



PLANNING COMMISSION MEETING AGENDA
Council Chambers, 1000 Laurel Street

March 29, 2017
Wednesday

Regular Meeting
6:00 p.m.

- 1. Call to Order and Flag Salute**
- 2. Roll Call**
- 3. Additions/Deletions to Agenda**
- 4. Citizen Participation**
- 5. Approval of Minutes**
 - A. February 22, 2017
- 6. Regular Agenda**
 - A. Sign Code Changes
- 7. Commissioner Reports**
- 8. Staff Updates**
- 9. Adjournment**

Council may add and take action on other items not listed on this agenda.

If you need ADA accommodations, please contact City Hall at (253) 517-2705 prior to the meeting.

Thank you.



Regular Meeting
Wednesday, February 22, 2017
6:00 p.m.

1. CALL TO ORDER and ROLL CALL

Chair Gillespie called the meeting to order at 6:00 p.m., and led the flag salute.

Present: Chair Gillespie, Commissioners Whalen, Balsley, Hutson, Tompkins, and LaVergne

Staff Present: Community & Economic Development Director Morales

Chair Gillespie welcomed new Commissioner Ryan LaVergne, who introduced himself.

2. ADDITIONS, DELETIONS, CORRECTIONS TO THE MEETING'S AGENDA

None.

3. CITIZEN COMMENT PERIOD

Mayor Perry thanked the Commissioners for their service.

4. APPROVAL OF MINUTES

COMMISSIONER WHALEN MOVED, seconded by Commissioner Balsley, to approve the minutes of September 28, 1916. **Approved 6/0.**

COMMISSIONER WHALEN MOVED, seconded by Commissioner Hutson, to approve the minutes of October 26, 1916 as corrected regarding the identity of Vice Chair in item 4. **Approved as corrected 6/0.**

COMMISSIONER WHALEN MOVED, seconded by Commissioner Balsley, to approve the minutes of November 30, 1916 as corrected regarding the Roll Call, which should indicate that Vice Chair Ripplinger was absent. **Approved as corrected 6/0.**

5. REGULAR AGENDA

A. Discussion of Short Course on Local Planning

Chair Gillespie welcomed guest speaker Ms. Anne Fritzel from the Department of Commerce, who introduced herself and gave a brief background on the Short Course on Local Planning, followed by facilitating an open discussion time.

B. Acceptance of 2017 Work Plan

Director Morales explained this week's Council discussion of the Work Plan and the addition of the review of potential annexation. Discussion ensued.

COMMISSIONER WHALEN MOVED, seconded by Vice Chair Balsley, to adopt the approved 2017 Work Plan from City Council as presented and discussed tonight.
Approved 6/0.

COMMISSIONER REPORTS

Commission Hutson

- Will be out of country for the March meeting

Vice Chair Balsley

- Chamber overview – April's meeting will host the "State of the City" reports
- Events Committee hard at work on Milton Days

Commission Whalen

- Glad to have a new Work Plan

Commission Thompkins

- March 22 is a conflict with the Police Foundation dinner so will not be present
- Learned so much from the Short Course!

Commission LaVergne

- Happy to be on the Commission

Chair Gillespie

- Proposes a committee to plan Commission involvement with Milton Days

STAFF UPDATES

Director Morales provided an update on development status.

NEXT MEETING

March 29, 2017, 6:00 pm – **MOTION** (Gillespie/Whalen) to postpone the meeting to the 5th Wednesday due to the conflict with the Police Foundation dinner. – **Passed 6/0.**

ADJOURNMENT

The meeting was adjourned at 8:15 p.m.

Approved at the meeting of _____, 20_____.

Chair Jim Gillespie

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City of Milton

William L. Cameron
City Attorney

MEMORANDUM

March 29, 2017

To:	Milton Planning Commission
CC:	Steve Peretti, Mayor Perry
Re:	Sign Code Changes

In 2015 the United States Supreme Court decided the case of *Reed v. Gilbert*. *Reed* had the effect of repealing virtually every sign code in the United State, Milton's included. This is explained in detail in the accompanying memorandum, and I will not belabor it here. The direction that the Court gave was that the message on a sign cannot be considered in its regulation. If Milton regulates the signs at Safeway and Arby's, the same regulations will apply to the Methodist Church and the VFW. If we let the Girl Scouts put up advertisements for their cookies, we cannot say anything about similar signs advertising the next Milton Klanvocation. And no, banning all signs is not an option.

Attached is a redlined copy showing the changes to the ordinance and a clean copy showing what is left. Certainly, we are at liberty to regulate the safety of sign construction and placement. We can regulate their number, location and size if the regulations are rational and reasonable. Essentially, we would be declaring what is or is not a public nuisance. We can prohibit signs that pose a danger (fake traffic control devices), are in some way fraudulent (false advertising), are illegal (pornography), or amount to unlawful conduct. The draft ordinance comes close to these goals.

Milton's ordinance contained more than its fair share of planning argot, and after struggling to understand as much of it as possible, I tried to write what is left in plainer English. I will claim modest success in reducing the number of "shalls" from 122 to 8. I have deleted about half the definitions, because the words they defined did not appear anywhere else in the Code. To the greatest extent possible, I have removed attempts at regulation from the definitions. Many of the provisions referred to 17.50.140. This section was completely destroyed, so I made up a new part B. That provision deals with the time limits on temporary signs, and as those are the types of signs at issue in *Reed*, great care needs to be exercised.

If you are curious about the editing, I suggest that you read the redline copy and the accompanying comments. Most edits do not include any accompanying comment, there are just too many, but there is some comment about the major changes.

ATTACHMENTS:

- Memorandum on Reed vs. Gilbert
- Revised Sign Code - clean copy
- Revised Sign Code - edits showing



City of Milton

William L. Cameron
City Attorney

MEMORANDUM

TO: Milton Planning Commission

DATE: March 29, 2017

RE: Necessary Amendment to Sign Code as the result of *Reed v. Town of Gilbert*

I. EXECUTIVE SUMMARY

A. Why are we spending time on this issue?

In June of 2015, the United States Supreme Court decided the case of *Reed v. Town of Gilbert*. That case now compels every jurisdiction with a sign code that deals with other than the structure of signs to rewrite their codes and ordinances to comply with the dictates of the First Amendment to the United States Constitution.

The facts in *Reed* are simple. Clyde Reed is the pastor of the Good News Community Church. A congregation so small it had no fixed place of meeting. On Saturday before a service, Reed would place about 20 small signs around Gilbert announcing the name of the church, and the time and place of the service. After church, Reed would retrieve the signs. Adam Adams, the Town Code Compliance Manager determined that these signs were “temporary directional signs” and they exceeded the permissible amount of time allowed for such signs. After a couple of citations, Reed appealed and eventually arrived in the United States Supreme Court. The Reed side of the case argued that if you needed to read the face of the sign to figure out what it was, then the sign was subject to strict scrutiny. That is basically the argument that the Court accepted.

B. The changes to our current Ordinance

While you would think that a reasonable person would have seen the danger of Adams’ procrustean position, he has now given us a very difficult to understand set of rules. You will doubtless see that some of the regulations require us to look at the face of the sign. For example, a temporary sign is one that announces an event, but the only regulation is that the sign come down after the event. That is, I hope, a perfectly rational regulation if your town is attempting to minimize the clutter of unregulated signs. Strict scrutiny requires the government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. If minimizing the clutter of signs to make Milton a more appealing place to live is a compelling governmental interest, then the temporary sign regulation is about as narrowly tailored to meet that regulation as possible. One can hardly complain that their free speech rights have been infringed by limiting announcements to upcoming but not past events.

Justice Alito’s concurring opinion suggests that a “rule imposing time restrictions on signs advertising a one-time event” is permissible. To that effect I have defined a temporary sign as “any sign that is not permanently mounted and that contains a message for a particular event or happening that will render the sign obsolete upon the event or happening.” This should pass Constitutional muster.

II. INTRODUCTION AND SUMMARY OF DECISION¹

Like many localities the Town of Gilbert Arizona, concluded that a proliferation of road signs impairs the beauty of the Town and may create threats to traffic and pedestrian safety. The Town crafted sign regulations regarding the number, size, and limits of display of such signs and categorized them on the message that the sign conveyed. In a 9-0 decision, with three concurring opinions, the U.S. Supreme Court held that such distinctions violate the First Amendment.

The Town's Sign Code categorizes temporary signs and then restricts their size, duration, location and other characteristics depending on the category into which each sign is placed. Depending on whether the Town categorizes the signs as "political," ideological promoting a "qualifying event," or conveying messages from "homeowners associations," or about real estate, the sign Code imposes greatly differing size, duration, number, location and other requirements within each category. The Good News Community Churches' temporary signs promoting church services receive far worse treatment than temporary signs promoting other types of businesses, political, ideological or other messages. The signs in all of these categories, however, equally impact the Town's established interests in public safety and aesthetics.

The Supreme Court adopted a bright line "on its face" rule: If you must read the sign's message to determine how it is regulated, then the regulation is automatically "content-based." And even some facially content-neutral regulations will be deemed content-based if the regulation can't be justified without reference to the content, or if it was adopted because of disagreement with, or attempt to censor, the message. Here, the Gilbert Sign Code on its face is content-based.² As such, strict scrutiny applies. Under strict scrutiny, the Code fails, and violates the First Amendment. The Court also held that the Town's good motives and government interest justifications were irrelevant and could not save the sign regulations from invalidation.

III. BACKGROUND OF SIGN REGULATION

Sign ordinances are generally recognized to be part of the local government toolkit for advancing governmental interests in traffic safety and aesthetics. The First Amendment applies to signs (they are a form of expression protected by the First and Fourteenth Amendments), and this creates difficulties in regulating them. The U.S. Supreme Court observed in *City of Ladue v. Gilleo*, 512 US 43 (1994) that signs present regulatory challenges not applicable to other forms of speech:

"While signs were a form of expression protected by the Free Speech Clause, they pose distinctive problems that are subject to municipalities' police powers. Unlike oral speech, signs take up space and may obstruct reviews, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. It is common ground that governments may regulate the physical

¹ The bulk of the memorandum has been liberally taken (pretty much copied) from a presentation by Michael C. Walter to the Association of Municipal Attorneys.

² Content-based regulations prohibit or compel speech on certain subjects or views, whereas content-neutral regulations are unrelated to the content of speech.

characteristics of signs -just as they can, within reasonable bounds and absent censorial purpose, regulate audible expression in its capacity as noise.”

Id., 512 U.S. at 48.

Effective regulation of sign placement and aesthetics, including size and locational regulations, typically requires the government to categorize signs by type, or to create “exemptions,” and such categorization often requires the government to read the sign to determine its function and, therefore, its category. Such categorization before *Reed* might pass constitutional muster, and was frequently evaluated under an intermediate scrutiny analysis. *See, e.g., City of Ladue v. Gilleo*, 512 U.S. 43, 48 (1994); *Davenport v. Washington Ed. Assn.*, 551 U.S. 177, 188 (2007); and *Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 48 (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”).

Prior to the *Reed* decision there was a split in the federal circuits over “content neutrality.” The Fifth, Eighth and Eleventh Circuits generally applied a rule that if you had to look at the message to determine if the regulation (or category or exemption) applied, then it was “content-based” and, thus, subject to strict scrutiny. The Third, Fourth, Sixth, Seventh and Ninth Circuits, on the other hand, looked to whether the government was trying to regulate or censor content through the regulation. If there was no evidence of government regulating or censoring content, the regulation was deemed “content-neutral”, and thus subject to only intermediate scrutiny (not the higher level and more demanding “strict scrutiny”). The courts in these circuits adopted this more flexible - and less demanding - rule because it was felt that local government needs flexibility in dealing with the First Amendment issues, and because it was believed that a limited number of content-based provisions not intended to censor speech is acceptable.

The Supreme Court has also previously upheld total bans on signage in certain situations. *See, e.g., Metromedia v. San Diego*, 453 U.S. 490 (1981) (ban on commercial billboards upheld); *City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984) (ban on signs posted on public property upheld). These previously accepted rules have been changed, perhaps eliminated, by the Supreme Court’s June 18, 2015, decision in *Reed v. Town of Gilbert*.

IV. FACTS AND BACKGROUND

A. The Town’s Code and rationale for the regulations

The Town of Gilbert lies about 18 miles Southeast of Phoenix, and has a population of approximately 200,000. The Town adopted a Sign Code to further its interests in aesthetics and pedestrian and traffic safety.

The Town’s Sign Code encompassed three broad categories of signage which the Supreme Court analyzed. The first general category, identified by the Town’s Code itself, included “Ideological signs.” These are signs “communicating a message or Ideas for noncommercial purposes,” and which do not fall into several other categories. They are treated most favorably, can be up to 20 sq. ft. in area, can be erected in all parts of the Town, and have no time or display limits.

The second general category is “political” signs which the Code describes as those “designed to influence the outcome of an election.” Ibis class of signage is treated less favorably than the first category. They can be no larger than 16 sq. ft. on residential property, but can be up to 32 sq. ft. on other properties. They can go up 60 days before a primary election, but only 15 days before a general election. An unlimited number of political signs are allowed. The Code does not identify any “take-down” time.

The final classification of signage covers “temporary directional signs relating to a qualifying event,” which includes those events put on by religious, charitable, and other similar nonprofit organizations. Ibis is the group of signage in which the Plaintiff Church fell. The purpose of these signs is to announce the event and point interested persons in the right direction. These signs can be no larger than 6 sq. ft., may be placed only on private property or on a public right of way, and can be displayed only for 12 hours before and one hour after the event. No more than four of these signs are allowed on any property.

B. Facts and the Litigation

The Town’s permitting exemption for temporary signs and, more specifically, it’s classification of the Church’s signs as “temporary directional signs,” is at the heart of the Reed case. The Plaintiffs/Petitioners in Reed are the Good News Community Church and its Pastor, Clyde Reed (collectively “Church”). The Defendants/Respondents are the Town of Gilbert, Arizona, and Adam Adams in his official capacity as the Town’s Code Compliance Manager (collectively “Town”).

Pastor Reed wanted to use the “temporary directional signs” to advertise his church services. The church services moved among various places because his church did not have its own building. Church members would put out 15-20 temporary signs early in the day on Saturday and take them down after Noon on Sunday. The signs were frequently in the right-of- way abutting the street, and displayed the Church’s name, and the time and location of the upcoming service. On two occasions, he received a citation for exceeding permissible hours and for not stating the time of the event on the Church signs. Reed asked the Town’s Sign Code compliance department for an “accommodation,” but his efforts proved unsuccessful. The Town’s Code Compliance Manager (Adams) informed him that there would be “no leniency under the Code” and promised to punish any future violations.

V. LITIGATION HISTORY

Reed and the Church filed a complaint in District Court for the District of Arizona, arguing that the Sign Code violated their free speech rights in violation of the First and Fourteenth Amendments. The District Court denied their motion for preliminary injunction, and the Ninth Circuit Court of Appeals affirmed, holding that the Sign Code’s provision regulating temporary directional signs did not regulate speech based on content. *Reed v. Town of Gilbert, Arizona*, 587 F.3d. 966, 979 (2009). The Ninth Circuit reasoned that even though an enforcement officer would have to read the sign to determine what provisions of the 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 analyzing “the expressive content of the sign.” *Id.* At 978. The Court then remanded to the District Court to determine whether the Sign Code’s distinctions among temporary directional signs, political signs, and ideological signs nevertheless constituted a content-based regulation of speech. *Reed v. Town of Gilbert, Arizona*, 832 F. Supp.3d 1070 (D. Ariz., 2011).

On remand, the District Court granted summary judgment to the Town. *Id.* The Court of Appeals, in a 2-1 decision, again affirmed, holding that the Sign Code’s categories were content neutral. The Ninth Circuit 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. *Reed v. Town of Gilbert, Arizona*, 707 F. 3d 1057, 1069 (9th Cir., 2013). In concluding that the Code was content neutral, the Ninth Circuit explained: “Gilbert did not adopt its regulation of speech because it disagreed with the message conveyed,” and it’s “interests in regulat[ing] temporary signs are unrelated to the content of the sign.” *Id.* at 1071-1072. Accordingly, the Court held that the Code was “content neutral as that term [has been] defined by the Supreme Court.” *Id.* at 1071. In light of that determination, it applied the intermediate level of scrutiny to the Sign Code and concluded that it did not violate the First Amendment. *Id.* at 1073-76.

The Church asked the Court to reverse the Ninth Circuit and rule that content-neutrality is determined objectively by the plain language of the regulations, regardless of the government’s asserted motives. The Church argued that the Sign Code facially distinguishes among types of speech and regulates those types of speech based on how the Town categorizes the speech. This content-based discrimination, according to the Church, should be reviewed under “strict scrutiny” and struck down as a violation of the First Amendment.

The Supreme Court granted certiorari on July 1, 2014, and in a 9-0 decision reversed the Ninth Circuit holding the Town’s Sign Code was facially content-based, did not satisfy strict scrutiny, and violated the First Amendment.

VI. THE HIGH COURT’S DECISION

Justice Thomas wrote the opinion of the Court, and was joined by Chief Justice Roberts and Justices Scalia, Kennedy, Alito, and Sotomayor. There were three concurring opinions.³

The Church, joined by amici representing various religious and libertarian interests, argued that if a municipal official must read the content of a sign to determine what kind of sign it is, the regulation is “content-based” and subject to strict scrutiny. They argued that the categorical distinctions were facially content-based, and thus the Town’s Sign Code is subject to2 strict scrutiny and it cannot survive because the Code is not narrowly tailored and alternative channels for communication do not exist. The Town, joined by amici representing local government, the U.S. government, and planning interests, argued that intermediate scrutiny should apply to sign ordinances that do not favor or censor viewpoints or ideas, and that the Town’s Code does not favor or censor viewpoints or ideas. These amici also argued that the Church’s “absolutist” test would wreak havoc on local government’s ability to address important traffic safety and aesthetic interests.

The Court’s analysis centered on the impact that the nature of the content of the three categories of signs should have on the legal rules applicable to the case. The Court began its analysis with a summary of First Amendment law relating to sign regulation, citing prior decisional law discussing content-based regulations and the strict scrutiny analysis. Under the First

³ Justice Alito wrote a concurring opinion, joined by Justices Kennedy and Sotomayor; Justice Kagan wrote a separate opinion concurring in the judgment only, joined by Justices Ginsburg and Breyer; and Justice Breyer separately joined in Justice Kagan’s opinion concurring in the judgment only

Amendment, government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.⁴ Content-based regulations such as 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 a compelling state interest.” 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. Slip Op., pp. 6-7. The key, according to the Court is whether distinctions in the regulations are based on “the message a speaker conveys,” or through reference to the content of the regulated speech, or where regulatory distinctions were adopted by the government “because of disagreement with the message [the speech] conveys.” *Id.*, pp 6-7.

The Court established a rule that strict scrutiny applies to any regulation that is “content-based.” The Court identified three general classes of regulations which are content-based, and thus subject to strict scrutiny analysis. The first is where the regulation “on its face” draws distinctions based on the message the speaker conveys. This was the category applicable to the Town’s regulations. The second category involves laws that can’t be justified “without reference to the content of the regulated speech.” The third are laws adopted by the government “because of disagreement with the message [the speech] conveys.” *Id.*, pp 6-7.

Here, the Town’s Sign Code is “content based on its face.” It defines “temporary directional signs” based on whether a sign conveys the message of directing the public to church or some other “qualifying event.” It defines “political signs” based on whether a sign’s message is “designated to influence the outcome of an election.” And it defines “Ideological signs” based on whether a sign “communicates a message or ideas” that do not fit within the Code’s other categories. It then subjects each of these categories to different regulatory restrictions. The restrictions in the Code that apply to any given sign “thus depend entirely on the communicative content of the sign.” The Court found no need to consider the Town’s justifications for good intentions for enacting the Code to determine that it was subject to strict scrutiny; the Court found that “on its face” the Code was content-based, and thus subject to strict scrutiny, and it failed that test.

The Court found the Ninth Circuit’s rationale for upholding the Code and its distinctions not “persuasive.” First, while the Court of Appeals determined that the Code was content-neutral because the Town “did not adopt its regulation of speech (based on] disagreement with the message conveyed,” and its justifications for regulating temporary directional signs were “unrelated to the content of the sign,” the High Court found that this analysis skipped 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’ on ‘in the regulated speech.’

Slip. Op., p. 8. The Court emphasized that the first step in any content-neutrality analysis is determining whether the regulation is content-neutral on its face before looking to the law’s justification or purpose. With a facially content-based regulation, innocent motives will not

⁴ Citing *Police Department of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

eliminate the danger of censorship presented because “future government officials may one day wield such statutes to suppress disfavored speech.” *Id.*, p. 10. Thus, “the price 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.” *Id.*

The Court also rejected the Ninth Circuit’s second rationale for finding the sign Code content neutral because it “does not mention any idea or viewpoint, let alone single one out for differential treatment.” *Id.*, p. 11. This analysis was flawed because a speech regulation targeted at specific subject matter can be content-based even if it does not discriminate up among viewpoints within that specific subject matter. Under the Town’s Code, 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. According to the Court, “that is a paradigmatic example of content-based discrimination.” *Id.*, p. 12

The Court also rejected the Appellate Court’s finding that the Code’s distinctions turning on the content-neutral elements of who was speaking through the sign and whether and when an event is occurring” would save the regulation. The Court noted that the Code’s distinctions are not speaker-based or event-based. Moreover, the fact that a distinction is speaker-based or event-based does not, as the Court of Appeals believed, automatically render the distinction content-neutral. “Characterizing a distinction as speaker-based is only the beginning- not the end - of the inquiry.” *Id.* p. 13. Thus, a speech regulation is content-based if the law applies to a particular speech because of the topic discussed or the idea or message expressed.” *Id.*, p. 13 (emphasis added). 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.’”

Slip. Op., p. 14.

Because the Sign Code imposes content-based restrictions on speech, those provisions can stand only if they survive “strict scrutiny.” Under established law, strict scrutiny requires the government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. 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. “The Town cannot do so.” *Slip. Op.*, pp. 14-15.

The Town’s regulations fail strict scrutiny analysis. The governmental interest in preservation of aesthetics fails because temporary directional signs (like the Church’s) are no greater an eyesore than ideological or political ones. Yet the Town’s 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 necessary to beautify the Town while at the same time allowing unlimited numbers of other types of signs that create the same problem.” *Id.*, p. 15

The Town’s governmental interest in pedestrian and traffic safety also fails strict scrutiny because there is no evidence 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.” Thus, in light of this “under inclusiveness,” the Town has not met its burden to prove that its Sign Code is narrowly tailored to further a compelling governmental interest. *Id.* The Court attempted to temper its new rulings by stating that its decision “will not prevent governments from enacting effective sign laws.” Slip. Op., p. 16. The Court notes that not all “distinctions” within sign codes are subject to strict scrutiny analysis; only content-based distinctions are. Thus, laws that are content-neutral are subject to “lesser scrutiny.”⁵

The Court also notes that the Town has “ample” content-neutral options available to resolve problems with safety and aesthetics. For example, it can still regulate aspects of signage that have nothing to do with the content of the message, such as size, building materials, lighting, moving parts and portability. 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.” Slip. Op., p. 16. Finally, sign regulations can be 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.” However, the signs at issue in this case, including political and Ideological signs and signs for events, “are far removed from those purposes.” Thus, they are facially content-based, are neither justified by traditional safety or aesthetic concerns nor narrowly tailored. Accordingly, they fail strict scrutiny test and violate the First Amendment.

A. Justice Alito’s concurring opinion

Justice Alito, joined by Justices Kennedy and Sotomayor, suggested many sign regulations that he concluded would not be barred by the Majority Court’s decision, even though they agreed that the regulations in the Town’s Code are “replete with content-based distinctions, and thus they must satisfy strict scrutiny.” Justice Alito provided a non-exclusive list of 10 rules that would not be content-based:

1. Rules regulating the size of signs;
2. Rules regulating the locations in which signs may be placed;
3. Rules distinguishing between lighted and unlighted signs;
4. Rules distinguishing between signs with fixed messages and electronic signs with messages that change;
5. Rules that distinguish between the placement of signs on private and public property;
6. Rules distinguishing between the placement of signs on commercial and residential property;
7. Rules distinguishing between on-premises and off-premises signs;

⁵ The Court does not indicate which level of “lesser scrutiny” should be applied to content neutral regulations – whether under the rational basis test or intermediate scrutiny, or something else. Presumably, this “lesser scrutiny” is the intermediate scrutiny test which has been applied in the past to content-neutral regulations. *See, e.g., City of Ladue v. Gilleo*, 512 U.S. 43 (1994); *Davenport v. Washington Ed. Assn.*, 551 U.S. 177, 188 (2007); *Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 48 (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”).

8. Rules restricting the total number of signs allowed per mile of roadway;
9. Rules imposing time restrictions on signs advertising a one-time event; and
10. Government entities may put up “all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.”

Slip. Op. (Alito concurring), pp. 1-2.

B. Justice Kagan’s concurring opinion

Justice Kagan’s concurrence (joined by Justices Ginsburg and Breyer), while supporting the Majority Court’s decision, acknowledges that many sign regulations dealing with public safety, historical markers, and even signs under the Federal Highway Beautification Act, “are now in jeopardy.” She acknowledges that most sign laws with subject-matter exemptions will not survive strict scrutiny analysis and will be struck down. After all, “it is the rare case” in which a speech restriction withstands strict scrutiny. To clear that 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.” The consequence unless the Courts “water-down strict scrutiny to something unrecognizable,” is that government will find itself in an unenviable bind - to either repeal the exemptions that allow for helpful signs on streets and sidewalks, or lift sign regulations altogether and resign themselves to the resulting “clutter.” *Slip. Op. (Kagan, concurring)*, pp. 1-2.

Justice Kagan wanted to temper the breadth of the Majority Court’s decision with “a dose of common sense, so as to leave standing laws that in no way implicate its intended function.” Noting that in many instances it is not “realistically possible” to apply a strict scrutiny analysis to all facially content-based regulations and exemptions to regulations, she suggests that in certain instances the Court should “relax” the standard so that “entirely reasonable” laws imperiled by strict scrutiny can survive. *Id.* She believes the Majority could have struck down the Town’s sign regulations without adopting such a sweeping, fixed rule that when laws single out specific subject matter they are automatically considered facially content-based, and when they are facially content-based they are automatically subject to strict scrutiny. While she agreed that the Town’s defense of its Code (aesthetics and safety) “does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test,”⁶ there was no need for the Majority to decide whether strict scrutiny applies to every sign ordinance in every town containing a subject matter exemption.

The Court and others will regret the Majority’s insistence on answering the strict scrutiny question and, as the years go by, “Courts will discover that thousands of towns have such ordinances, many of them ‘entirely reasonable’.” Her concern is that the Court “may soon find itself a veritable Supreme Board of Sign Review” *Id.*, p. 6. Thus, “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.” *Id.*, p. 7.

⁶ She cites, for example, the Town’s inability to provide “any reason at all” for prohibiting more than four directional signs on property while placing no limits on the number of other types of signs. She also criticized the Town for offering no justification for restricting the size of directional signs to 6 sq. ft. while allowing other signs to reach 20 sq. ft., and noted the absence of any “sensible basis for these and other distinctions” would doom the Town’s ordinance under even intermediate scrutiny that the Court typically applies to time, place or manner speech regulations. *Slip Op. (Kagan, concurring)*, p. 6

C. Justice Breyer's concurring opinion

Justice Breyer also expressed concern about the Majority's bright line test and use of categories to decide sign regulation cases. He would focus on what he called "content discrimination" to help decide the First Amendment questions when the line is unclear between subject matter and viewpoint as the basis for the regulation. He also objected to the strong "presumption of unconstitutionality" that he saw in the Majority opinion. Slip. Op. (Breyer, concurring), pp. 1-3. Justice Breyer joined in Justice Kagan's concurrence, but wrote separately to state his opinion that "categories alone cannot satisfactorily resolve the legal problem before us." He suggests that 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." *Id.*, p. 1.

He notes that in some instances using content discrimination to trigger strict scrutiny makes sense; however, and many others, it does not. In these other instances, use of content discrimination to automatically trigger strict scrutiny and thereby call in to play a strong presumption against constitutionality "goes too far." Regulatory programs almost always require some form of content discrimination, and to hold that such content discrimination automatically triggers strict scrutiny "is to write a recipe for judicial management of ordinary government regulatory activity." Some examples include government regulation of securities, of energy conservation labeling practices, of prescription drugs, of doctor-patient confidentiality, of income tax statements, and even signs at petting zoos. *Id.*, p. 3.

He also expressed concern over applying strict scrutiny to "commercial speech," noting that many justifiable instances of "content-based" regulation are non-commercial. His approach would be to treat content discrimination as a strong reason weighing against the constitutionality of a rule in a traditional public forum, or where viewpoint discrimination is threatened, but elsewhere treated 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." Thus, he 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 the relevant regulatory objectives." *Id.*, p. 5.

"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 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."

Id., p. 5.

VII. THE TAKE-AWAYS-AND FALLOUT

- The Majority has set forth a bright line test for sign code regulation. When laws single out a specific topic or subject matter they are facially content-based. When they are facially content-based, they are automatically and universally subject to strict scrutiny.

- Strict scrutiny is a stringent standard of review. To satisfy strict scrutiny, 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.” It is the “rare case” in which a speech restriction will withstand strict scrutiny.
- The Supreme Court-or at least the Majority here-now appears more serious about policing the line between content-based and content-neutral restrictions on speech. If the Majority’s bright line test is followed, other Courts will strictly construe this demarcation⁷ and, as justice Kagan wrote, the Supreme Court may find itself “a veritable Supreme Board of Sign Review.”
- The decision applies to more than just temporary signs or one-time events. The decision likely applies to most forms of sign regulation, including permanent and temporary signs, fixed and portable signs, wind, blade and animated signs, illuminated and non-illuminated signs, ongoing information and activities, as well as one-time events-and more.
- Government can no longer escape strict scrutiny of sign regulations that on their face distinguish speech based upon content, topic or subject matter by offering a “good faith” or “good motives” justification. Intent, motive, or justification is no longer relevant to the analysis if the regulation is facially content-based.
- Speech regulations will only be deemed content-neutral if they are in fact plainly content neutral on their face.
- For the first time the Court identifies regulations that target a particular “topic,” and not just general speech or communication. The concept of a content-based “topic” is not recognized in prior Supreme Court jurisprudence on First Amendment sign regulation.
- The first step in any “content-neutral” analysis is determining whether the law is content-neutral on its face.
- The decision will have far-reaching impact beyond just sign regulations. The Court’s decision will almost certainly impact other forms of government regulation such as design regulations, theme regulations, panhandling, handbills, drug labeling regulations, automated phone calls, advertising, and landmark and historic regulations.
- The debate over whether a regulation is content based and exactly what that means in specific factual contexts won’t be settled by *Reed*. Whether the Majority’s decision will be strictly followed by the lower Courts also remains to be seen. Nonetheless, the decision has potentially significant ramifications for government regulation of signage and other First Amendment-related activities, and should prompt a thorough and careful review of all jurisdictions’ sign regulations, as well as other regulations impacting the First Amendment.

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⁷ Following the *Reed* decision, several federal appellate courts are either reconsidering recent sign code decisions or have remanded their decisions to lower courts for a new analysis under *Reed*.

Chapter 17.50

SIGN CODE

Sections:

- 17.50.010 Purpose.
- 17.50.020 Definitions.
- 17.50.030 Administration and enforcement.
- 17.50.040 Permits required.
- 17.50.050 Permit application requirements.
- 17.50.060 Prohibited signs.
- 17.50.070 Exempt signs.
- 17.50.080 General provisions.
- 17.50.083 Signs in the right-of-way.
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- 17.50.100 Monument signs.
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- 17.50.190 Penalty for violations.
- 17.50.200 Severability.

17.50.010 Purpose.

The purpose of this chapter is to regulate the installation, alteration, relocation, number, size, height, and placement of signs within the city. Consistent with the comprehensive plan, the regulation of signs protects the health, safety, and welfare of the citizens. It promotes the aesthetic appearance of the city to

maintain and protects the value of property. It encourages quality design that creates an attractive and harmonious community and business environment. It provides businesses with the adequate means to advertise their products and services. It preserves the right of free speech exercised by its citizens. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.020 Definitions.

“A-board/sandwich board signs” means small signs, either single- or double-faced and portable.

“Abandoned sign” includes a sign that has not been changed or removed within 180 days of ceasing to be relevant.

“Awning” means any structure made of cloth, metal, or other material with a frame attached to a building. Some awnings can be raised flat against the building when not in use.

“Awning sign” means a sign affixed to the surface of an awning.

“Banner sign” means a sign made of cloth, fabric, paper, flexible plastic or material. Banners may contain text, numbers, graphic images or symbols. Pennants and flags are not considered banners.

“Billboard” means a preprinted or hand painted changeable copy sign. It includes both the structural framework that supports a billboard and any message. Although sometimes smaller, billboard sizes often range from 12 to 14 feet in height and 24 to 48 feet in width. A billboard is not a “changeable copy sign” as defined below.

“Building facade” means the exterior walls of a building exposed to public view or that cannot be viewed by those within the building.

“Canopy” means any structure, other than an awning, made of cloth, metal, or other materials with framework attached to a building or carried by a frame supported by the ground.

“Canopy sign” means a sign erected upon, against or directly above a canopy.

“Changeable copy sign (manual)” means any sign that is designed so that characters, letters, or illustrations can be changed or rearranged by hand without altering the face or the surface of the sign; i.e., reader boards with changeable pictorial panels. A billboard is not a changeable copy sign.

“Changing message center” means an electronically controlled sign, message center, or readerboard.

“Dangerous sign” means a sign that by nature of its condition is hazardous to the public’s health, safety, and welfare.

“Display surface” means the area made available by the sign structure for the purpose of displaying a message.

“Double-faced sign” means a sign that has a message on opposite sides of a single display surface or sign structure. Wedge, round or multifaceted signs are not double-faced signs when determining square footage. Instead, the area of each face of such signs is used when figuring square footage.

“Electrical sign” means a sign or sign structure that uses electrical wiring, connections or fixtures as a part of the sign, but not including signs illuminated by an exterior light source.

“Electronic sign” means a sign designed to allow changes in the sign electronically.

“Festoon” means a strip, string or cluster of balloons.

“Flag” means a piece of cloth or other flexible material .

“Flashing sign” means a sign or a portion thereof that changes light intensity or switches on and off, contains motion or the optical illusion of motion by use of electrical energy. Changing message centers are not flashing signs.

“Freestanding letters” means individual letters, characters or marks comprising any portion of a sign or sign structure, whether erected flat against a wall or upon a framework for support.

“Freestanding sign” means a sign supported by poles, uprights, braces, or standards and is not connected to or supported by any other structure. Pole signs and monument signs are examples of freestanding signs.

“Freeway sign” means a pole or monument sign that is allowed by code for those properties that are located along the Interstate 5 (I-5) right-of-way as defined in 17.50.085. “Freeway signs” are specifically oriented to the traffic on the interstate rather than other state or local roadways.

“Grade” means the elevation or level of the street (or parking lot) closest to the sign to which reference is made, as measured at the street centerline, or the relative ground level in the immediate vicinity of the sign.

“Marquee” means a permanent structure attached to, supported by and projecting from a building or free standing that provides protection from the weather elements. This does not include a projecting roof but does include canopies.

“Marquee sign” means a sign attached to and made part of a marquee.

“Monument sign” means a ground-mounted, fixed sign

“Multiple occupancy building” means a single structure with a common building access that houses more than one business, office or venture.

“Mural” means is a work of art painted or applied to a wall of a building or other structure.

“Parapet” means that portion of a building wall that extends above the roof of the building.

“Pennant” means a sign made of cloth, fabric, flexible plastic, or similar types of material that does not contain text, numbers, images or symbols.

“Permanent sign” means a sign that is erected without restriction on the time period allowed for display.

“Permittee” includes any person who should have taken out a permit under this Chapter or MMC 15.05.

“Planned center” means a group of structures housing at least one business, office, venture or independent or separate part of an activity that was processed through the site approval process as one project or that shares access or parking facilities. Individual parcels need not be under the same ownership in order to qualify as a planned center.

“Pole sign” means any sign, electric or otherwise, hung, supported or cantilevered from one or more supports constructed of structural steel, pipe, or other materials.

“Portable sign” means any sign that is manifestly designed to be transported, including by trailer or on its own wheels, even though the wheels of such sign may be removed and the remaining chassis or support constructed without wheels is converted to an A or T frame sign, or attached temporarily or permanently to the ground, since this characteristic is based on the design of such a sign. Portable signs are usually changeable copy signs.

“Reader board” means a sign that allows for frequent changes of copy; usually such copy is not electronic. A reader board may be a component of a monument, pole, or wall sign.

“Reader board, mobile” means a reader board sign that is not permanently installed on-site.

“Repair” means to paint, clean, replace damaged parts, or improve the structural integrity of a sign, but not change its size, shape, location, or character.

“Revolving sign” means any sign or sign structure that revolves or partially revolves about an axis.

“Roof” means the exterior surface and its supporting structures on the top of a building. Overhangs extending beyond the facade of the lower wall are part of the roof.

“Roof sign” means any sign erected upon, against, or directly above a roof or parapet of a building or structure. When permitted, eighty percent of the sign area must be backed by the roof system.

“Sign” means any object, device, display, structure or part thereof that is used to advertise, identify, direct, or attract attention to a product, business, activity, place, person, institution, or event using words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images.

“Sign area” means the entire area of a sign on which on which information is placed. Sign structures and associated architectural embellishments, framework and decorative features that contain no information and are not illuminated are not calculated in determining sign area. Sign area is calculated by measuring the area of the smallest rectangle, circle, triangle or parallelogram that can be drawn around all parts of the sign to expose the largest sign surface area, including the

sign face background, and including all spaces and voids between or within letters or symbols that comprise a single word, statement, description, title, name, graphic symbol or message for all sign faces. Sign supporting structures that are part of the sign display are included. The entire perimeter area of the letters, graphics, symbols, and framework are used to determine sign area.

“Sign graphics” includes all lines, strokes, text, symbols and logos applied to a sign surface excluding the background to which they are applied.

“Sign height” means the vertical distance measured from the adjacent natural grade at the base of the sign to the highest point of the sign structure..

“Sign structure” means any structure that supports or is capable of supporting any sign as defined in this chapter. A sign structure may be a single pole and may or may not be an integral part of a building. Any structure that performs an entirely separate use, such as a telephone booth, bus shelter, Goodwill container, fence, etc., is not a sign structure.

“Temporary sign” means any sign that is not permanently mounted and that contains a message for a particular event or happening that will render the sign obsolete upon the event or happening.

“Traffic control device” means a sign to control traffic placed in accord with the Manual for Uniform Traffic Control Devices.

“Unlawful sign” means any sign that was erected in violation of any applicable ordinance or law governing such sign or its construction at the time of its placement and that does not comply with all applicable ordinances or laws now.

“Vision clearance area” means an area of unobstructed sight distance. Vision clearance areas means the following areas:

1. On corner lots to maintain safety, a triangular area, two sides of which shall extend 20 feet along the lot lines from the corner of the lot formed by the intersection of the two streets And within which no tree are allowed, and no fences, shrubs, or other physical obstruction higher than 42 inches above the established grade are permitted.
2. On lots upon which a vehicular driveway is maintained, a triangular area , extending 20 feet along the lot line abutting the street and 20 feet along the driveway.

3. On lots adjacent to those defined in 1 and 2, above, that area necessary to complete the triangular area.

4. The areas described in 1, 2 and 3, above, are subject to MMC 12.20.030, Overhanging or obstructing vegetation or debris.

“Wall plane” includes that portion of a facade that is contained on one general plane. A single wall plane may contain windows and doors but it is generally a solid surface. The fascia of projecting porches or colonnades may be considered part of the wall plane from which the porch or colonnade projects in calculating signage area.

“Wall sign” means a sign attached or erected parallel to and extending not more than one foot from the facade or face of any building to which it is attached. Signs incorporated into mansard roofs, marquees, or canopies will be treated as a sign attached to a building.

(Ord. 1666 § 2, 2006; Ord. 1563 § 1, 2003; Ord. 1474 § 1, 2001; Ord. 1437 § 1, 2000).

17.50.030 Administration and enforcement.

A. Anyone installing or altering a temporary or permanent sign must obtain a sign permits unless specifically exempted by MMC 17.50.070. The sign must comply with all city codes. The land use administrator will issue all permits for the construction, alteration, and erection of signs in accord with the provisions of this Chapter and other applicable laws.

B. The land use administrator, or code enforcement officer, of the city of Milton will interpret and enforce this Chapter. In addition to complying with the provisions of this Chapter of the zoning code, the materials, structural design, construction, inspection, and maintenance requirements for signs must comply with the Construction Codes administered by the public works department and the current National Electrical Code and the National Electrical Safety Code. (Ord. 1666 § 2, 2006; Ord. 1536 § 1, 2002; Ord. 1437 § 1, 2000).

17.50.040 Permits required.

A. It is unlawful for any person to erect, re-erect, construct, enlarge, display, alter or move a sign, or cause the same to be done, without first obtaining a permit for each sign from the land use administrator.

B. A permit is required for signs installed simultaneously on a single supporting structure. Thereafter, each additional sign- erected on the structure must have a separate permit.

C. No permit is required for an exempt sign or any sign not specifically regulated by this Chapter.

D. No additional permit is needed to repaint, clean, repair, otherwise perform normal maintenance on a sign or sign structure, or change copy on a changeable copy sign. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.050 Permit application requirements.

To obtain a sign permit, the applicant must make application in writing on forms furnished by the public works department. Every application for a permanent sign must include the following:

A. Contact information, if desired, by the permittee.

B. Identification and description of the sign including the type, size, dimensions, height, and number of faces;

C. Description of the land where the proposed sign is to be located by street address;

D. Consent of the owner or person in legal possession of the property upon which the sign is to be erected or his agent;

E. Sign drawings showing display faces with the proposed message and design accurately represented as to size, area, and dimensions;

F. Site plan drawn to scale containing a north arrow, location of property lines, lot dimensions, location of existing signs, and the location of the proposed sign on the site;

G. Plans, elevations, diagrams, light intensities, structural calculations and other material as may be reasonably required by the land use administrator;

H. If the sign application is for a freestanding sign that proposes a footing, a building permit is required;

- I. Documentation demonstrating that the sign installer has a valid Washington State contractor's license when a sign requires a building permit unless the sign is being installed by the owner of the sign;
- J. Application for an electrical permit from the city of Milton or other electric provider for any electrical sign;
- K. A permit fee as adopted in the latest fee ordinance of the city council;
- L. Proof that a city of Milton business license has been obtained by the sign installation contractor and the company that is utilizing the permitted sign if the company utilizing the permitted sign is required to obtain a business license. (Ord. 1837 § 7, 2014; Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.060 Prohibited signs.

The following signs are not be permitted in any zoning district:

- A. Signs that pose a hazard to public health or safety other than because of the message delivered;
 - B. Signs that make use of words such as "Stop," "Look," "One-Way," "Danger," "Yield," "Slow, Children At Play," "Detour," "Road Construction" or any similar word, phrase, symbol, or lights that interfere with or are confused with pedestrian or vehicular public safety signs as identified in the MUTCD manual but which are not placed by the public authority and are not in compliance with the MUTCD or applicable laws and regulations;
 - C. Signs displaying obscene matter. Matter is obscene if
 - 1. the average person, applying contemporary community standards, would find that the sign taken as a whole appeals to a prurient interest in sex; and
 - 2. the sign depicts or describes in a patently offensive way, as measured against community standards, sexual conduct Which explicitly depicts or describes patently offensive representations or descriptions of:
 - (a) Ultimate sexual acts, normal or perverted, actual or simulated; or
 - (b) Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area; or
 - (c) Violent or destructive sexual acts, including but not limited to human or animal mutilation, dismemberment, rape or torture
- ; and

3. the sign taken as a whole lacks serious literary, artistic, political or scientific value.

D. Signs that obstruct ingress or egress from fire escapes, doors, windows, or other exits or entrances;

E. Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying the sign unless otherwise specifically allowed by this Chapter (this does not apply to allowed portable signs or to signs or lettering on buses, taxis, or vehicles operating during the normal course of business and excludes signs to advertise the sale of said vehicle);

F. Off-premises signs;

G. Rotating and revolving signs;

H. Signs containing strobe lights that are visible beyond the property line;

I. Abandoned signs;

J. Permanent signs on undeveloped sites;

K. Outdoor, portable electric signs;

L. Mobile reader board signs except as permitted under MMC 17.50.140 as temporary signs;

M. Signs on utility poles;

N. Blinking or flashing lights, balloons, searchlights, clusters of flags, strings of twirlers or propellers, flares, and other displays of a carnival nature;

O. Banners except as approved as temporary signs under MMC 17.50.140;

P. Balloons except as approved as temporary signs under MMC 17.50.140;

Q. No sign may be used as a fence nor may any fence be used as a sign nor may any sign be attached to a fence;

R. Billboard; and

S. Any other type or kind of sign that does not comply with the terms, conditions, provisions, and intent contained in this Chapter or other applicable law or ordinance. (Ord. 1712 § 1, 2007; Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.070 Exempt signs.

The following signs do not require a permit for installation. All other provisions of this chapter apply.

- A. Legal notices, identification, traffic, or other signs erected or required by governmental authority under any law, statute or ordinance;
- B. Signs erected or sanctioned by a government agency;
- C. Historic site markers, plaques, or gravestones and signs on or eligible for listing on federal or state historic registers are excluded from this provision;
- D. Address numbers identification;
- E. Signs not oriented or intended to be legible from a right-of-way or other property. Examples may include signs identifying rules for a swimming pool, signs identifying restroom facilities, parking regulations and tow-away signs;
- F. Painted wall decorations or murals;
- G. Flags not to exceed 12 in number; and
- H. Locally designated historic signs. The Milton Light and Water sign located on the western building elevation of the Public Works Building at 1000 Laurel Street has been identified as a sign of locally important historical significance. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.080 General provisions.

A. The area of all signs may not exceed 200 square feet except for uses with building fronts more than 100 feet long. For uses in which the building linear front footage exceeds 100 feet, the maximum area of all signs may not exceed an area equal to two times the linear front footage of the building or 450 square feet, whichever is less. Multiple occupancy buildings may display an additional 50 square feet of wall signage for no more than two building occupants, other than the primary occupant, subject to the provisions of MMC 17.50.110.

B. Number and Spacing of Monument Signs. One monument sign is permitted per primary street frontage. Multiple monument signs must be a minimum of 250 feet apart along one or more street frontages.

C. Indirect Lighting. Monument signs, where permitted in residential zones (RS, RMD, RM), may only be illuminated from an indirect source. (Ord. 1666 § 2, 2006; Ord. 1474 § 2, 2001; Ord. 1437 § 1, 2000).

17.50.083 Signs in the right-of-way.

A. With the exception of traffic control devices, A-board/sandwich board signs, temporary signs, temporary construction signs associated with work within the public right-of-way, and properly authorized banners (see MMC 17.50.140), no signs may be erected or placed within the public right-of-way. Traffic control devices, A-board/sandwich board signs, temporary signs may be placed in the right-of-way outside of median strips, public sidewalks, and vehicular and bicycle lanes. They may not block driveways or be affixed to utility poles, trees, or traffic control devices, and may not block vision clearance areas.

B. Vision Clearance Area. Pole signs are permitted in the vision clearance area where the bottom of the sign is at least 10 feet above the elevation of the street grade.

C. Vehicle Area Clearances. When a sign extends over a private area where vehicles travel or are parked, the bottom of the sign structure must be at least 14 feet above the ground. Vehicle areas include driveways, alleys, parking areas, and loading and maneuvering areas. Exceptions are prohibited.

D. Pedestrian Area Clearances. When a sign extends over a walkway or other space accessible to pedestrians, the bottom of the sign structure must be at least eight feet above the ground. Exceptions are prohibited. (Ord. 1666 § 2, 2006; Ord. 1474 § 2, 2001; Ord. 1437 § 1, 2000).

17.50.085 Freeway signs.

Freeway signs are located along and specifically oriented toward traffic on I-5.

A. Maximum Number and Spacing.

1. RS, RMD, RM, MX, CF, OS: Zero.
2. B, M-1: One per parcel or one per planned center when the parcel or planned center directly abuts the I-5 right-of-way. The parcel or planned center must be a minimum of 12,000 square feet in area, or have been legally created prior to January 1, 2003, in order to erect a freeway sign. The freeway sign is in addition to other allowed signage, it must be located along the side of the property nearest I-5, and it must be oriented toward I-5.

B. Size Allocation.

1. RS, RMD, RM, MX, CF, OS: Does not apply.
2. B, M-1: Up to a maximum sign area of 250 square feet. No sign face may exceed 125 square feet.

C. Maximum Height.

1. RS, RMD, RM, MX, CF, OS: Does not apply.
2. B, M-1: 40 feet.

D. Landscape and Siting Requirements. Freeway signs must be located in a planting bed of equal area to the area of the sign. The planting bed may be included within the planting strips required under Chapter 17.15C MMC, Landscape regulations table. The minimum dimension of the planting bed must be 10 feet measured from inside face of the curb to inside face of curb. The planting beds will be improved with the following:

1. One gallon groundcover planted 12 inches on center; and
2. One shrub per 10 square feet of sign area. Shrubs located within the vision clearance area may not be taller than 36 inches. (Ord. 1666 § 2, 2006; Ord. 1563 § 2, 2003).

17.50.090 Pole signs.

Pole signs are an alternative to monument signs for planned centers.

A. Maximum Number and Spacing.

1. RS, RMD, RM, MX: Zero.
2. B, CF, M-1, OS: One center identification sign per parcel.

B. Size Allocation.

1. RS, RMD, RM, MX: Does not apply.
2. B, CF, M-1, OS: Maximum sign area of 200 square feet. No sign face may exceed 100 square feet.

C. Maximum Height.

1. RS, RMD, MX: Does not apply.
2. RM: 12 feet.
3. B, CF, M-1, OS: 20 feet.

D. Landscape and Siting Requirements. Pole signs must be located in a planting bed of equal area to the area of the sign. The planting bed may be included within the planting strips required under Chapter 17.15C MMC, Landscape regulations table. The minimum dimension of the planting bed must be five feet measured from inside face of curb to inside face of curb. The planting beds will be improved with the following:

1. One gallon groundcover planted 12 inches on center; and
2. One shrub per 10 square feet of sign area. Shrubs located within the vision clearance area may not be taller than 36 inches. (Ord. 1666 § 2, 2006; Ord. 1474 § 3, 2001; Ord. 1437 § 1, 2000).

17.50.100 Monument signs.

Monument signs with a height ranging from five to 12 feet above the average ground elevation, and a base (not included in the sign surface area calculation) that is attached to the ground as a wide base of solid construction so that the bottom of the sign is no more than six inches above the base are the preferred sign type along street frontages.

A. Maximum Number.

1. RS, RMD, MX: Zero for residential uses; one per street frontage for permitted or conditionally permitted nonresidential uses. One subdivision identification sign is permitted per subdivision.
2. RM: One per street frontage.
3. B, CF, M-1, OS: One per street frontage.

B. Size Allocation.

1. RS, RMD, MX: Maximum 64 square feet for permitted or conditionally permitted uses; except for a subdivision identification sign which may be a maximum of 36 square feet.
2. RM: 64 square feet.

3. B, CF, M-1, OS: Minimum of 32 square feet up to a maximum sign area of 96 square feet. No sign face may exceed 48 square feet.

C. Maximum Height.

1. RS, RMD, MX: Eight feet.
2. RM: 12 feet.
3. B, CF, M-1, OS: 12 feet.

D. Landscape and Siting Requirements. Monument signs must be located in a planting bed of equal area to the area of the sign. The planting bed may be included within the planting strips required under Chapter 17.15C MMC, Landscape regulations table. The minimum dimension of the planting bed must be five feet measured from inside face of curb to inside face of curb. The planting beds will be improved with the following:

1. One gallon groundcover planted 12 inches on center; and
2. One shrub per 10 square feet of sign area. Shrubs located within the vision clearance area may not be taller than 36 inches.

E. When Not Allowed. A monument sign is not permitted if existing signs attached to buildings exceed the limit of 15 percent of the wall area. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.105 Mixed use town center monument sign.

The community monument sign permitted by Ordinance 1577 may continue as a nonconforming use.

17.50.110 Signs attached to buildings.

Awning, fascia, graphic, marquee, roof, and wall signs are permitted signs for attachment to buildings. Signs attached to buildings are permitted on wall elevations that are viewable from public rights-of-way or on wall elevations containing public entrances to the building.

A. Maximum Number. No limit within the size allocation. A limit of one roof sign per wall elevation viewable to the public (see roof sign definition). Multiple occupancy buildings may display one additional wall sign for each additional occupant, subject to the maximum area per sign described in subsection C of this section.

B. Size Allocation.

1. RS, RMD: Four square feet or 10 percent of the wall area, whichever is greater.
2. RM: Eight square feet.
3. MX: 48 square feet or 15 percent of the wall area, whichever is greater.
4. B, CF, M-1, OS: 48 square feet or 15 percent of the wall area, whichever is greater.

C. Maximum Area per Sign.

1. RS, RMD: 32 square feet per sign (roof signs are prohibited).
2. RM: Eight square feet (roof signs are prohibited).
3. MX: 100 square feet (each roof sign may be a maximum of 48 square feet, where no sign face may exceed 24 square feet). For multiple occupancy buildings, the individual building occupant signs allowed by subsection A of this section may not exceed 25 square feet per sign face.
4. B, M-1: 200 square feet (each roof sign may be a maximum of 48 square feet, where no sign face may exceed 24 square feet). For multiple occupancy buildings, the individual occupant signs allowed by subsection A of this section may not exceed 25 square feet per sign face.
5. CF, OS: 100 square feet (each roof sign may be a maximum of 48 square feet, where no sign face may exceed 24 square feet).

D. Wall signs may not exceed 12 inches in thickness. (Ord. 1666 § 2, 2006; Ord. 1474 § 4, 2001; Ord. 1437 § 1, 2000).

17.50.120 A-board/sandwich board signs.

A. Maximum Number.

1. RS, RMD, RM: Zero.
2. B, CF, M-1, MX, OS: One.

B. Size Allocation.

1. RS, RMD, RM: Does not apply.

2. B, CF, M-1, MX, OS: 12 square feet.

C. Maximum Height.

1. RS, RMD, RM: Does not apply.

2. B, CF, M-1, MX, OS: Four feet.

D. Duration. A-board/sandwich board signs are permitted to remain in place only so long as it is providing immediately useful information. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.140 Temporary signs.

A. Temporary signs must conform to MMC 17.50.080.

1. No flashing temporary signs of any type is permitted; however, internally illuminated signs, e.g., portable reader boards, are permitted unless they conform to the current National Electrical Code and the National Electrical Safety Code;

2. All temporary signs must be securely fastened and positioned in place so as not to constitute a hazard to pedestrians or motorists;

3. No temporary sign may project over or into a public right-of-way or property except properly authorized banners over streets installed by the city of Milton.

B. The duration of display for the following temporary signs shall be as follows:

1. Blinking or flashing lights, balloons, banners, searchlights, clusters of flags, strings of twirlers or propellers, flares, and other displays of a carnival nature may be displayed during a special event so long as the event does not exceed ten days;

2. Mobile reader boards and off premise signs may be used a reasonable time before a special event;

3. Temporary signs may be placed a reasonable time prior to the event or happening; and

4. Signs permitted by this section must be removed promptly after the event or happening.

17.50.150 Nonconforming signs.

A. A sign is legally nonconforming if it is out of conformance with this code, and:

1. The sign was lawfully erected in compliance with the applicable sign ordinance of the city or county which was effective at the time of sign installation, and a valid permit for such sign exists; or
2. The sign was erected prior to January 1, 1996.

B. A legal nonconforming sign must be brought into compliance with this chapter or removed if:

1. The sign is abandoned;
2. The sign is damaged in excess of 50 percent of its replacement value, unless such destruction is the result of vandalism or intentional destruction or removal by someone not authorized by the sign owner;
3. The owner seeks to change the sign structure supporting, holding, or surrounding the sign, other than minor maintenance or repair;
4. The occupant space(s) to which the sign applies is undergoing an expansion or renovation which increases the size of the occupant space floor area or site coverage by 20 percent or more, or the value of the expansion or renovation exceeds 50 percent of the assessed value of the structure;
5. The building to which the sign applies is demolished. (Ord. 1716 § 1, 2008; Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.160 Maintenance of signs.

All signs and landscape, including signs heretofore installed, must be constantly maintained in a state of security, safety, and repair. , The owner or occupant of the premises on which any sign is not securely, safely and properly maintained or is dangerous must repair or remove the sign within five working days after receiving notice from the building official. The owner or occupant must repair or remove damaged signs or signs in disrepair within 30 days. The premises surrounding a sign must be free and clear of rubbish and the landscaping area free of weeds. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.170 Removal of signs.

A. All signs and sign structures that do not conform to the Construction Codes, MMC 15.05, that are a hazard to life and property, or that by their condition or

location present an immediate and serious danger to the public, must be discontinued or made to conform within the time the building official may specify. If the owner cannot be found or refuses to comply with the order to remove, the building official may then have the dangerous sign removed and the owner cited. The cost of removing the sign plus administrative costs will be charged to the property owner.

B. Any person who owns or leases a nonconforming sign must remove the sign when it has been abandoned.

C. If the permittee has not identified himself, the City may remove any sign once it has ceased to be relevant, if it should be removed under this section or if the City might have requested the permittee remove it.

C. (Ord. 1666 § 2, 2006; Ord. 1663 § 20, 2006; Ord. 1437 § 1, 2000).

17.50.180 Deviation from standards.

A. Authority. The land use administrator may grant a deviation from the requirements of this chapter using Process II (Chapter 17.71 MMC). In granting any deviation, the director may prescribe conditions that are necessary to satisfy the criteria below.

B. The land use administrator may grant a deviation from standards from the provisions of MMC 17.50.150(B)(4) requiring the removal of a nonconforming sign because of a change in copy only if the circumstances prompting the deviation from standards request do not result from the actions of the applicant. A change in telephone area code or street name are two examples of potential changes in copy that would not be prompted by the actions of the applicant.

C. The land use administrator may grant a deviation from standards of this chapter only if the applicant demonstrates compliance with the following criteria:

1. The deviation from standards as approved does not constitute a grant which is inconsistent with the intent of the sign code;
2. The deviation from standards is necessary because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located;

3. The granting of the deviation from standards will not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and in the zone in which the subject property is located;

4. The special conditions and circumstances prompting the deviation from standards request do not result from the actions of the applicant;

5. The deviation from standards as granted represents the least amount of deviation from the prescribed regulations necessary to accomplish the purpose for which the deviation from standards is sought and which is consistent with the stated intent of this chapter; and

6. The granting of the deviation from standards will not constitute a public nuisance or adversely affect the public safety and the proposed deviation from standards does not interfere with the location and identification of adjacent buildings or activities. (Ord. 1741 § 23, 2009; Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.182 Construction.

1. Not content based. The City recognizes that 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. Except where a compelling state interest is involved such as the control of public safety matters, this Chapter does not in any way deal with the content of signs other than as expressly stated.

2. Narrowly construed. This Chapter shall be narrowly construed so as to impose the least impingement on free speech and expression as is consistent with the exercise of the police power of the City.

3. No criminal activity permitted. Nothing in this subsection shall be construed as permitting the public display of illegal pornography, or the solicitation for the commission of crimes or treason.

17.50.185 Signs of Historical Community Significance.

1. A sign may be designated by the City Council as a sign of historical community significance.

2. When a sign of historical community significance is reestablished after a period of absence, the sign must be restored to its historic appearance, height, and width to be classified as a historically significant. If the sign is altered, including but not limited to additional messaging that was not historically present, the sign will not be considered historically significant.

17.50.190 Penalty for violations.

A. It shall be unlawful for any person, firm, or corporation to erect, construct, enlarge, alter, move, improve, convert, demolish, equip, or use any sign or sign structure in the city, or cause or permit the same to be done, contrary or in violation of any provisions of this chapter.

B. Any person, firm, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor and punishable as set forth in Section 9.04.040 MMC. (Ord. 1666 § 2, 2006; Ord. 1536 § 2, 2002; Ord. 1437 § 1, 2000).

17.50.200 Severability.

If any clause, sentence, paragraph, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgement shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

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Chapter 17.50

SIGN CODE*

Commented [WLC1]: As you can see, other attorneys have made comments on the code. I agree with most but not all of them. For the most part changes to language are to help understanding. When in doubt, stuff has mostly been deleted.

Sections:

- 17.50.010 Purpose.
- 17.50.020 Definitions.
- 17.50.030 Administration and enforcement.
- 17.50.040 Permits required.
- 17.50.050 Permit application requirements.
- 17.50.060 Prohibited signs.
- 17.50.070 Exempt signs.
- 17.50.080 General provisions.
- 17.50.083 Signs in the right-of-way.
- 17.50.085 Freeway signs.
- 17.50.090 Pole signs.
- 17.50.100 Monument signs.
- 17.50.105 Mixed use town center monument sign.
- 17.50.110 Signs attached to buildings.
- 17.50.120 A-board/sandwich board signs.
- 17.50.130 Directional signs.
- 17.50.135 Political signs.
- 17.50.140 Temporary signs.
- 17.50.150 Nonconforming signs.
- 17.50.160 Maintenance of signs.
- 17.50.170 Removal of signs.
- 17.50.180 Deviation from standards.
- 17.50.182 Construction.
- 17.50.185 Signs of Historical Community Significance.
- 17.50.190 Penalty for violations.
- 17.50.200 Severability.

~~*Prior legislation: Ord. 1405.~~

17.50.010 Purpose.

The purpose of this chapter is to regulate the installation, alteration, relocation, number, size, height, and placement of signs within the

city. ~~In conformance~~ Consistent with the comprehensive plan, the regulation of signs is ~~found to protect~~ the health, safety, and welfare of the citizens. It ~~is intended to promote~~ the aesthetic appearance of the city to maintain and ~~enhance its~~ protects the value of property values. It ~~is intended to encourage~~ quality design that creates an attractive and harmonious community and business environment, ~~which it~~ provides businesses with the adequate means to advertise their products and/or services. It ~~is further intended to preserve~~ the right of free speech exercised by its citizens. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

Commented [DPK2]: In order to withstand even intermediate scrutiny, this section will need to be beefed up.

17.50.020 Definitions.

“A-board/sandwich board signs” means small ~~type~~ signs, either single- or double-faced ~~and~~, portable, ~~upon which is generally placed advertising copy denoting products or services being offered upon the premises on which such signs are placed.~~

Commented [DPK3]: Note - every definition of a sign that creates a category based on content (political signs, business signs, etc.) may lead to improper content based restrictions later in the chapter. Ideally, the definitions section will not have, nor need, any of the yellow definitions.

“Abandoned sign” means a sign that no longer correctly identifies, exhorts or advertises any person, business, lessor, owner, product or activity conducted or available on the premises where such sign is located ~~and which includes a sign that has not been changed or removed within 180 days of a tenancy change ceasing to be relevant.~~

Most of the green definitions are simply related to the construction type of the sign, which has nothing to do with the content of the sign. These definitions and distinctions are fine and will be used more as the code is rewritten.

Commented [WLC4]: Where I have struck out material that was highlighted in red, I have changed the color to blue if the strikethrough is not clear.

“Advertising copy” means any sign graphics, background colors, logos or trademarks that identify or promote the sign user or any product or service; or that provides information about the sign user, the building or the products or services available.

Commented [WLC5]: Judges have an idea of what abandoned is and little needs to be added except some certainty for the Code Enforcement Officer

“Awning” means any structure made of cloth, metal, or other material with a frame attached to a building, ~~whether or not the same is so erected as to permit its being~~ Some awnings can be raised to a position flat against the building when not in use.

“Awning sign” means a sign affixed to the surface of an awning ~~and which does not extend vertically or horizontally beyond the limits of such awning.~~

“Balloon” means a latex balloon 36 inches or less in diameter ~~tethered on a cord not greater than four feet in length.~~

Commented [WLC6]: Attempting to include regulations inside a definition is problematic. If I put a five foot cord on the balloon it is no longer regulated by this ordinance. Similar changes have been made throughout. I have deleted both definitions as they applied to specific business applications.

~~“Balloon, rooftop” means a balloon with a vertical dimension greater than 36 inches but not greater than 25 feet.~~

“Banner sign” means a sign made of cloth, fabric, paper, ~~nonrigid~~ flexible plastic or ~~similar types of material~~. Banners may contain text, numbers, graphic images or symbols. Pennants and flags are not considered banners.

“Billboard” means a preprinted or ~~handpainted~~ hand painted changeable advertising copy sign ~~that directs attention to businesses, commodities, services, or facilities that are not primarily sold, manufactured, or distributed from the property on which the sign is located. The term “billboard”~~It includes both the structural framework that supports a billboard and any ~~billboard faces attached thereto~~message. Although sometimes smaller, billboard sizes often range from 12 to 14 feet in height and 24 to 48 feet in width. A billboard is not a “changeable copy sign” as defined below.

Commented [kne7]: See comment 4 below. Same applies.

“Building facade” means the exterior walls of a building exposed to public view or that ~~wall cannot be viewed by persons not those~~ within the building.

~~“Business sign” means a sign located on the premises of the business with which it is associated.~~

Commented [kne8]: Case law is split in the U.S. District Courts regarding whether it is still permissible to have distinctions in sign regulations based upon on premise or off premise signs. Several courts in California have declined to extend Reed to to on premise/off premise distinctions. However, other courts, for example in Thomas v. Schroer, W.D. Tenn (Sept. 8, 2015) have found that where the only way to determine whether a sign is an on premise sign is to consider the content of the sign and determine whether that content is sufficiently related to the activities conducted on the property on which they are located, the distinction is content based and is subject to strict scrutiny. We tend to agree with the Tennessee Court’s reasoning on this issue - the code enforcement officer must read the sign to apply the code.

“Canopy” means any structure, other than an awning, made of cloth, metal, or other materials with framework attached to a building or carried by a frame supported by the ground.

“Canopy sign” means ~~any a~~ sign erected upon, against or directly above a canopy.

Commented [WLC9]: I agree this definition is not necessary, but I think it is a stretch to say one may not maintain a sign off their premises about what is going on only on their premises. This distinction can be applied to commercial, religious, political or any identification sign.

~~“Center identification sign” means any sign that identifies a shopping center, industrial center, or office center by name, address, or symbol. Center identification signs may also identify individual tenants or businesses within the center.~~

~~“Change in nature” means an expansion of the building or structure housing the business in excess of 50 percent of the existing assessed value, or a change in the name of the business that would require a change in signage.~~

Commented [kne10]: See comment 4 above. Same applies.

“Changeable copy sign (manual)” means any sign that is designed so that characters, letters, or illustrations can be changed or rearranged by hand without altering the face or the surface of the sign; i.e., ~~readerboards~~ reader boards with changeable pictorial panels. A billboard is not a changeable copy sign.

“Changing message center” means an electronically controlled sign, message center, or readerboard ~~where copy changes of a public service or commercial nature are shown on the same lamp bank, i.e., time, temperature, date, news, or commercial information of interest to the traveling public.~~

~~“Commercial flag” means a flag no larger than 24 square feet identifying the words, numbers, or business/corporate images and symbols. No more than 12 commercial flags may be erected on a site.~~

~~“Construction sign” means a temporary nonilluminated sign giving the name or names of principal contractors, architects, lending institutions, or other persons or firms responsible for construction on the site where the sign is located, together with other information included thereon.~~

~~“Damaged/disrepaired sign” means a sign that is damaged, in disrepair, or vandalized and not repaired within 60 days of the damaging event.~~

“Dangerous sign” means a sign that by nature of its condition is hazardous to the public’s health, safety, and welfare.

~~“Directional sign” means a permanently erected single or double-faced sign designed to guide or direct pedestrian or vehicular traffic to an area, place, or convenience. Directional signs shall only contain information on exits, entrances, parking, telephones, restrooms, or similar types of information and the name and/or logo of the business where the directional sign is located.~~

~~“Directory sign” means a sign on which the names and locations of occupants or the use of a building is given.~~

“Display surface” means the area made available by the sign structure for the purpose of displaying ~~the a~~ an advertising message.

Commented [kne11]: This is also yellow because case law is split regarding whether Reed prohibits a distinction between commercial and noncommercial signs. While some cases state that the commercial/noncommercial First Amendment tests remain intact following Reed, others say that distinguishing between commercial and noncommercial plainly requires the reader to analyze the content of the sign, making such a regulation content based. Under the commercial speech tests, the fact that a regulation is content based results in heightened scrutiny:

City must show that the ordinance directly advances a substantial governmental interest and that the measure is drawn to achieve that interest

“Double-faced sign” means a sign that has ~~advertising copy a message~~ on opposite sides of a single display surface or sign structure. Wedge, round or multifaceted signs ~~shall are not be considered~~ double-faced signs when determining square footage. Instead, the area of each face of such signs is used when figuring square footage.

Commented [kne12]: This is green (rather than yellow) because the definition of advertising copy is not limited to commercial graphics/logos/text.

Commented [WLC13]: This chapter contained 122 instances of the word “shall.” I have removed most of them. The word has some utility in legal construction, but most lawyer try to minimize the use of the word as it tends to switch the brain off if overused.

“Electrical sign” means a sign or sign structure that uses electrical wiring, connections ~~and~~/or fixtures as a part of the sign, but not including signs illuminated by an exterior light source.

“Electronic sign” means a sign designed to allow changes in the sign ~~graphics~~ electronically.

“Festoon” means a strip, ~~or~~ string ~~of balloons that includes or~~ clusters ~~or strings of balloons connected to a fixed object or vehicle on at least one end of the festoon.~~

“Flag” means a piece of cloth or other ~~nonrigid flexible~~ material identifying one of the following:

1. ~~Flag of a nation;~~

2. ~~Commemorative flag such as a POW flag; or~~

3. ~~Flag of a political subdivision.~~

Commented [kne14]: This part is problematic because it requires looking at the content of the flag and its message

~~“Flag, commercial.” See “Commercial flag.”~~

“Flashing sign” means a sign or a portion thereof that changes light intensity or switches on and off ~~in a constant, random or irregular pattern or~~ contains motion or the optical illusion of motion by use of electrical energy. Changing message centers ~~shall not be considered are not~~ flashing signs.

“Freestanding letters” means individual letters, characters or marks comprising any portion of a sign or sign structure, whether erected flat against a wall or upon a framework for support.

“Freestanding sign” means a sign supported by poles, uprights, braces, or standards and is not connected to or supported by any

other structure. Pole signs and monument signs are examples of freestanding signs.

“Freeway sign” means a pole or monument sign that is allowed by code for those properties that are located along the Interstate 5 (I-5) right-of-way as defined in ~~this chapter~~ 17.50.085. “Freeway signs” are specifically oriented to the traffic on the interstate rather than other state or local roadways.

~~“Garage sale sign” means a temporary sign that advertises a residentially based garage sale.~~

Commented [kne15]: Temporary signs may be ok depending upon how they are treated. If a sign is temporary based upon its physical characteristics, i.e., because it is an A-frame or it is stuck into the ground with a small post, the distinction is ok. If it is temporary because it requires the reader to look at the content of the sign, for example that a garage sale only lasts for a day or two, then the distinction is problematic. Here the temporary nature of event is related to its content, so not permissible.

“Grade” means the elevation or level of the street (or parking lot) closest to the sign to which reference is made, as measured at the street centerline, or the relative ground level in the immediate vicinity of the sign.

Commented [kne16]: This part is content based and not permissible.

~~“Grand opening” means welcoming clients, customers, etc., into a newly opened or relocated place of business for the purpose of promoting or familiarizing people with the business. To be eligible for grand opening signs, the business must be lawfully licensed by the city of Milton and have been open for three months or less (see also MMC 17.50.040(B)).~~

~~“Graphic” means any of the following: symbols or pictures formed by writing, drawing, or engraving, relating to the written or printed word, the symbols or devices used in writing or printing to represent a symbol, word, meaning, or message.~~

~~“Identification sign” means a sign that is limited to the name, address and number of a building, institution, or person and to the activity carried on in the building or institution, or the type of occupancy of the person.~~

~~“Illuminated sign” means a sign designed to give forth any artificial or reflected light, either directly from a source of light incorporated into or connected with such sign, or indirectly from a source intentionally directed upon it, so shielded that no direct illumination from it is visible elsewhere than on the sign and in the immediate proximity thereof.~~

~~“Incidental sign” means a small sign, four square feet or less in area, intended primarily for the convenience and direction of the public on the premises. Incidental signs do not advertise but are for informational purposes only. Incidental signs may contain information that denotes the hours of operation, telephone number, credit cards accepted, entrances and exits, and information required by law. Incidental information may appear on a sign having other copy as well, such as an advertising sign.~~

~~“Institutional sign” means a sign to identify educational, civic, and religious institutions.~~

~~“Internal illumination” means a source of lighting concealed entirely within a sign that makes sign graphics visible by transmitting light through a translucent or semi-translucent material.~~

~~“Landscaping” means trees, shrubs, and groundcover used around or under the base of monument signs. Required landscaping may be planted in concrete planters, landscape beds, or planter boxes.~~

~~“Lawn sign” means a temporary sign within the lawn or landscape area of a site. Lawn signs often identify businesses that have performed improvements to a building or site. Political signs are not considered lawn signs.~~

~~“Liquidation sign” means a temporary sign for the purposes of identifying liquidation sales.~~

~~“Logo” means an identifying emblem or insignia containing sign-graphics, symbols or colors typically used for identification and/or advertisement.~~

~~“Marquee” means a permanent structure attached to, supported by and projecting from a building or free standing that provides and providing protection from the weather elements, but. This does not include a projecting roof. For purposes of this chapter, a freestanding permanent roof-like structure providing protection from the elements, such as a service station gas pump island, will also be considered a marquee. This also but does includes canopies.~~

Commented [WC17]:

See the definition of “sign” and discussion concerning “directional sign”

Commented [kne18]: See Comment 9 above. One way to handle temporary signs is to require a city-issued approval sticker which can be used to determine the temporary nature of the sign and with no restrictions on content or need to read the sign.

~~“Marquee sign” means a sign attached to and made part of a marquee. A marquee (or canopy) is defined as a permanent roof-like structure attached to and supported by the building and projecting beyond a building, but does not include a projecting roof.~~

~~“Monument sign” means a ground-mounted, fixed sign with a height ranging from five to 12 feet above the average ground elevation. The base (not included in the sign surface area calculation) is attached to the ground as a wide base of solid construction. In no instance shall the bottom of the sign be more than six inches above the base.~~

Commented [WC19]: The regulation of the sign should not be included in the definition. This language appears in 17.50.100 where it belongs.

~~“Multiple occupancy building” means a single structure with a common building access that houses more than one retail business, office or commercial venture.~~

~~“Municipal facility sign” means a sign that is located on the premises of a facility owned or operated by the city of Milton.~~

Commented [kne20]: As written, this is permissible because it is limited to the location of the sign. If it is utilized to allow the city to license or permit certain types of signs by non-government speakers on city property, then it becomes problematic

~~“Mural” means is a work of art painted or applied to a wall of a building or other structure a decorative design or scene intended to provide visual enjoyment that is painted or placed on an exterior building wall. A mural contains no commercial message, logo, corporate symbol, or registered trademark.~~

Commented [kne21]: See comment on commercial/noncommercial distinctions.

~~“Neighborhood identification sign” means a sign to identify a particular residential area or development.~~

Commented [kne22]: While this is clearly content based, it may be able to survive strict scrutiny because it's a location identified useful to emergency services and the public in an emergency.

~~“Neon lighting” means illuminated tubing forming sign graphics or that is otherwise used as an exposed lighting source. For the purpose of this chapter, the term “neon” will be considered a generic term for this type of lighting regardless of the type of fluorescing gas or material contained within the tubing.~~

~~“Neon sign” means neon lighting used to draw attention to a business or building in any manner, including (but not limited to) neon sign graphics, logos or outlining of a building’s architectural features.~~

~~“Nonconforming sign” means any sign, legally constructed, that does not conform to the requirements of this chapter.~~

~~“Nonstructural trim” means the molding, battens, caps, nailing strips, latticing, cutouts, or letters and walkways that are attached to the sign structure.~~

~~“Off-premises sign” means a sign that identifies, advertises, or gives directional information to a commercial establishment not located on the premises where the sign is installed or maintained. A billboard is an example of an off-premises sign.~~

Commented [kne23]: See previous comment on on-premise/off-premise.

~~“Off-site directional arrow real estate signs” means off-site, portable, temporary, directional signs intended to assist people in finding the location of difficult to locate property that is offered for sale. They may not exceed six inches in height or 24 inches in length per side, must be freestanding on their own stake and the bottom edge of the sign must be placed at ground level.~~

~~“On-premises sign” means a sign that carries only advertisements and messages strictly applicable to a lawful use of the premises on which it is located.~~

Commented [kne24]: See previous comment on on-premise/off-premise.

~~“On-site real estate sign” means a temporary or portable sign placed on the subject property that advertises that the property is for sale, rent, or lease. The number of such signs shall be limited to one per broker per street frontage or public entrance, whichever is greater. For a dwelling unit, the area of the sign shall be no greater than 12 square feet, where no sign face may exceed six square feet. For other uses and developments, the size of an on-site real estate sign shall not exceed 64 square feet, where no sign face may exceed 32 square feet. All on-site real estate signs must be removed when the sale closes or in the case of a rental or lease, when the tenant takes possession.~~

~~“Open house sign” means a portable or temporary sign advertising property that is for sale, rent, or lease. The number of such signs shall be limited to three per property per agent, except that if the agent has more than one property in a development listed for sale, rent, or lease, the agent’s total number of such signs for the development shall be limited to four. The area of such signs shall be no greater than 12 square feet. They may be placed in the right of~~

~~way outside of median strips, public sidewalks, and vehicular and bicycle lanes. They may not block driveways or be affixed to utility poles, trees, or traffic signs. Open house signs must be removed each day at the conclusion of the open house and are permitted only between sunrise and sunset when the seller or the agent are in attendance at the property.~~

~~“Painted signs” means a sign or sign structure, nonelectrical in nature, except such signs may have illumination from an exterior light source.~~

“Parapet” means that portion of a building wall that extends above the roof of the building.

~~“Patio sale sign” means a temporary sign that advertises a residentially based patio sale.~~

~~“Pennant” means a sign made of cloth, fabric, nonrigid-flexible plastic, or similar types of material that is not more than 24 square feet in size. Pennants may that does not contain text, numbers, or business/corporate images and/or symbols. No more than 12 pennants may be erected on a site. Banners and flags are not considered pennants. Pennants need not be triangular in shape.~~

~~“Perimeter” means the outer boundary required to enclose a sign area.~~

“Permanent sign” means a sign that is erected without restriction on the time period allowed for display.

“Permittee” includes any person who should have taken out a permit under this Chapter or MMC 15.05.

“Planned center” means a group of structures housing at least one ~~retail business, office, commercial venture or independent or separate part of an activity business~~ that was processed through the site approval process as one project or that shares ~~the access and/or~~ parking facilities. Individual parcels need not be under the same ownership in order to qualify as a planned center.

“Pole sign” means any sign, electric or otherwise, hung, supported or cantilevered from one or more supports constructed of structural steel, pipe, or other materials ~~or combinations of same.~~

~~“Political sign” means any temporary sign that advertises a candidate for public elective office or any political party or a sign that promotes a position on a public or ballot issue.~~

~~“Porch sale sign” means a temporary sign that advertises a residentially based porch sale.~~

“Portable sign” means any sign that is manifestly designed to be transported, including by trailer or on its own wheels, even though the wheels of such sign may be removed and the remaining chassis or support constructed without wheels is converted to an A or T frame sign, or attached temporarily or permanently to the ground, since this characteristic is based on the design of such a sign. ~~It is characteristic of such a portable sign that the space provided for advertising matter consist of a~~ are usually changeable copy sign.

“Projecting sign” means a sign, other than a wall sign, that is attached to and projects more than one foot from a structure or other building face.

“Projection” means the distance by which a sign extends beyond its means of support.

~~“Public information sign” means a sign erected and maintained by any governmental entity for traffic direction or for designation of or directions to any school, hospital, historical site, or public service, property, or facility.~~

Commented [kne25]: While this is content based, it probably would withstand strict scrutiny because of relation to safety. Also government speech is subject to different tests

“~~Readerboard~~Reader board” means a sign ~~consisting of tracks to hold letters~~ that allows for frequent changes of copy; usually such copy is not electronic. A ~~readerboard~~reader board may be a component of a monument, pole, or wall sign.

“~~Readerboard~~Reader board, mobile” means a ~~readerboard~~reader board sign that is not permanently installed on-site.

~~“Real estate sign” means a sign erected by the owner or owner’s agent displayed for a limited time and offering the sale, rent or lease of ground upon which it is located or of a building located on the same parcel of ground.~~

“Repair” means to paint, clean, ~~or~~ replace damaged parts of a sign, or to improve its the structural strength integrity of a sign, but not in a manner that would change ~~the~~ its size, shape, location, or character.

“Revolving sign” means any sign or sign structure that revolves or partially revolves ~~by means of some mechanical method~~ about an axis.

“Roof” means the exterior surface and its supporting structures on the top of a building. Overhangs extending beyond the facade of the lower wall are ~~considered~~ part of the roof.

“Roof sign” means any sign erected upon, against, or directly above a roof or parapet of a building or structure. When permitted, Eighty percent of the sign area shall must be backed by the roof system.

~~“Seasonal decorations” means temporary decorations for holidays that do not fall under the definition of a sign and that are installed no sooner than 30 days before a holiday and removed no later than five days after the holiday. Decorations that fall under the definition of a sign must conform to all provisions of the sign code.~~

Commented [kne26]:

“Sign” means any object, device, display, structure or part thereof that is used to advertise, identify, direct, or attract attention to a product, business, activity, place, person, institution, or event using words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images. ~~Directional and incidental signs are considered signs for the purpose of this chapter.~~

Commented [WC27]: These definitions are being removed. “incidental sign” appears only in this definition and its own definition and “directional sign” and incidental signs require that the content of the message be considered. Insofar as signs are inside buildings or are things that probably are not of public concern other than as required by fire and building codes.

“Sign area” means the entire area of a sign on which ~~advertising copy, logos, trademarks, and business or corporate colors are to be~~ on which information is placed. Sign structures and associated architectural embellishments, framework and decorative features that contain no ~~written or advertising copy information, and that are~~ not illuminated ~~and that contain no logos or trademarks shall not be~~

~~are not calculated in determining sign area included.~~ Sign area ~~shall be~~ is calculated by measuring the area of the smallest rectangle, circle, triangle or parallelogram that can be drawn around all parts of the sign ~~from the viewpoint to exposing~~ the largest sign surface area, including the sign face background, and including all spaces and voids between or within letters or symbols that comprise a single word, statement, description, title, ~~business~~ name, graphic symbol or message for all sign faces. Sign supporting structures that are part of the sign display ~~shall be~~ are included ~~in the area of calculation.~~ The entire perimeter area of the letters, graphics, symbols, and framework ~~shall be~~ are used to determine sign area.

“Sign graphics” includes all lines, strokes, text, symbols and logos applied to a sign surface ~~and does not include~~ excluding the background ~~surface~~ to which they are applied.

“Sign height” means the vertical distance measured from the adjacent natural grade at the base of the sign to the highest point of the sign structure, ~~provided, however, that the grade of the ground may not be built up in order to allow the sign to be higher.~~

“Sign structure” means any structure that supports or is capable of supporting any sign as defined in this chapter. A sign structure may be a single pole and may or may not be an integral part of a building. Any structure that performs an entirely separate use, such as a telephone booth, bus shelter, Goodwill container, fence, etc., ~~shall not be considered~~ is not a sign structure.

~~“Silhouette lighting,” sometimes called “halo lighting,” means lighting being emitted from the back side of pan channel sign graphic that has the open side of the channel facing the wall or sign face it is mounted to, thereby silhouetting the sign graphics.~~

~~“Subdivision identification sign,” means a sign no larger than 36 square feet to identify a particular subdivision that is larger than four acres or more in size.~~

~~“Swinging sign” means a sign installed on an arm or spar that is fastened to an adjacent wall or upright pole, which sign is allowed to move or swing to a perceptible degree.~~

Commented [kne28]: See neighborhood sign

“Temporary sign” means any sign that is not permanently mounted and that contains a message for a particular event or happening that will render the sign obsolete upon the event or happening. ~~means any banner, pennant, or other advertising display, with or without frames, constructed of cloth, light fabric, paper, plastic, cardboard, or other similar material. Temporary signs are not intended for ongoing advertising of products or services or for the naming of a business in lieu of a permitted permanent sign.~~

Commented [kne29]: See comment on temporary signs.

“Temporary sign, sports field” means any maintained, nonfreestanding sign attached to fencing at a sports field that can only be displayed during the sport’s season of play and must be removed at the end of the sport’s season of play.

Commented [kne30]: While the definition is not inherently content based because it focuses only on the location of the sign, the use of this definition in 17.50.140 is problematic.

“Traffic advisement sign” means a sign erected within the public right-of-way alerting motorists of impending road conditions. Signs depicting rail road crossings, curves ahead, crosswalks, and deer crossings are examples of traffic advisement signs. Allowable traffic advisement signs are identified in the AASHTO manual.

Commented [kne31]: This would probably survive strict scrutiny because of safety concerns.

“Traffic control signs device” means a sign erected within the public right-of-way identifying restrictions on travel. Examples of traffic control signs include stop signs, one-way signs, and speed limit signs. ~~to control traffic placed in accord with the Manual for Uniform Traffic Control Devices.~~

Commented [kne32]: Same comment as above.

“Unlawful sign” means any sign that was erected in violation of any applicable ordinance or ~~code~~ law governing such ~~erection~~ sign or its construction at the time of its ~~erection~~ placement, ~~which sign has never been in conformance or~~ and that does not comply with all applicable ordinances or ~~codes~~ laws now.

“Vision clearance area” means an area ~~for the preservation of unobstructed sight distance. Vision clearance areas shall conform to the following requirements,~~ means the following areas:

1. All ~~On~~ corner lots ~~shall to maintain for safety, vision purposes a triangular area, two sides of which shall extend 20 feet along the lot lines from the corner of the lot formed by the intersection of the two streets.~~ ~~And~~ ~~W~~ within which the triangle no tree shall be

are allowed, and no fences, shrubs, or other physical obstruction higher than 42 inches above the established grade ~~shall be~~ are permitted.

2. On lots upon which a vehicular driveway is maintained, ~~an area of vision clearance shall be maintained on each side of the driveway. The area shall be defined by a triangle~~ triangular area, extending 20 feet along the lot line abutting the street and 20 feet along the driveway.

3. ~~If the driveways of adjacent properties vision clearance is affected then the fence, shrub, tree or sign must meet the requirements of subsections 1 and 2 of this definition~~ On lots adjacent to those defined in 1 and 2, above, that area necessary to complete the triangular area.

4. The ~~requirements listed in subsections~~ areas described in 1, 2 and 3, ~~above, of this definition shall be~~ are subject to MMC 12.20.030, Overhanging or obstructing vegetation or debris.

“Wall plane” includes that portion of a facade that is contained on one general plane. A single wall plane may contain windows and doors but it is generally a solid surface. The fascia of projecting porches or colonnades may be considered part of the wall plane from which the porch or colonnade projects ~~for~~ in calculating signage area.

“Wall sign” means a sign attached or erected parallel to and extending not more than one foot from the facade or face of any building to which it is attached. ~~Wall signs shall be supported throughout their entire length, with the exposed face of the sign parallel to the plane of said wall or facade.~~ Signs incorporated into mansard roofs, marquees, or canopies ~~shall~~ will be treated as a “sign attached to a building.”

~~“Window sign” means a sign painted on, affixed to, or installed inside a window for purposes of viewing from outside the premises.~~

~~“Yard sale sign” means a temporary sign that advertises a residentially based yard sale.~~ (Ord. 1666 § 2, 2006; Ord. 1563 § 1, 2003; Ord. 1474 § 1, 2001; Ord. 1437 § 1, 2000).

Commented [WLC33]: Moved to 17.50.110

17.50.030 Administration and enforcement.

A. ~~All~~ ~~Anyone installing or altering a new~~ temporary or permanent signs ~~require~~ must obtain a sign permits unless specifically exempted by MMC 17.50.070. ~~The sign permits require full conformance~~ must comply with all city codes. The land use administrator ~~shall~~ will issue all permits for the construction, alteration, and erection of signs in accordance with the provisions of this ~~section and related chapters and titles of the municipal code~~ Chapter and other applicable laws.

B. ~~It shall be the duty of t~~he land use administrator, or code enforcement officer, of the city of Milton ~~to will~~ interpret and enforce this ~~section~~ Chapter. In addition to ~~meeting~~ complying with the provisions of this ~~section~~ Chapter of the zoning code, the ~~permits,~~ materials, structural design, construction, inspection, and maintenance requirements for signs must ~~conform to Chapter 15.04~~ MMC comply with the Construction Codes, administered by the public works department. ~~In addition, all signs, where appropriate, shall conform to~~ and the current National Electrical Code and the National Electrical Safety Code. (Ord. 1666 § 2, 2006; Ord. 1536 § 1, 2002; Ord. 1437 § 1, 2000).

17.50.040 Permits required.

A. It ~~shall is~~ be unlawful for any person to erect, re-erect, construct, enlarge, display, ~~change copy~~, alter or move a sign, or cause the same to be done, without first obtaining a permit for each sign from the land use administrator ~~as required by this chapter~~.

B. A permit ~~shall be~~ is required for signs installed simultaneously on a single supporting structure. Thereafter, each additional sign ~~(s)~~ erected on the structure must have a separate permit.

C. No permit is required for an exempt sign or any sign not specifically regulated by this Chapter.

~~C. This section shall not be construed to require an~~ No additional permit is needed to repaint, clean, repair, ~~or~~ otherwise perform normal maintenance ~~or repair on of a permitted sign or sign structure, nor shall it be construed to require an additional permit for~~

Commented [kne34]: Nothing inherently wrong with this - there may be some word changes that you could regulate, like use of "stop" or if you were regulating the color or size of text. The permit officer would have to be careful not to otherwise regulate based on the message of the sign. When the sign code amendments are complete, there would be no basis for the officer to do so, except in very limited situations, like use of the word "stop."

~~the change of copy for on~~ a changeable copy sign. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.050 Permit application requirements.

To obtain a sign permit, the applicant ~~shall~~must make application in writing on forms furnished by the public works department. Every application for a permanent sign ~~shall~~must include the following:

A. ~~Telephone number and address of the owner or agent are required on temporary signs. This information need not be on the front of the sign;~~Contact information, if desired, by the permittee.

B. Identification and description of the sign including the type, size, dimensions, height, and number of faces;

C. Description of the land where the proposed sign is to be located by street address;

D. ~~An affidavit that the written e~~Consent of the owner or person in legal possession of the property or agent of the owner or person in legal possession of the property to which or upon which the sign is to be erected has been obtained or his agent;

E. Sign drawings showing display faces with the proposed message and design accurately represented as to size, area, and dimensions;

F. Site plan drawn to scale containing a north arrow, location of property lines, lot dimensions, location of existing signs, and the location of the proposed sign on the site;

G. Plans, elevations, diagrams, light intensities, structural calculations and other material as may be reasonably required by the land use administrator;

H. If the sign application is for a freestanding sign that proposes a footing, a building permit is required;

I. Documentation demonstrating that the sign installer has a valid Washington State contractor's license when a sign requires a building permit unless the sign is being installed by the owner of the sign;

Commented [WLC35]: This is problematic. Often the permittee will desire to remain anonymous. One can imagine that a permittee putting up a sign announcing a Klanvocation or Nambla meeting might not want a lot of identifying information on the sign or as a public record. There is no doubt, for example, that the government cannot require any group to reveal its members' names and addresses, unless public officials have a compelling need for the information and no alternative means of obtaining it. *See, e.g., NAACP v. Alabama, 357 U.S. 449 (1958).* As the Supreme Court pointed out in a 1995 case that struck down an ordinance prohibiting the anonymous distribution of political leaflets: "Anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation — and their ideas from suppression — at the hand of an intolerant society." *McIntyre v. Ohio Elections Commission, 514 U.S. 334, 357 (1995).*

Commented [kne36]: Same comment above.

J. Application for an electrical permit from the city of Milton or other electric provider for any electrical sign;

K. A permit fee as adopted in the latest fee ordinance of the city council;

L. Proof that a city of Milton business license has been obtained by the sign installation contractor and the company that is utilizing the permitted sign if the company utilizing the permitted sign is required to obtain a business license. (Ord. 1837 § 7, 2014; Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.060 Prohibited signs.

The following signs ~~shall~~are not be permitted in any zoning district:

A. Signs that pose a hazard to public health or safety other than because of the message delivered, as determined by the building official;

B. Signs that make use of words such as “Stop,” “Look,” “One-Way,” “Danger,” “Yield,” “Slow, Children At Play,” “Detour,” “Road Construction” or any similar word, phrase, symbol, or lights so as to that interfere or bewith or are confused with pedestrian or vehicular public safety signs as identified in the ~~AASHTO~~ MUTCD manual but which are not placed by the public authority and are not in compliance with the AASHTO manual MUTCD or applicable laws and regulations;

C. Signs displaying obscene, indecent, or immoral matter as per ~~Chapter 5.44 MMC;~~ matter. Matter is obscene if

1. the average person, applying contemporary community standards, would find that the sign taken as a whole appeals to a prurient interest in sex; and

2. the sign depicts or describes in a patently offensive way, as measured against community standards, sexual conduct Which explicitly depicts or describes patently offensive representations or descriptions of:

Commented [WC37]: I am not of the opinion that we building official can become the free speech official. There must be a hazard to public health or safety in fact and even then this might not be enough. For example, a sign that is patently racially offensive might cause all sorts of public danger, but may be protected speech.

Commented [WC38]: There are essentially counterfeit traffic signs. To help avoid a challenge I have included language to require that they not have been placed by the public authority. The original reference to AASHTO is not correct. The MUTCD is a joint effort between FHWA and a number of private organizations and is the generally accepted standard for traffic signs.

Commented [WLC39]: This chapter does not deal with obscenity per se, but with adult entertainment. I have substituted the definition in 5.44.060 B, which make some sense. We can regulate public displays of obscene matter.

- (a) Ultimate sexual acts, normal or perverted, actual or simulated; or
- (b) Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area; or
- (c) Violent or destructive sexual acts, including but not limited to human or animal mutilation, dismemberment, rape or torture

; and

- 3. the sign taken as a whole lacks serious literary, artistic, political or scientific value.

D. Signs that obstruct ingress or egress from fire escapes, doors, windows, or other exits or entrances;

E. Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying the sign unless otherwise specifically allowed by this SectionChapter (this does not apply to allowed portable signs or to signs or lettering on buses, taxis, or vehicles operating during the normal course of business and excludes signs to advertise the sale of said vehicle);~~Signs attached to or placed on any stationary vehicle or trailer, whether operating or not, so as to be visible from a public right of way for the purpose of providing advertisement of services or products or for the purpose of directing people to a business. This provision shall not apply to the identification of a firm or its principal products on operable vehicles operating in the normal course of business. Public transit buses and licensed taxis are exempt from this restriction;~~

F. ~~Off-premises signs except for off premises real estate signs as permitted under MMC 17.50.140;~~

G. Rotating and revolving signs;

H. Signs containing strobe lights that are visible beyond the property line;

I. Abandoned signs;

Commented [DPK40]: While some of these might be content based, they would likely withstand any level of scrutiny given the government interest involved.

Commented [WC41]: This section is designed to keep a business – or disgruntled political theorist – from painting advertising, slogans, political messages on a semi-trailer and parking it here and there – usually in front of the business.

Commented [kne42]: See previous comment on off-premise.

J. Permanent signs on undeveloped sites, ~~except for subdivision signs;~~

K. Outdoor, portable electric signs;

L. Mobile ~~readerboard~~ reader board signs except as permitted under MMC 17.50.140 as temporary signs;

M. Signs on utility poles;

~~N. Signs on sign posts of advisory signs such as “curve ahead,” “crosswalk,” or “road narrows”;~~

Commented [WLC43]: This is taken care of in B, supra.

O. Blinking or flashing lights, balloons, searchlights, clusters of flags, strings of twirlers or propellers, flares, and other displays of a carnival nature, ~~grand opening displays, or on a limited basis as seasonal decorations except as provided for in MMC 17.50.140;~~

P. Banners except as approved as temporary signs under MMC 17.50.140;

Q. Balloons except as approved as temporary signs under MMC 17.50.140;

~~R. Signs on or eligible for listing on federal or state historic registers are excluded from this provision;~~

Commented [WC44]: This is a confusing was to say that a sign is exempt – transferred to 17.50.070 C.

~~S. No public address system or sound devices shall be used in conjunction with any sign or advertising device;~~

Commented [WLC45]: This is a clear limitation on speech.

~~RT. No sign shall may be used as a fence nor shall may any fence be used as a sign nor shall may any sign be attached to a fence;~~

~~SU. Billboard signs; and~~

~~TV. Any other type or kind of sign that does not comply with the terms, conditions, provisions, and intent contained in this Chapter and other applicable law or ordinances. (Ord. 1712 § 1, 2007; Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).~~

17.50.070 Exempt signs.

The following signs do not require a permit for installation. All other provisions of this chapter apply.

~~A. Temporary political signs under six square feet per face;~~

~~AB. Legal notices, identification, traffic, or other signs erected or required by governmental authority under any law, statute or ordinance;~~

Commented [kne46]: Despite being content based, these are required by law

~~C. Seasonal holiday decorations not including any form of advertising or the name of a business;~~

~~D. Handicap parking signs;~~

Commented [kne47]: Same

~~E. Signs on product dispensers permitted outside of a business. These signs may include signs on vending machines and gas pumps;~~

Commented [kne48]: Certain gas pump signs, like no smoking would probably withstand scrutiny. There may be other types of signs required by law here.

~~F. Menu boards for drive-through businesses; provided, that the copy on the sign is not intended to be readable from a public right-of-way;~~

~~G. Professional nameplates not exceeding two square feet in area;~~

~~H. Plaques, tablets or inscriptions indicating the name of a building, date of erection, or other commemorative information, that are an integral part of the building structure or are attached flat to the face of the building, that are nonilluminated, and that do not exceed four square feet in surface area;~~

~~BI. Signs of the state, city or public service companies indicating danger, aids to service or safety, traffic control or traffic direction signs or signs identifying programs such as the adopt a road litter control program, etc. erected or sanctioned by a government agency;~~

Commented [kne49]: Depends upon the structure and implementation of the government program

~~CJ. Historic site markers, plaques, or gravestones and signs on or eligible for listing on federal or state historic registers are excluded from this provision;~~

~~DK. Address numbers or signs depicting a family name, such as Keck's residence identification;~~

~~L. Signs on structures or improvements intended for a separate use, such as phone booths, charitable donation containers, and recycling boxes;~~

Commented [kne50]: There is a case finding that an exemption for charitable donation bin signs was content based. As written, it doesn't define the content of the sign on the structure, but in reality that is probably what it refers to. Could be reworked to clarify that the implementation should only be related to location.

~~M. Building addresses with numbers and letters not more than 10 inches in height;~~

~~EN. Signs not oriented or intended to be legible from a right-of-way, or other property, or from the air. Examples may include signs identifying rules for a swimming pool, signs identifying restroom facilities, parking regulations and tow-away signs;~~

~~O. Parking lot painting of handicap symbols, striping, numbers, and notations of compact spaces;~~

~~FP. Painted wall decorations or murals;~~

~~Q. Painted wall highlights;~~

~~R. Signs affected by stipulated judgments to which the city is a party, entered by courts of competent jurisdiction;~~

~~GS. Flags and commercial flags not to exceed 12 in number; and~~

T. Locally designated historic signs. The Milton Light and Water sign located on the western building elevation of the Public Works Building at 1000 Laurel Street has been identified as a sign of locally important historical significance. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.080 General provisions.

A. The area of all signs shall may not exceed 200 square feet except for uses with building fronts more than 100 feet long. For uses in which the building linear front footage exceeds 100 feet, the maximum area of all signs shall may not exceed an area equal to two times the linear front footage of the building or 450 square feet, whichever is less. Multiple occupancy buildings may display an additional 50 square feet of wall signage for no more than two building tenantsoccupants, other than the primary tenantoccupant, subject to the provisions of MMC 17.50.110. ~~In no instance shall the primary tenant be permitted to use any of the additional signage to increase the maximum allowed signage for the primary tenant.~~

B. Number and Spacing of Monument Signs. One monument sign is permitted per primary street frontage; ~~one additional monument~~

Commented [kne51]: Assuming definition of mural edited, should be permissible.

Commented [kne52]: Not sure how this is a sign?

Commented [kne53]: While this is not content based, we're wondering when, if ever, this is used and how it would be useful.

Commented [kne54]: Because this encompasses all types of flags, this is permissible. But, see previous comments on definitions of flags.

Commented [WC55]: Zoning Ordinances are by the nature arbitrary. That perfectly acceptable when it comes to land use regulation but is in inherent conflict with the First Amendment. I have stricken out numerous arbitrary limitations and this could perhaps be better, but I am not sure how. Certainly, a sign for a small shop would be lost and useless on the side of a megastore, but they both enjoy the same free speech rights. I do not have a pat answer for this one.

Commented [WC56]: I have changed "tenant" to "occupant" throughout. Tenant implies that the occupant leases the property when he may be an owner, partner, beneficiary or perhaps just a squatter.

Commented [WC57]: I have removed the last sentence because it does indeed tell the primary occupant or landlord what he can say.

Commented [WC58]: This is questionable. If the sign code is to address visual clutter, one sign ought to do. Perhaps a sign for each entrance makes better sense. One sign per frontage is perfectly logical.

sign is permitted for each additional 300 feet of primary street frontage. Multiple monument signs shall must be a minimum of 250 feet apart along one or more street frontages.

C. Indirect Lighting. Monument signs, where permitted in residential zones (RS, RMD, RM), shall may only be illuminated from an indirect source. Civic uses that are a permitted or a conditional use in the residential zones may have an “electronic sign,” subject to the approval of a conditional use permit for the sign. For civic uses that are conditional uses in the residential zones, the approval for the use and the sign may be combined into a single conditional use permit. (Ord. 1666 § 2, 2006; Ord. 1474 § 2, 2001; Ord. 1437 § 1, 2000).

Commented [kne59]: This is not content based if the sign does not have to be related to the permitted use or conditional use

Commented [WC60]: I think that signs may be regulated by zone, but the regulation applies without regard to the character of the speaker.

17.50.083 Signs in the right-of-way.

A. With the exception of traffic control and advisement signs devices, A-board/sandwich board signs, open house signs, real estate directional arrow signs, temporary political signs, temporary construction signs associated with work within the public right-of-way, and properly authorized banners (see MMC 17.50.140(A)(4)), no signs shall may be erected or placed within the public right-of-way. Traffic control and advisement signs devices, A-board/sandwich board signs, open house signs, and real estate directional temporary arrow signs may be placed in the right-of-way outside of median strips, public sidewalks, and vehicular and bicycle lanes. They may not block driveways or be affixed to utility poles, trees, or traffic signs control devices, and shall may not block vision clearance areas.

Commented [WC61]: Isn't this where they usually go?

B. Vision Clearance Area. Pole signs are permitted in the vision clearance area where the bottom of the sign is at least 10 feet above the elevation of the street grade.

C. Vehicle Area Clearances. When a sign extends over a private area where vehicles travel or are parked, the bottom of the sign structure must be at least 14 feet above the ground. Vehicle areas include driveways, alleys, parking areas, and loading and maneuvering areas. Exceptions are prohibited.

D. Pedestrian Area Clearances. When a sign extends over a walkway or other space accessible to pedestrians, the bottom of the sign

structure must be at least eight feet above the ground. Exceptions are prohibited. (Ord. 1666 § 2, 2006; Ord. 1474 § 2, 2001; Ord. 1437 § 1, 2000).

17.50.085 Freeway signs.

Freeway signs are located along and specifically oriented toward traffic on I-5.

A. Maximum Number and Spacing.

1. RS, RMD, RM, MX, CF, OS: Zero.
2. B, M-1: One per parcel or one per planned center when the parcel or planned center directly abuts the I-5 right-of-way. The parcel or planned center ~~shall~~must be a minimum of 12,000 square feet in area, or have been legally created prior to January 1, 2003, in order to erect a freeway sign. The freeway sign is in addition to other allowed signage, it ~~shall~~must be located along the side of the property nearest I-5, and it ~~shall~~must be oriented toward I-5.

B. Size Allocation.

1. RS, RMD, RM, MX, CF, OS: Does not apply.
2. B, M-1: Up to a maximum sign area of 250 square feet. No sign face ~~shall~~may exceed 125 square feet.

C. Maximum Height.

1. RS, RMD, RM, MX, CF, OS: Does not apply.
2. B, M-1: 40 feet.

D. Landscape and Siting Requirements. Freeway signs ~~shall~~must be located in a planting bed of equal area to the area of the sign. The planting bed may be included within the planting strips required under Chapter 17.15C MMC, Landscape regulations table. The minimum dimension of the planting bed ~~shall~~must be 10 feet measured from inside face of the curb to inside face of curb. The planting beds ~~shall~~will be improved with the following:

1. One gallon groundcover planted 12 inches on center; and
2. One shrub per 10 square feet of sign area. Shrubs located within the vision clearance area ~~shall~~may not be taller than 36 inches. (Ord. 1666 § 2, 2006; Ord. 1563 § 2, 2003).

17.50.090 Pole signs.

Pole signs are an alternative to monument signs for planned centers ~~on parcels of five acres or greater with a minimum of 300 feet of street frontage.~~

Commented [WC62]: As noted above, I do not see why a large parcel owner should have more free speech than the owner of a smaller parcel. .

A. Maximum Number and Spacing.

1. RS, RMD, RM, MX: Zero.
2. B, CF, M-1, OS: One center identification sign per parcel ~~of five acres or greater with a minimum of 300 feet of street frontage or one per planned center of five acres or greater with a minimum of 300 feet of street frontage.~~ One additional center identification pole sign is permitted for each additional 300 lineal feet of street frontage. Multiple center identification pole signs shall be a ~~minimum of 250 feet apart along one or more street frontages.~~

Commented [WC63]: This is questionable. If the sign code is to address visual clutter, one sign ought to do. Perhaps a sign for each entrance makes better sense.

B. Size Allocation.

1. RS, RMD, RM, MX: Does not apply.
2. B, CF, M-1, OS: ~~One square foot of sign area for each lineal foot of primary street frontage up to a m~~Maximum sign area of 200 square feet. No sign face ~~shall~~may exceed 100 square feet.

C. Maximum Height.

1. RS, RMD, MX: Does not apply.
2. RM: 12 feet.
3. B, CF, M-1, OS: 20 feet.

D. Landscape and Siting Requirements. Pole signs ~~shall~~must be located in a planting bed of equal area to the area of the sign. The planting bed may be included within the planting strips required under Chapter 17.15C MMC, Landscape regulations table. The

minimum dimension of the planting bed ~~shall~~must be five feet measured from inside face of curb to inside face of curb. The planting beds ~~shall~~will be improved with the following:

1. One gallon groundcover planted 12 inches on center; and
2. One shrub per 10 square feet of sign area. Shrubs located within the vision clearance area ~~shall~~may be not be taller than 36 inches. (Ord. 1666 § 2, 2006; Ord. 1474 § 3, 2001; Ord. 1437 § 1, 2000).

17.50.100 Monument signs.

Monument signs with a height ranging from five to 12 feet above the average ground elevation, and a base (not included in the sign surface area calculation) that is attached to the ground as a wide base of solid construction so that the bottom of the sign is no more than six inches above the base are the preferred sign type along street frontages.

A. Maximum Number.

1. RS, RMD, MX: Zero for residential uses; one per street frontage for permitted or conditionally permitted nonresidential uses. One subdivision identification sign is permitted per subdivision ~~greater than four gross acres in size.~~
2. RM: One per street frontage. ~~The parcel must have a minimum 30 feet of street frontage.~~
3. B, CF, M-1, OS: One per street frontage. ~~The parcel must have a minimum of 30 feet of street frontage.~~

Commented [kne64]: Same comment

Commented [WC65]: This is a slightly different question, but why would a 4 + acre subdivision have more right to free speech than a 4 – acre subdivision? Technically, this regulates the content of a sign, but it is no different than a city limit sign or an address. It identifies the property and is no different than any other identification sign.

B. Size Allocation.

1. RS, RMD, MX: ~~Does not apply to residential uses.~~ Maximum 64 square feet for permitted or conditionally permitted ~~nonresidential~~ uses; except for a subdivision identification sign which may be a maximum of 36 square feet.
2. RM: 64 square feet.

Commented [kne66]: Same comment

3. B, CF, M-1, OS: Minimum of 32 square feet ~~plus one square foot per lineal foot of primary street frontage~~ up to a maximum sign area of 96 square feet. No sign face ~~shall~~ may exceed 48 square feet.

C. Maximum Height.

1. RS, RMD, MX: Eight feet.
2. RM: 12 feet.
3. B, CF, M-1, OS: 12 feet.

D. Landscape and Siting Requirements. Monument signs ~~shall~~ must be located in a planting bed of equal area to the area of the sign. The planting bed may be included within the planting strips required under Chapter 17.15C MMC, Landscape regulations table. The minimum dimension of the planting bed ~~shall~~ must be five feet measured from inside face of curb to inside face of curb. The planting beds ~~shall~~ will be improved with the following:

1. One gallon groundcover planted 12 inches on center; and
2. One shrub per 10 square feet of sign area. Shrubs located within the vision clearance area ~~shall~~ may ~~be~~ not be taller than 36 inches.

E. When Not Allowed. A monument sign is not permitted if existing signs attached to buildings exceed the limit of 15 percent of the wall area. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.105 Mixed use town center monument sign.

~~A. In addition to any other signs allowed by this chapter and notwithstanding any restriction placed by this chapter on off-premises signs, there is allowed one~~ The community monument sign in the mixed use town center. ~~This community monument sign may be placed anywhere within the area depicted in Exhibit A, attached to~~ permitted by Ordinance 1577 and incorporated by this reference as if set forth in full may continue as a nonconforming use.

Commented [WC67]: This is perhaps a nice idea, but the entire section is direct governmental regulation of free speech.

~~B. The community monument sign allowed by this section shall be a maximum of eight feet high, one foot thick and 64 square feet of area.~~

~~C. Only one community monument sign shall be allowed for the businesses located in the MX district.~~

~~D. The Milton/Edgewood Chamber of Commerce or the first MX district business to submit a complete application for a sign permit for a community monument sign shall be authorized to construct and maintain the sign upon acquiring approval of the permit. Any sign permit issued for a community monument sign shall expire if the sign is not constructed within six months of permit issuance, subject to a six-month extension for good cause as determined by the planning and community development director. If a sign permit expires or is denied, the right to build the sign shall go to the next person to file a complete permit application.~~

~~E. In addition to the requirements specified in MMC 17.50.050, an application for a community monument sign shall contain the following information:~~

- ~~1. An affidavit or declaration of mailing evidencing that all businesses within the MX district have been notified of the opportunity to have their business advertised on the community monument sign. Said notice shall have given businesses at least 15 days to elect to participate by written mailed or delivered response to a specified address. Said notice shall be mailed to the addresses of each business as identified in records at the Pierce County assessor's office.~~
- ~~2. A list of all those businesses that have elected to participate.~~
- ~~3. An acknowledgement approved in form by the city that the applicant agrees to assume full responsibility for maintenance of the sign and compliance with applicable city regulations. The acknowledgement shall provide that the applicant may transfer its responsibilities to any other MX district business owner willing to sign the acknowledgement if a copy of the new acknowledgement is provided to the city.~~

Commented [kne68]: This appears to be content based if the sign's content is restricted to a message about the business.

Moreover, these two sections raise other First Amendment issues regarding the treatment of commercial and noncommercial signs. Commercial signs cannot be treated more favorably than noncommercial. What the City has done here is to create an opportunity available to business that is otherwise not available to noncommercial speakers, which probably would not withstand scrutiny.

~~4. An easement approved as to form by the city that authorizes the city to remove the sign at the expense of the person or entity subject to the acknowledgement identified in subsection (E)(3) of this section if the acknowledgor relinquishes its responsibilities to maintain the sign or comply with city regulations. The acknowledgor shall be deemed to have relinquished its responsibilities if it fails to undertake an act required by this section within 30 days of receiving written notice from the city.~~

F. In addition to any other requirement that may apply to a sign permit, the following conditions apply for the issuance of a sign permit for a community monument sign:

~~1. All businesses identified in subsection (E)(2) of this section shall have equal advertising space on the community monument sign. The acknowledgor can condition the participation of each business on entering into a private agreement with the acknowledgor to reimburse the acknowledgor for its proportionate share of costs in constructing the sign and fulfilling its responsibilities imposed by this code section. All advertising on the community monument sign shall be limited to advertising MX-district businesses. Beyond those limitations identified in this subsection, the acknowledgor may not place any further limitations on participation in the community monument sign.~~

~~2. The community monument sign as proposed will comply with the requirements of this section and all other applicable city requirements.~~

G. The person or entity subject to the acknowledgement in subsection (E)(3) of this section shall have the following responsibilities upon permit issuance:

~~1. Ensure that the sign complies with all city regulations during the life of the sign, including maintenance responsibilities imposed by MMC 17.50.160 as now or hereafter amended.~~

~~2. Remove businesses advertised on the community monument sign that are no longer located within the MX district and replace them with businesses that wish to participate and have located in~~

~~the MX district after notice to MX business was issued under subsection (E)(1) of this section. Businesses shall be given priority in order of seniority in the MX district. If no new business wishes to replace a business that is removed from the sign, the acknowledged or may inquire if businesses that previously declined to participate in the sign wish to be added, in order of seniority in the MX district. Any newly participating business shall be subject to the applicable limitations of subsection (F)(1) of this section. (Ord. 1666 § 2, 2006; Ord. 1663 § 19, 2006; Ord. 1577 § 1, 2003).~~

17.50.110 Signs attached to buildings.

Awning, fascia, graphic, marquee, roof, and wall signs are permitted signs for attachment to buildings. Signs attached to buildings are permitted on wall elevations that are viewable from public rights-of-way or on wall elevations containing public entrances to the building.

A. Maximum Number. No limit within the size allocation. A limit of one roof sign per wall elevation viewable to the public (see roof sign definition). Multiple occupancy buildings may display one additional wall sign for each ~~tenant~~ additional occupant, other than the primary tenant, up to a maximum of two additional secondary tenant signs, subject to the maximum area per sign described in subsection C of this section.

Commented [DPK69]: If this is just a counting mechanism, then it is fine. However, if this means that those signs can only be for the tenant's business, then it would need to be changed.

B. Size Allocation.

1. RS, RMD: ~~Four square feet for residential uses; or 10 percent of the wall area for permitted or conditionally permitted nonresidential uses, whichever is greater.~~

Commented [WLC70]: I tend to disagree with the comment below. Any business has a need to identify itself to the public. If I need a pair of shoes repaired it is helpful to see a sign "shoes repair" in and amongst the other stores, businesses &c.

2. RM: Eight square feet.

Commented [DPK71]: Does this imply what the signs content should be? If so, it would need to be changed.

3. MX: 48 square feet or 15 percent of the wall area, whichever is greater.

Because there is a different between the residential and non-residential uses, this may be something that needs to be addressed.

4. B, CF, M-1, OS: 48 square feet or 15 percent of the wall area, whichever is greater.

C. Maximum Area per Sign.

1. RS, RMD: ~~Four square feet;~~ 32 square feet per sign ~~for signs for permitted or conditionally permitted nonresidential uses~~ (roof signs are prohibited).

2. RM: Eight square feet (roof signs are prohibited).

3. MX: 100 square feet (each roof sign may be a maximum of 48 square feet, where no sign face may exceed 24 square feet). For multiple occupancy buildings, the individual building ~~tenant occupant~~ signs allowed by subsection A of this section ~~shall may~~ not exceed 25 square feet per sign face.

Commented [DPK72]: See prior comment. Depends on intent.

4. B, M-1: 200 square feet (each roof sign may be a maximum of 48 square feet, where no sign face may exceed 24 square feet). For multiple occupancy buildings, the individual ~~building tenant occupant~~ signs allowed by subsection A of this section ~~shall may~~ not exceed 25 square feet per sign face.

5. CF, OS: 100 square feet (each roof sign may be a maximum of 48 square feet, where no sign face may exceed 24 square feet).

D. Wall signs ~~shall may~~ not exceed 12 inches in thickness. (Ord. 1666 § 2, 2006; Ord. 1474 § 4, 2001; Ord. 1437 § 1, 2000).

17.50.120 A-board/sandwich board signs.

Commented [kne73]: Ok if definition changed

A. Maximum Number.

1. RS, RMD, RM: Zero.

2. B, CF, M-1, MX, OS: One.

B. Size Allocation.

1. RS, RMD, RM: Does not apply.

2. B, CF, M-1, MX, OS: 12 square feet.

C. Maximum Height.

1. RS, RMD, RM: Does not apply.

2. B, CF, M-1, MX, OS: Four feet.

Commented [DPK74]: Because the definition of this sign limits it to certain commercial business, the regulations on this type of sign may need to be changed.

D. Duration. A-board/sandwich board signs are permitted to remain in place only ~~during the hours of a business' operation.~~ A-board/sandwich board signs shall be removed at the close of business each day so long as it is providing immediately useful information. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

Commented [DPK75]: If this means that the sign has to pertain to the business, it may need to be changed. If it simply means that the sign, whatever the content, can only be out during the hours of operation of the host site, then it may be ok.

17.50.130 Directional signs.

A. Type. Directional signs refer to a permanently erected single or double faced sign designed to guide or direct pedestrian or vehicular traffic to an area, place, or convenience.

Commented [WC76]: As these signs almost always are in the right-of-way, a bit more regulation may be warranted. If the sign is the daily special, when the business closes, the sign goes inside. If it is a political opinion on an elected official, then it can stay up so long as the official remains in office. We are thus not regulating the speech as much as limiting the license to use the public way only when there is a message to communicate.

B. Content. Directional signs shall only contain information on exits, entrances, parking, telephones, restrooms, or similar types of information and the name and/or logo of the business where the directional sign is located.

Commented [DPK77]: The very nature of a directional sign prohibits certain other types of signs. So, these regulations only apply to certain messages. You must read the sign in order to properly apply the regulation.

C. Number. One per directional access from a primary street frontage plus one additional directional sign per business.

D. Size and Height. The maximum size of directional signs shall be six square feet. The maximum height for directional signs shall be 42 inches. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

Commented [WC78]: It seems unlikely that this regulation can pass scrutiny as it requires one to consider the content of the message.

17.50.135 Political signs.

A. Political signs that require a building or electrical permit are prohibited.

B. Political signs on private property shall be subject to all applicable permit requirements.

C. Political signs are allowed in all zones.

D. Political signs on private property shall be limited to one sign per street frontage, and shall be no greater than 16 feet in area. (Ord. 1666 § 2, 2006).

Commented [WC79]: This is not possible.

17.50.140 Temporary signs.

A. Temporary signs shall must conform to MMC 17.50.080.

1. ~~Unless otherwise identified below, the duration of display of a temporary sign shall not exceed 90 days during any 12 month period, unless otherwise noted in subsection B of this section;~~

Commented [WC80]: Limiting time one may express his views is not permissible.

~~2.~~ No flashing temporary signs of any type ~~shall be~~ is permitted; however, internally illuminated signs, e.g., portable ~~readerboards~~ reader boards, ~~shall are~~ be permitted; ~~provided, that unless~~ they conform to the current National Electrical Code and the National Electrical Safety Code;

~~3.~~ All temporary signs ~~shall~~ must be securely fastened and positioned in place so as not to constitute a hazard to pedestrians or motorists;

~~4.~~ No temporary sign ~~shall~~ may project over or into a public right-of-way or property except properly authorized banners over streets installed by the city of Milton.

B. The duration of display for the following temporary signs shall be as follows:

1. Blinking or flashing lights, balloons, banners, searchlights, clusters of flags, strings of twirlers or propellers, flares, and other displays of a carnival nature may be displayed during a special event so long as the event does not exceed ten days;

2. Mobile reader boards and off premise signs may be used a reasonable time before a special event;

3. Temporary signs may be placed a reasonable time prior to the event or happening; and

4. Signs permitted by this section must be removed promptly after the event or happening.

~~1. Grand opening displays including: posters, pennants, banners or streamers, balloons, searchlights, clusters of flags, strings of twirlers or propellers, flares, and other displays of a carnival nature (12-day maximum time period);~~

~~2. Lawn signs (30-day maximum time period);~~

~~3. Liquidation signs (one week maximum time period);~~

~~4. Garage, porch, and patio sale signs (72-hour maximum time period);~~

Commented [DPK81]: This is the precise issue that was at play in Reed v. Gilbert. The different regulations on different types of temporary signs must be changed.

Commented [WLC82]: This subsection is new. There are numerous references to 17.50.140 throughout, but the entire subsection is objectionable for one reason or another. I have tried to write this in a way that it will accommodate the church bazar, Costco grand opening and Neo Nazi rally.

Commented [kne83]: If definition of lawn sign is amended, this could work.

- ~~5. Yard sale signs (72 hour maximum time period);~~
- ~~6. Real estate signs (30 day maximum time period beyond the date when the property is sold or no longer offered for sale);~~
- ~~7. Off premises real estate signs (daily, signs may only be posted during the hours of 8:00 a.m. and 6:00 p.m.);~~
- ~~8. Open house signs (72 hour maximum time period);~~
- ~~9. Subdivision signs (30 day maximum time period beyond the date when the final certificate of occupancy has been issued);~~
- ~~10. Construction signs denoting the architect, engineer or contractor, when placed upon the premises while construction work is in progress. Said signs not to exceed 16 square feet in area (30 day maximum time period beyond the date when the certificate of occupancy is issued for the last structure);~~
- ~~11. Nonprofit institutional signs for the purpose of soliciting funds for a capital project on the site. Such signs may not be permitted at the same time as a construction sign (maximum three years from date of permit application);~~
- ~~12. Rooftop balloon signs with a vertical dimension not greater than 25 feet (maximum of one week per calendar year per business);~~
- ~~13. Banners (maximum of six 21 day periods per calendar year);~~
- ~~14. Temporary signs, sports field (maximum of 75 days per calendar year); and~~
- ~~15. Political signs shall be removed within seven days after the election, except that a candidate who wins a primary election may continue to display political signs until seven days after the general election. (Ord. 1666 § 2, 2006; Ord. 1649 § 1, 2005; Ord. 1474 § 5, 2001; Ord. 1437 § 1, 2000).~~

17.50.150 Nonconforming signs.

A. A sign is legally nonconforming if it is out of conformance with this code, and:

Commented [kne84]: Reasonable amortization periods could be considered

1. The sign was lawfully erected in compliance with the applicable sign ordinance of the city or county which was effective at the time of sign installation, and a valid permit for such sign exists; or

2. The sign was erected prior to January 1, 1996.

B. A legal nonconforming sign ~~shall~~must be brought into compliance with this chapter or ~~shall be~~ removed if:

1. The sign is abandoned;

2. The sign is damaged in excess of 50 percent of its replacement value, unless such destruction is the result of vandalism or intentional destruction or removal by someone not authorized by the sign owner;

3. The owner seeks to change the sign structure supporting, holding, or surrounding the sign, other than minor maintenance or repair;

4. The ~~tenant-occupant~~ space(s) to which the sign applies is undergoing an expansion or renovation which increases the size of the ~~tenant-occupant~~ space floor area or site coverage by 20 percent or more, or the value of the expansion or renovation exceeds 50 percent of the assessed value of the structure;

5. The building to which the sign applies is demolished. (Ord. 1716 § 1, 2008; Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.160 Maintenance of signs.

All signs and landscape, including signs heretofore installed, ~~shall~~must be constantly maintained in a state of security, safety, and repair. ~~If any sign is found not to be so maintained or is insecurely fastened or otherwise dangerous (see dangerous signs), it shall be the duty of t~~The owner and/or occupant of the premises on which the any sign is not securely, safely and properly maintained or is dangerous is fastened tomust repair or remove the sign within five working days after receiving notice from the building official. ~~For damaged or disrepaired signs in disrepair, it shall be the duty of T~~the owner and/or occupant tomust repair or remove damaged signs or signs in disrepair ~~the sign~~ within 30 days. The premises surrounding a

sign ~~shall~~must be free and clear of rubbish and the landscaping area free of weeds. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.170 Removal of signs.

A. All signs and sign structures ~~nonconforming in the structural requirements as specified in the International that do not conform to the Construction Building Codes, MMC 15.05, which as a consequence that~~ are a hazard to life and property, or ~~which that by its~~their condition or location present an immediate and serious danger to the public, ~~shall~~must be discontinued or made to conform within the time the building official may specify. ~~In the event~~If the owner ~~of such sign~~ cannot be found or refuses to comply with the order to remove, the building official ~~shall~~may then have the dangerous sign removed and the owner cited. The cost of removing the sign plus administrative costs will be charged to the property owner.

B. Any person who owns or leases a nonconforming sign ~~shall~~must remove ~~such the~~ sign when ~~the sign it~~ has been abandoned:

~~1. If the person who owns or leases such sign fails to remove it as provided in this section, the building official shall give the owner of the building, structure, or premises upon which such sign is located 60 days' written notice to remove it;~~

~~2. If the sign has not been removed at the expiration of the 60 days' notice, the building official may remove such sign at cost to the owner of the building, structure, or premises; and~~

~~3. Costs incurred by the city of Milton due to removal may be made a lien against the land or premises on which such sign is located, after notice and hearing, and may be collected or foreclosed in the same manner as liens otherwise entered in the liens docket of the city.~~

C. If the permittee has not identified himself, the City may remove any sign once it has ceased to be relevant, if it should be removed under this section or if the City might have requested the permittee remove it.

Commented [kne85]: This would not meet legal requirements for entry of property. This section should be removed. If a nuisance or hazard existed, the building official could obtain a warrant of abatement to go onto the property, but absent such court-issued warrant, this would not be permissible.

Commented [WLC86]: As I noted above, a speaker has a right to remain anonymous. "The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be, at least in the field of literary endeavor, the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. ^{10.51} Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment." *McIntyre, supra.*

C. (Ord. 1666 § 2, 2006; Ord. 1663 § 20, 2006; Ord. 1437 § 1, 2000).

17.50.180 Deviation from standards.

A. Authority. The land use administrator may grant a deviation from the requirements of this chapter using Process II (Chapter 17.71 MMC). In granting any deviation, the director may prescribe conditions that are necessary to satisfy the criteria below.

B. The land use administrator may grant a deviation from standards from the provisions of MMC 17.50.150(B)(4) requiring the removal of a nonconforming sign because of a change in copy only if the circumstances prompting the deviation from standards request do not result from the actions of the applicant. A change in telephone area code or street name are two examples of potential changes in copy that would not be prompted by the actions of the applicant.

C. The land use administrator may grant a deviation from standards of this chapter only if the applicant demonstrates compliance with the following criteria:

1. The deviation from standards as approved ~~shall~~does not constitute a grant which is inconsistent with the intent of the sign code;
2. ~~That~~ the deviation from standards is necessary because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located;
3. ~~That~~ the granting of the deviation from standards will not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and in the zone in which the subject property is located;
4. ~~That~~ the special conditions and circumstances prompting the deviation from standards request do not result from the actions of the applicant;
5. ~~That~~ the deviation from standards as granted represents the least amount of deviation from the prescribed regulations

necessary to accomplish the purpose for which the deviation from standards is sought and which is consistent with the stated intent of this chapter; and

6. ~~That the granting of the deviation from standards shall result in greater convenience to the public in identifying the business location for which a sign code deviation from standards is sought; and~~

Commented [WLC87]: This cannot stand as written and I'm not sure what it means anyway.

~~7. That the granting of the deviation from standards will not constitute a public nuisance or adversely affect the public safety and the proposed deviation from standards shall~~ does not interfere with the location and identification of adjacent buildings or activities. (Ord. 1741 § 23, 2009; Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).

17.50.182 Construction.

1. Not content based. The City recognizes that 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. Except where a compelling state interest is involved such as the control of public safety matters, this Chapter does not in any way deal with the content of signs other than as expressly stated.

2. Narrowly construed. This Chapter shall be narrowly construed so as to impose the least impingement on free speech and expression as is consistent with the exercise of the police power of the City.

3. No criminal activity permitted. Nothing in this subsection shall be construed as permitting the public display of illegal pornography, or the solicitation for the commission of crimes, or treason.

17.50.185 Signs of Historical Community Significance.

1. A sign may be designated by the City Council as a sign of historical community significance.

2. When a sign of historical community significance is reestablished after a period of absence, the sign shall must be restored to its historic appearance, height, and width in order to be classified as a historically significant. If the sign is altered, including but not limited to additional messaging that was not historically present, the sign shall will not be considered historically significant.

17.50.190 Penalty for violations.

A. It shall be unlawful for any person, firm, or corporation to erect, construct, enlarge, alter, move, improve, convert, demolish, equip, or use any sign or sign structure in the city, or cause or permit the same to be done, contrary or in violation of any provisions of this chapter.

B. Any person, firm, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor and punishable as set forth in Section 9.04.040 Chapter 1.08 MMC. (Ord. 1666 § 2, 2006; Ord. 1536 § 2, 2002; Ord. 1437 § 1, 2000).

Commented [WLC88]: The current version clearly refers to an offense being a misdemeanor, but MMC 1.08 only describes civil infractions. I have changed the penalty to refer to the criminal code section which defines a misdemeanor.

17.50.200 Severability.

If any clause, sentence, paragraph, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgement shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable. (Ord. 1666 § 2, 2006; Ord. 1437 § 1, 2000).