



September 23, 2022

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RE: Constitutionality of Oklahoma City Municipal Sign Code

Dear Mr. Jordan,

Thank you for your prompt response and your ongoing attention to the Oklahoma City Sign Code. We are pleased to learn that the City shares our interest in ensuring that the code respects the free speech rights of Oklahomans and that the City has already begun work to revise the Sign Code to comport with *Reed v. Gilbert*, 576 U.S. 155 (2015). Thank you for sharing the Proposed Sign Code and for inviting collaboration.

We have reviewed the Proposed Sign Code. We have grave concerns that it broadly and unconstitutionally bans freestanding signs that candidates, campaign supporters, and political and social activists for decades have placed on street corners, roadsides, and medians across Oklahoma City, and that the Tenth Circuit held in *McCraw v. City of Okla. City*, 973 F.3d 1057 (10th Cir. 2020), to be protected speech in the public square. Notably, § 59-16113 of the Proposed Sign Code categorically prohibits freestanding signs from being “placed on or over a public or private street, alley, or other rights-of-way,” and § 59-16119 defines “right-of-way” as “[t]he land within the public sphere which may be used by pedestrian or vehicular traffic.” Of course, freestanding signs are protected speech, as recognized by the Supreme Court in *Reed v. Gilbert*, 576 U.S. 155 (2015). Furthermore, First Amendment protections are strongest in public spaces traditionally used by the people for free speech, which include the very areas in and around roadways where the Proposed Sign Code would ban free-standing signs. (See *McCraw v. City of Okla. City*, 973 F.3d 1057, 1070 (10th Cir. 2020), *cert. denied*, 141 S. Ct. 1738 (2021))

(holding that, like sidewalks and street corners, “Oklahoma City’s medians are traditional public fora”).

Instead of the sweeping restrictions in the Proposed Sign Code, municipalities might impose less restrictive time, place, or manner restrictions on freestanding signs placed on street corners, roadsides, and medians. For example, cities might prohibit signs that effectively “block access to structures, parked cars, block vehicular sight distance views at corners, intersections, or block pedestrian walking paths.”¹ Sign placement might also be restricted so as to not “interfere[] with the requirements of the Americans with [D]isabilities [A]ct.”² Cities might also require that temporary signs not “mimic, or be attached to, official roadway signage.”³ And certain size and time requirements might also be adopted. For example, Arizona requires limits temporary roadway signs in non-residential areas to a “maximum area of thirty-two square feet,”⁴ and its Town of Gilbert prohibits signs pertaining to an event (like an election) from remaining longer than three days after the conclusion of the event.⁵

While we do not necessarily endorse the legality of any of these regulations, we feel they are better starting points for curing the constitutional deficiency of the City’s current Sign Code than the approach taken by the Proposed Sign Code of banning more rather than less speech in the public square. Simply put, the City may not impose a blanket ban on freestanding signs on street corners, roadsides, and medians, as these protected spaces are held in trust for the public to engage in the free exchange of ideas.

In the interest of crafting a sign code that respects the First Amendment rights of Oklahomans, we would like to schedule a meeting. We have provided our availability via email. We look forward to working with you to resolve this matter in a constitutional manner.

CC: David Holt, Mayor
Bradley Carter, Ward 1 City Councilmember

¹ Id.

² 16 Ariz. Rev. Stat. § 1019(C)(3).

³ Gig Harbor Mun. Code § 17.80.110(A)(2).

⁴ 16 Ariz. Rev. Stat. § 1019(C)(4).

⁵ Gilbert Mun. Code § 5.6.9.

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Todd Stone, Ward 4 City Councilmember
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Sincerely,

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