



# COOLIDGE WALL

— A Legal Professional Association

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February 24, 2023

Gregory S. Gaines  
Director of Planning & Community Development  
City of West Carrollton  
300 East Central Avenue  
West Carrollton, OH 45449

**Re: Sign Code Update**

Dear Mr. Gaines:

Beginning in September 2021, the City of West Carrollton (the “City”) asked me to conduct a legal review of the City’s sign code (“Sign Code”). In my initial review, I determined several Sign Code provisions needed to be updated. In coordination with City staff, we focused our efforts on revising the Sign Code in accordance with current law while also maintaining the Sign Code’s integrity. Therefore, much of the Sign Code remains the same.

My review of the Sign Code centered on two United States Supreme Court decisions: *Reed v. Town of Gilbert*, 576 U.S. 155, 135 S. Ct. 2218 (2015) and *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 142 S. Ct. 1464 (2022). These decisions address the delicate balancing act that municipalities face when regulating signs: protecting the community’s aesthetic value on one hand, while protecting First Amendment Rights to free speech on the other.

*Reed* held that a regulation of speech is content based under the First Amendment if it targets speech based on its communicative content, i.e., if it applies to particular speech because of the topic discussed or the idea or message expressed. Content based regulations must pass “strict scrutiny” – the toughest legal standard. As you can imagine, the *Reed* decision was difficult to put into practice because many sign codes have different regulations for different categories of signs, such real estate signs versus yard sale signs. The *Reed* decision found these regulations to be unconstitutional.

The *Austin* decision clarified *Reed*. In *Austin*, the Court noted “First Amendment precedents and doctrines have consistently recognized that restrictions on speech may require some evaluation of the speech and nonetheless remain content neutral.” *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 142 S. Ct. 1464, 1473 (2022).

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The City of Austin’s sign code prohibited the new construction of off-premise signs. This ban did not apply to on-premise signs. Austin’s sign code defined the term “off-premise sign” to mean “a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site.” Austin, Tex., City Code §25-10-3(11) (2016). Several advertising companies challenged the ban because they were prohibited from placing new billboards within the City of Austin.

The Court concluded that the distinction between on-premise and off-premise signs is content neutral because it relates to the **location** of the sign, not the sign’s content. It is agnostic as to content. “Thus, absent a content-based purpose or justification, the [Austin’s] distinction is content neutral and does not warrant the application of strict scrutiny.” *City of Austin*, 142 S. Ct. 1464 at 1471. Therefore, the Court upheld Austin’s sign code.

The updated version of West Carrollton’s Sign Code incorporates the *Austin* decision holding. This allows the City to ban off-premise commercial signs. These are signs that advertise goods and services that are not located on the site where the sign is installed (i.e. billboards).

It was also important in our review that the Sign Code recognize the difference between commercial speech and non-commercial speech<sup>1</sup>. Thus, the Sign Code revisions expand how First Amendment issues are addressed in relation to non-commercial speech.

In conclusion, the Sign Code revisions are based on legal precedent. Its integrity remains the same. The purpose of the updated Sign Code is to enhance and protect the physical appearance and aesthetic value of the City of West Carrollton; to promote the value of residential and commercial areas; and more importantly, to protect the rights of individuals to display non-commercial messages protected by the First Amendment.

Sincerely,

*Stephen M. McHugh/sjs*

Stephen M. McHugh

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<sup>1</sup> It has long been held that commercial speech is subject to a less stringent legal standard than non-commercial speech. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 100 S. Ct. 2343 (1980).

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cc: Lori Denlinger, Law Director  
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Sarah J. Sparks, Esq.

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