150) square feet; cannot be more than twenty-five (25) feet above grade level or higher than the eave line of the principal building; first floor level only for retail uses.

[g] One per street frontage, all signs may be no higher than the eave line of the principal building; may be lighted (shielded light source) and include name and address of facility only. Childcare center and bed and breakfast only.

[h] Cannot exceed twenty-five (25) percent of the total allowable sign area for the premises.

[i] Illuminated window signs shall be included in the total allowable sign area for the premises.

[j] Temporary signs or posters displayed for periods not exceeding fourteen (14) days announcing or advertising events sponsored by noncommercial organizations shall be exempt from limitations for window signs.

17.18.133 Sign illumination matrix.

Sign Type	Residential District-Illumination Allowed Y/N	Gateway District-Illumination Allowed Y/N	Downtown & Mixed-Use District-Illumination Allowed Y/N	Industrial District-Illumination Allowed Y/N
Awning Sign	N	N	N	N
Banner	N	N	N	N
Bulletin Board	N	Y	Y	Y

Canopy Sign	N	N	N	N
Changeable Copy Sign	N	Y	N	Y
Creative Sign	N	N	N	N
Marquee Sign	N	Y	Y	Y
Monument Sign	Y[(a)]	Y	Y	Y
Painted Wall Sign	N	Y	Y	Y
Pole Sign	N	Y	N	Y
Political Sign	N	N	N	N
Portable Sign	N	N	N	N
Projecting Sign	N	Y	Y	Y
Roof Sign	N	N	N	N
Suspended Sign	Y[(a)]	Y	Y	Y
Temporary Sign	N	N	N	N
Wall Sign	Y[(a)]	Y	Y	Y
Window Sign	N	(b)	(b)	(b)

[(a)] Downward aimed direct light source only; may not be illuminated between 10:00 p.m. and 7:00 a.m. if within five hundred (500) feet of existing residential uses.

[(b)] Illuminated window signs shall be included in the total allowable sign area for the premises.

17.18.134 Sign height matrix.

Sign Type	Residential District-Max Height-Feet	Gateway District-Max Height-Feet	Downtown & Mixed-Use District-Max Height-Feet	Industrial District-Max Height-Feet
Awning Sign	0	(a)	(a)	(a)
Banner	0	(a)	(a)	(a)
Bulletin Board	6	6	6	6
Canopy Sign	0	(a)	(a)	0
Changeable Copy Sign	0	(a)	0	(a)
Creative Sign	0	4	4	4
Marquee Sign	0	(a)	(a)	(a)
Monument Sign	5	6	0	6
Nameplate	Exempt	6[(a)]	6[(a)]	6[(a)]
Painted Wall Sign	0	(a)	(a)	(a)

Pole Sign	0	25	0	25
Political Sign	Exempt	Exempt	Exempt	Exempt
Portable Sign	0	4	4	0
Projecting Sign	6	(b)	(b)	(b)
Roof Sign	0	0	0	0
Suspended Sign	6	(b)	(b)	(b)
Temporary Yard Sign	3.5	3.5	3.5	3.5
Wall Sign	6[(a)]	(c)	(c)	(c)
Window Sign	0	(d)	(d)	(d)

[(a)] May be no higher than the eave line of the principal building.

[(b)] Minimum height above sidewalk or grade eight feet. Shall not be higher than the eave from which the sign projects if attached to a single story building or fifteen (15) feet above grade, whichever is less, or the height of the bottom of any second story window if attached to a multi-story building.

[(c)] Cannot be twenty-five (25) feet above grade level or higher than the eave line of the principal building; first floor level only for retail uses.

[(d)] Window signs visible beyond the boundaries of the lot upon which the sign is displayed shall not exceed twenty-five (25) percent of the window or door area at the ground floor level; and twenty-five (25) percent of the total allowable sign area for the premises.

FRUITA COLORADO

COUNCIL WORKSHOP AGENDA ITEM COVER SHEET

TO: Mayor & City Council

FROM: Mike Bennett, City Manager

DATE: January 23, 2024

AGENDA TEXT: City Council Handbook Review

PURPOSE

The City Council Handbook is updated prior to each Municipal Election. During previous meetings, staff has provided an overview of the updates and incorporated City Council suggestions to the handbook, which is already live on www.fruita.org. Within a suggested new section "What to Expect," we have added a language under "Your First 90 Days" drafted by Mayor Pro Tem Breman, we ask you to review. Also, Council has requested to discuss whether any additional language should be added to the handbook regarding relatives of City Council as City employees.

BACKGROUND

Currently, there is no policy regarding relatives of City Council members as employees of the City. In the City of Fruita Employee Handbook, which does not apply to City Council, is Section 3.6 Employment of Relatives, which reads:

3.6 Employment of Relatives
The City of Fruita's policy is to avoid real or apparent conflicts of interest, or circumstances that could result in actual or perceived acts of favoritism, interpersonal conflicts or jeopardizing confidentiality. The hiring of relatives will not be considered in the following situations:

- *When one exercises any supervisory, appointment or disciplinary responsibility, or is in the line of supervisory authority of the other.*
- *When one is employed in a position with access to confidential information of the other, such as personnel records, information systems, or involved with processing timekeeping or payroll records.*
- *When one would be responsible to audit, verify, receive or be entrusted with money handled by the other.*
- *Where both employees would report to the same immediate Supervisor, or are in direct or potential competition with each other.*
- *Children of employees cannot be employed in the same division in which the parent is employed.*

- *For the purpose of this section of the handbook, relative is defined as spouse, child, parent, grandparent, grandchild, brother or sister (this includes step, half and in-law relationships). Relative also includes aunt, uncle, niece, nephew and first cousin (these relative relationships do not include step, half and in-law relationships).*

The above examples are NOT meant to be all-inclusive. In the event that two Employees become related and one of the above situations occurs, one Employee may be required to resign or transfer to another position consistent with this policy within 30 calendar days after the change in status.

This item is for Council to discuss whether to add similar language to the City Council Handbook.