



March 14, 2017

City of Goodyear
Sign Ordinance Code Amendment

Dear Mr. Careccia,

Thank you for the opportunity to provide feedback to the City of Goodyear regarding the proposed sign ordinance.

We appreciate the time and effort the City staff put into re-designing the sign ordinance. Below you will find comments regarding the proposed sign ordinance.

WeMAR believes licensees and their clients should be left to decide the best type, size and placement of signs in order to achieve the advertising needed to facilitate the exchange and sale of property, so long as that sign does not infringe on another's property or free speech rights.

We believe signs are more properly treated as free speech since they are a form of communication, rather than land use. Therefore, we suggest the mechanism of ordinance is inappropriate and regulations should be limited.

We are concerned the new code does not serve a compelling government interest, is not narrowly tailored or content neutral. In addition, there are some practical, every day functional concerns. Signage overly limited in size, location or duration becomes less valuable as an economic way to advertise a business reducing the economic vitality of the business community. Businesses who cannot adequately identify themselves to the market place become less able to succeed, are discouraged from opening in the first place, and suffer a higher instance of failure.

We question the requirement of sign permits as it appears in most instances to be an infringement of free speech/expression. We recognize the necessity of proper sign construction and maintenance, particularly of large and illuminated signage, but those concerns are best addressed in the building/construction codes.

Additionally, limitations on temporary directional signs for garage sales, open houses and other neighborhood events seem unnecessarily restrictive since the concern being addressed involves the running of a business in a residential neighborhood and that concern is best addressed in the residential and commercial codes.

We are concerned the proposed sign ordinance treats political and governmental signs differently than other signs. It would seem that although an argument could be made as to neutral content, there is a problem with differentiation of speakers and limiting speech based on the identity of the speaker (*Sorrell v. IMS Health Services*).

Under the First Amendment to the U.S. Constitution signs are protected since they are forms of communication/speech. Signs are also property, and under the Fifth Amendment to the Constitution, signs are protected from uncompensated taking by the government. If the sign code disproportionately affects one group of people over another, it could be in violation of the equal protection clause of the Fourteenth Amendment.

WeMAR looks to several decisions over the years confirming signs are a form of speech. *Bigelow v. Virginia*, *Virginia Pharmacy Board v. Virginia Consumer Council*, and *Central Hudson Gas & Electric Company v. Public Services Commission* are a few. When we apply the four-prong test created by these decisions, we question the constitutionality of a large portion of the proposed ordinance.

4-prong test:

- 1 - Is the speech promoting a product of service that is lawful? And is it truthful?
- 2 – Is the government interest substantial?

If both criteria are met:

- 3 – Does the regulation directly advance the governmental interest?
- 4 – Is the regulation more extensive than necessary?

The delineation of commercial versus non-commercial messaging seems to violate *Reed v. Gilbert* since one must consider the sign content to determine if the message is commercial or non-commercial.

As stated in Article 7-1 (Purpose), the proposed sign code seeks to promote effective messaging and economic vitality for local businesses and services. Item 1 states one of the purposes of the code is to promote and aid public and private sectors in the identification, location and advertisement of goods and services. WeMAR is concerned that several elements of the proposed sign ordinance fail this test.

Article 7-3, A:

This provision seems to require a city permit for speech in general. This seems overly broad. For clarification, is this provision intended for permanent signs only?

Article 7-5A, items 5&6:

It appears the ordinance may violate the decision in *Central Radio Company v. City of Norfolk* regarding the distinction between art conveying a commercial message and art conveying a non-commercial message.

Article 7-5, A, Items 5 &6:

Past court decisions have ruled art as a form of speech/expression protected under the First Amendment and determined that free speech cannot be limited because of the identity of the speaker. These items seem to contradict those rulings by differentiating between commercial versus non-commercial displays. In addition, the prohibition that *when displayed in conjunction with a commercial enterprise that may derive economic gain from the display* is an arbitrary measure with no compelling government interest attached.

Article 7-6, A Item 4:

The Lanham Trademark Act prohibits governments from regulating signs for aesthetic purposes when those signs display a registered service mark. In *Blockbuster Videos v. City of Tempe*, the court confirmed municipalities may not enforce zoning regulations if those regulations require the mark to be altered. By requiring signs to be compatible with and complement the surrounding district in terms of color and style, it appears the city may be in violation of this. We ask the city to understand a business survives and thrives when customers and potential customers are exposed to the business' mark (brand) repeatedly and come to know that business, its goods and services and its location. Requiring a business to alter its brand identification lessens the business' ability of establishing its identity in the community and providing adequate economic contribution to the community and to the business owner.

Article 7-6, B, item 3:

Under state law political signs are allowed in the public right of way, a prohibition against signs in the public right of way would require content consideration.

Article 7-7:

Legibility and visibility are important when placing a sign. Inadequate signage size, contrast, legibility and visibility cause harm to the sign owner/speaker and to the public. Potential customers seeking a product or service and unable to locate it are disserved. The person attempting to make the public aware of their offerings is also disserved. If signage on a fast-moving street is not legible or visible, public safety may be at risk as potential customers strive to change several lanes or turn quickly in order to patronize the business. WeMAR believes the

same principles outlined by the Manual on Uniform Traffic Control Devices (2009) are important in commercial signage. Does the sign:

- Fulfill the need
- Command attention
- Convey clear meaning
- Give adequate time for proper response.

In order for the sign message to be visible it must have a visual arc large enough to be seen by the eye. Research since the 1930's has helped establish legibility indexes, luminance and contrast measures. Sign viewing angles and their relationship to letter height best practices should be noted as a way of establishing **minimum** sign sizes.

Article 7-8A, item B:

WeMAR is concerned the limit of one directory sign and one wall sign per unit for a multi-tenant building may not be adequate. In large multi-building properties, additional directory signs and wall signs on more than one wall denoting the building information helps visitors and tenants locate units efficiently. WeMAR questions the compelling government interest in limiting the identification of buildings and tenant information.

Article 7-8A, Item b:

The requirement of removing temporary subdivision signs when 95% of the lots have been sold seems like an unnecessary restriction of speech as well as economically ill-advised. WeMAR contends it is in the best interest of the City, the neighborhood and the community to allow signage to remain in place until all subdivision lots are sold or the lots are abandoned. Builders and developers take a big financial risk and invest large sums initiating subdivisions. Frequently, they will reduce prices or provide additional incentives to purchase when few lots remain in an attempt to preserve their profit. Making it more difficult for developers to advertise and guide prospective homeowners to the remaining lots could cause unnecessary delay in closing out a subdivision, and if the economy has a down turn could result in empty lots being abandoned due to developer financial distress as seen in 2009, 2010 and 2011.

Article 7-8B, item 1a:

WeMAR is concerned the 25% maximum front face area is too limiting and arbitrary. WeMAR questions the compelling government interest in limiting a business' ability to place its name on awnings and canopies it owns since the purpose is to identify the goods or services provided to potential customers passing by.

Article 7-8B, item 5 & 6:

Applying differing treatments towards Drive Through Restaurants and Gas Stations could be interpreted as content/speaker based. WeMAR questions the compelling government interest in this differentiation.

Article 7-8B, item 10:

WeMAR is concerned over the limited amount of signage allowed, particularly when there is more than one business under the same roof. For example, a grocery store with a bank and a coffee bistro or a real estate company with a title company sharing space. It would seem in the best interest of the businesses, city and community to allow adequate signage so that prospective clients can readily identify the goods and services offered.

C: WeMAR questions the compelling government interest in limiting cabinet signs.

Article 7-8B, 11:

WeMAR questions the necessity of limiting window signage to 25% of the total window area. Window signage helps businesses advertise specials and particular product as well as allowing a business to express its personality. Since the windows are on the building owned or leased by the owner, WeMAR questions the compelling government interest in limiting speech on a building privately owned.

Article 7-9A:

WeMAR suggests at least 2 signs be allowed on residential properties since it may be advisable for a homeowner to advertise his/her home for sale or lease at the front yard and at the back. Larger parcels may require additional signage to be adequate to the task of selling or leasing the property.

WeMAR has concerns regarding the maximum sign size. It does not appear to allow for sign riders. REALTORS® and property owners use sign riders to help highlight features such as special financing, charitable donations, pools, home warranties, seller financing, other features and the agent's name and contact information. Sign riders serve a valuable purpose in highlighting features to the market to enable a quicker sale.

This section differentiates between political and non-political signs which appears to violate the content test.

Article 7-9B, item 4:

WeMAR questions the compelling government interest in requiring a business to have an annual permit to post a temporary sign near their business.

Article 7-12C,3:

Under no circumstance should an owner's agent be responsible by ordinance for owner's property. An agent is authorized through private contract to perform particular tasks on behalf of the owner. If sign or property related maintenance, upkeep and repair are not part of the contract between owner and agent, then an agent cannot legally or ethically tamper with the sign since it is not the agent's property and the owner has not granted that authority to the agent.

Article 7-13B:

The responsible party for sign violations should be the owner of the sign. Third parties who do not own the sign cannot tamper with the sign since they have no legal ownership rights and have not been granted rights from the owner.

If you have questions or require additional information, please call or email me. Thank you again for this opportunity.

Sincerely,

A handwritten signature in blue ink that reads "Liz Recchia". The signature is fluid and cursive, with the first name "Liz" and last name "Recchia" clearly legible.

Liz Recchia

Government Affairs Director

WeMAR