



HIGHLAND CITY

HIGHLAND CITY PLANNING COMMISSION AGENDA

Tuesday, February 28, 2023

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

VIRTUAL PARTICIPATION



YouTube Live: <http://bit.ly/HC-youtube>



Email comments prior to meeting: planningcommission@highlandcity.org

7:00 PM REGULAR SESSION

Call to Order – Audrey Moore, Chair

Invocation – Commissioner Christopher Howden

Pledge of Allegiance – Commissioner Jay Roundy

1. UNSCHEDULED PUBLIC APPEARANCES

Please limit comments to three minutes per person. Please state your name.

2. CONSENT ITEMS

Items on the consent agenda are of a routine nature or have been previously studied by the Planning Commission. They are intended to be acted upon in one motion. Commissioners may pull items from consent if they would like them considered separately.

- a. **Approval of Meeting Minutes** *General City Management – Heather White, Planning Commission Secretary*
Regular Planning Commission Meeting – January 24, 2023

3. **PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT – SIGNS** *Development Code Update (Legislative) – Kellie Smith, Planner & GIS Analyst*

The Planning Commission will hold a public hearing to consider a proposal by Highland City Staff to amend Article 7 Signs in the Development Code to update several regulations regarding temporary signage in residential and commercial zones. The Planning Commission will take appropriate action.

4. **PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT – IMPROVEMENT COMPLETION BONDING REQUIREMENTS** *Development Code Update (Legislative) – Rob Patterson, City Attorney*

The Planning Commission will hold a public hearing to consider a proposal by Highland City Staff to amend sections of Chapter 6 of the Development Code related to the duration and term of performance and warranty bonds for developments. The Planning Commission will take appropriate action.

5. PLANNING COMMISSION AND STAFF COMMUNICATION ITEMS

The Planning Commission may discuss and receive updates on City events, projects, and issues from the Planning Commissioners and city staff. Topics discussed will be informational only. No final action will be taken on communication items.

a. Future Meetings

- March 7, City Council, 7:00 pm, City Hall
- March 21, City Council, 7:00 pm, City Hall
- March 28, Planning Commission, 7:00 pm, City Hall
- April 18, City Council, 7:00 pm, City Hall

Legislative: An action of a legislative body to adopt laws or policies.

Administrative: An action reviewing an application for compliance with adopted laws and policies.

ADJOURNMENT

In accordance with Americans with Disabilities Act, Highland City will make reasonable accommodations to participate in the meeting. Requests for assistance can be made by contacting the City Recorder at (801) 772-4505 at least three days in advance of the meeting.

ELECTRONIC PARTICIPATION

Members of the Planning Commission may participate electronically via telephone, Skype, or other electronic means during this meeting.

CERTIFICATE OF POSTING

I, Kellie Smith, the City Planner, certify that the foregoing agenda was posted at the principal office of the public body, on the Utah State website (<http://pmn.utah.gov>), and on Highland City's website (www.highlandcity.org).

Please note the order of agenda items are subject to change in order to accommodate the needs of the Planning Commission, staff and the public.

Posted and dated this agenda on the 23rd day of February, 2023.

Kellie Smith, City Planner

THE PUBLIC IS INVITED TO PARTICIPATE IN ALL PLANNING COMMISSION MEETINGS.



HIGHLAND CITY

HIGHLAND CITY PLANNING COMMISSION MINUTES

Tuesday, January 24, 2023

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

VIRTUAL PARTICIPATION

 YouTube Live: <http://bit.ly/HC-youtube>

 Email comments prior to meeting: planningcommission@highlandcity.org

7:00 PM REGULAR SESSION

Call to Order – Audrey Moore, Chair

Invocation – Commissioner Jerry Abbott

Pledge of Allegiance – Commissioner Trent Thayn

The meeting was called to order by Commissioner Audrey Moore as a regular session at 7:02 PM. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting. The prayer was offered by Commissioner Jerry Abbott and those in attendance were led in the Pledge of Allegiance by Commissioner Trent Thayn.

PRESIDING: Commissioner Audrey Moore

COMMISSIONERS

PRESENT: Jerry Abbott, Tracy Hill, Chris Howden, Claude Jones, Audrey Moore, Jay Roundy, and Trent Thayn

CITY STAFF PRESENT: Mayor Kurt Ostler, City Administrator Erin Wells, City Attorney Rob Patterson, City Planner and GIS Specialist Kellie Smith, Planning Commission Secretary Heather White, Utility Clerk Jill Powell

OTHERS PRESENT: Jon Hart, Brian Jones

1. UNSCHEDULED PUBLIC APPEARANCES

Please limit comments to three minutes per person. Please state your name.

None was offered.

2. CONSENT ITEMS

Items on the consent agenda are of a routine nature or have been previously studied by the Planning Commission. They are intended to be acted upon in one motion. Commissioners may pull items from consent if they would like them considered separately.

- a. Approval of Meeting Minutes** *General City Management – Heather White, Planning Commission Secretary*
Regular Planning Commission Meeting – December 13, 2022

Commissioner Chris Howden MOVED to approve the December 13, 2022 minutes with the change that Commissioner Howden conducted the meeting. Commissioner Jones SECONDED the motion. All present were in favor. The motion carried unanimously.

3. PUBLIC HEARING/ORDINAINCE: GENERAL PLAN AMENDMENT – MODERATE INCOME HOUSING ELEMENT *General Plan Update (Legislative) – Kellie Smith, Planner & GIS Analyst*

The Planning Commission will hold a public hearing to consider a request by Highland City Staff to update the Moderate Income Housing Element of the General Plan to be compliant with Utah State Code. The Planning Commission will take appropriate action.

Ms. Smith explained that Highland recently received a notice of non-compliance from the State regarding the moderate-income housing element of the General Plan. She said staff attended a training where it was explained that the only way the moderate-income housing element would comply with Utah State Code was by matching the strategies' wording verbatim. She said the State also required a 5-year timeline with more specific benchmarks. She noted that many cities in Utah received a notice of non-compliance from the State for the same reason. She reviewed the definitions of "Moderate-Income Housing", "Housing Affordability", and "Moderate-Income Housing Unit". She reviewed the proposed implementation measures with specific timeline and benchmarks for the following strategies:

- H - Amend land use regulations to eliminate or reduce parking requirements for residential development where a resident is less likely to rely on the resident's own vehicle, such as residential development near major transit investment corridors or senior living facilities
- U - Develop a moderate-income housing project for residents who are disabled or 55 years or older
- F - Zone or rezone for higher density or moderate-income residential development in commercial or mixed-use zones near major transit investment corridors, commercial centers, or employment centers
- O - Apply for or partner with an entity that applies for state or federal funds or tax incentive to promote the construction of moderate income housing, an entity that applies for programs offered by the Utah Housing Corporation within that agency's funding capacity, an entity that applies for affordable housing programs administered by the Department of Workforce Services, and entity that applies for affordable housing programs administered by an association of governments established by an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, an entity that applies for services provided by a public housing authority to preserve and create moderate income housing or any other entity that applies for programs or services that promote the construction or preservation of moderate income housing
- E - Create or allow for and reduce regulations related to internal or detached accessory dwelling units in residential zones
- N - Implement a mortgage assistance program for employees of the municipality, an employer that provides contracted services to the municipality, or any other public employer that operates within the municipality

Commissioner Moore opened the public hearing at 7:31 PM and asked for public comment. Hearing none, she closed the public hearing at 7:31 PM and asked for additional discussion.

Each commissioner discussed strategies they were in favor of along with concerns or details that needed clarification. They discussed the implications for not adopting moderate-income housing strategies. Commissioner Roundy thought citizens should be given a chance to provide input. He also thought that some of the strategies, namely the mortgage assistance program, were too vague and needed clarification. Commissioner Thayn wondered what the city was committing to by adopting the strategies. Mr. Patterson explained that Highland was committing to add the strategies to the General Plan, and then to report to the state on how the city was doing. He said it was up to each city to decide how to implement strategies.

After considering each strategy, members of the Planning Commission showed interest in housing projects for residents 55 years old or older, but without the phase regarding higher density. They thought “municipal employee” needed a specific definition. They thought Highland should consider regulations for accessory dwellings. Commissioner Moore called for a vote.

Commissioner Abbott MOVED that the Planning Commission recommend strategies E, N, and U to the City Council with the following changes:

- 1. Remove the phrase regarding higher density in U, and*
- 2. Later define “municipal employee” in N.*

Commissioner Hill SECONDED the motion.

The vote was recorded as follows:

<i>Commissioner Jerry Abbott</i>	<i>Yes</i>
<i>Commissioner Chris Dayton</i>	<i>Absent</i>
<i>Commissioner Tracy Hill</i>	<i>Yes</i>
<i>Commissioner Christopher Howden</i>	<i>Yes</i>
<i>Commissioner Claude Jones</i>	<i>Yes</i>
<i>Commissioner Audrey Moore</i>	<i>Yes</i>
<i>Commissioner Jay Roundy</i>	<i>No</i>
<i>Commissioner Trent Thayn</i>	<i>Yes</i>

Motion carried 6:1

4. ANNUAL OPEN & PUBLIC MEETING TRAINING

City Attorney Rob Patterson will present a training on the Open and Public Meetings Act (OPMA).

Mr. Patterson presented training on the Open and Public Meetings Act. Commissioner Thayn wondered how working meetings were handled. Mr. Patterson explained that work sessions were noticed the same as regular meetings. He said the public was permitted to attend and listen to work sessions.

5. PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT - MODEL HOMES

Development Code Update (Legislative) – Kellie Smith, Planner & GIS Analyst

The Planning Commission will hold a public hearing to consider a proposal by Highland City Staff to amend several sections of the Development Code relating to model homes in residential zones. The Planning Commission will take appropriate action.

Ms. Smith explained that model homes were operating in the Ridgeview development for each of the builders. In working with the builders to bring them to compliance on signage, staff realized that the Development Code required a conditional use permit in several residential zones but did not address model homes in Planned Developments. Because other model home building permits were under review, staff determined it necessary to update the Development Code. Ms. Smith reviewed the proposed regulations for a model home, including the maximum number of personnel, signage, parking/traffic, lighting, operation times, business license requirements, garage usage, final inspections, and length of use.

Commission Moore opened the public hearing at 8:26 PM and asked for public comment. Hearing none, she closed the public hearing at 8:27 PM and asked for additional discussion.

The Planning Commission discussed what they thought was the appropriate amount of landscaping for a model home. Commissioner Abbott thought model homes should be landscaped the same as other homes in the development. Ms. Smith explained that the currently model homes needed to have 70% of the front landscaped within a year of receiving the certificate of occupancy. She said xeriscaping would not be required and that it would only apply to park strips. She suggested that landscaping follow typical landscaping requirements of the subdivision.

Commissioner Abbott wondered if handicapped parking was required for model homes. Mr. Patterson said cities generally didn't regulate parking for model homes because developers followed engineering standards for commercial sites.

Commissioner Howden MOVED that the Planning Commission recommend approval of the proposed amendment to several sections of the Development Code relating to model homes in residential zones.

Commissioner Roundy SECONDED the motion.

The vote was recorded as follows:

<i>Commissioner Jerry Abbott</i>	<i>Yes</i>
<i>Commissioner Chris Dayton</i>	<i>Absent</i>
<i>Commissioner Tracy Hill</i>	<i>Yes</i>
<i>Commissioner Christopher Howden</i>	<i>Yes</i>
<i>Commissioner Claude Jones</i>	<i>Yes</i>
<i>Commissioner Audrey Moore</i>	<i>Yes</i>
<i>Commissioner Jay Roundy</i>	<i>Yes</i>
<i>Commissioner Trent Thayn</i>	<i>Yes</i>

Motion carried 7:0

6. PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT - RECORD DRAWINGS *Development Code Update (Legislative) - Kellie Smith, Planner & GIS Analyst*

The Planning Commission will hold a public hearing to consider a proposal by Highland City Staff to amend Section 5-9-111 of the Development Code to clarify details regarding record drawings or as-builts for completed subdivisions. The Planning Commission will take appropriate action.

Ms. Smith explained that the engineering department had been working with several developers in an attempt to receive more accurate record drawings for completed subdivisions. She said engineering had received different types of drawings in the past and that the code lacked specificity on what exactly was required. Ms. Smith reviewed the proposed amendments.

Commissioner Moore opened the public hearing at 8:48 PM and called for public comment. Hearing none, she closed the public hearing at 8:48 PM and asked for additional discussion.

Commissioner Roundy wondered what happened if the drawings were accepted and approved by the engineer, then something fell apart. Mr. Patterson explained that it then became Highland's responsibility. He said it was important to improve the records of the city. Commissioner Moore called for a motion.

Commissioner Roundy MOVED that the Planning Commission recommend approval of the proposed amendment to Section 5-9-111 of the Development Code relating to record drawings of completed subdivisions.

Commissioner Moore SECONDED the motion.

The vote was recorded as follows:

<i>Commissioner Jerry Abbott</i>	<i>Yes</i>
<i>Commissioner Chris Dayton</i>	<i>Absent</i>
<i>Commissioner Tracy Hill</i>	<i>Yes</i>
<i>Commissioner Christopher Howden</i>	<i>No</i>
<i>Commissioner Claude Jones</i>	<i>Yes</i>
<i>Commissioner Audrey Moore</i>	<i>Yes</i>
<i>Commissioner Jay Roundy</i>	<i>Yes</i>
<i>Commissioner Trent Thayn</i>	<i>Yes</i>

Motion carried 6:1

7. PLANNING COMMISSION AND STAFF COMMUNICATION ITEMS

The Planning Commission may discuss and receive updates on City events, projects, and issues from the Planning Commissioners and city staff. Topics discussed will be informational only. No final action will be taken on communication items.

a. Future Meetings

- February 7, City Council, 7:00 pm, City Hall
- February 21, City Council, 7:00 pm, City Hall
- February 28, Planning Commission, 7:00 pm, City Hall
- March 7, City Council, 7:00 pm, City Hall

ADJOURNMENT

Commissioner Hill moved to adjourn the meeting. Commissioner Moore seconded the motion. All were in favor.

The meeting end at 8:56 PM.

I, Heather White, Planning Commission Secretary, hereby certify that the foregoing minutes represent a true, accurate and complete record of the meeting held on January 24, 2023. The document constitutes the official minutes for the Highland City Planning Commission Meeting.

/s/Heather White
Planning Commission Secretary

DRAFT



PLANNING COMMISSION AGENDA REPORT ITEM #3

DATE: February 28, 2023
TO: Planning Commission
FROM: Kellie Smith, Planner & GIS Analyst
SUBJECT: **PUBLIC HEARING/ORDINANCE:** Text Amendment - Signs
TYPE: **DEVELOPMENT CODE UPDATE (LEGISLATIVE)**

PURPOSE:

The Planning Commission will hold a public hearing to consider a proposal by Highland City Staff to amend Article 7 Signs in the Development Code to update several regulations regarding temporary signage in residential and commercial zones. The Planning Commission will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends the Planning Commission hold a public hearing, accept the findings, make any amendments the Commission feels necessary, and recommend **APPROVAL** of the proposed amendment to Article 7 Signs in the Development Code.

PRIOR COUNCIL DIRECTION:

On January 3, 2023, staff communicated the need to update temporary sign regulations in the Development Code. Setbacks in the Ridgeview project have made it impossible to have development promotional signage that meets the Development Code requirements. The Council provided feedback about the need to consider regulations that are appropriate, but still provide business support.

BACKGROUND:

Complaints were submitted to the City's Code Compliance Officer regarding the excessive development promotional signage throughout the Ridgeview development. To address the complaint, staff worked with each of the builders in Ridgeview to bring their temporary signage into compliance. While working with them, staff came to the conclusion that with the setbacks and fence locations throughout the development, it would not be possible to fully comply. Staff determined it was necessary to amend the code to update the sign regulations.

In researching temporary sign regulations, staff found that the U.S. Supreme Court's decision in *Reed v. Town of Gilbert* on June 18, 2015 established that municipal sign regulations cannot be "content based".

The City's temporary sign code is content based. The code requires different sizes and setbacks for promotional signs, grand opening signs, agricultural signs, model home signs, and garage/yard sale signs. Based on the Supreme Court decision, staff has drafted a

proposed amendment that shifts the sign regulations from being content based to being based on what type of property the sign is located on.

SUMMARY OF THE REQUEST:

1. *Home Occupations*

- a. The proposed amendment clarifies that signs for home occupation businesses are prohibited.

2. *Truth in Advertising*

- a. All signs must be directly related to a product, promotion, property, merchandise, sale, transaction, or use located on or available at the property associated with the sign, and any sign that promotes, advertises, or displays a product, promotion, property, merchandise, sale, transaction, or use that is not located on or available on the property associated with the sign shall be considered an off-premise sign.
- b. All signs shall comply with all applicable truth in advertising laws and regulations, including but not limited to the Utah Truth in Advertising Act, Title 13, Chapter 11a, Utah Code.

3. *Signs in Residential, Agricultural, and Planned Development Zones*

a. Permanent Signs

Property Type	Allowed Sign Types	Maximum Size	Location	# of signs
Single Family Lot	Name plate, address marker	2 sq ft	Private property/on the dwelling	2 per lot
Subdivision	Monument sign, sign integrated into a permitted fence structure	To be determined during the development review process	To be determined during the development review process.	To be determined during the development review process

b. Temporary Signs – Requires a temporary sign permit.

Property Type	Allowed Sign Types	Maximum Size	Location	Sign Removal	# of signs at one time
Vacant/Under construction (>1 acre)	Freestanding, a-frame	6 sq ft (max height 6')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle; -No more than 2 signs may be located along each road frontage	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding & a-frame) per road frontage
Vacant/Under construction (1-5 acres)	Freestanding, a-frame	24 sq ft (max height 8')	-Shall not be located any closer to any	72 hours after the use/promotion/	1 of each sign type (freestan

			ROW than its height from grade (1:1); -Must be out of site triangle; -No more than 2 signs may be located along each road frontage	sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	ding & a-frame) per road frontage
Vacant/Under construction (>5 acres)	Freestanding, a-frame, banner	32 sq ft (max height 12')	-Shall not be located any closer to any ROW than its height from grade (1:1) with a minimum of 10' setback from ROW, unless integrated into a permitted fence structure; -Must be out of site triangle; -No more than 3 signs may be located along each road frontage	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding, a-frame, & banner) per road frontage
Single Family Lot	Freestanding, a-frame	12 sq ft (max height 6')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle; -No more than 2 signs may be located along each road frontage	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding & a-frame) per road frontage

Multi-family Unit (>6 units/acre)	Freestanding, a-frame	6 sq ft (max height 6')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle; -No more than 2 signs may be located along each road frontage	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 of each sign type (freestanding & a-frame) per road frontage
Public Property	Freestanding, a-frame, banner, blade sign	As approved by Zoning Administrator	As approved by Zoning Administrator	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	As approved by Zoning Administrator
Off-site directional signage	Freestanding or a-frame; a banner sign may only be permitted if integrated into a permitted fence structure	6 sq ft (max height 6')	-May only be located on private property; -Shall not be located in any ROW; -Must receive written permission from the private property owner	24 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	

- i. Temporary on-premise signage that is less than six (6) square feet total on a single family or multi-family lot is exempt from the requirement to get a sign permit and pay the fee, but is still required to meet all regulations of this chapter.
 - j. The current code allows temporary agricultural signs to be exempt from the requirement to get a sign permit and pay the fee, but still requires that the signage meet all regulations of the chapter. This exemption was included in the proposed amendment.
4. *Signs in Commercial Zones and Commercial Uses in Planned Development Zones*
- a. Permanent Signs – No significant changes were made in this section.
 - b. Temporary Signs – Requires a temporary sign permit.

Sign Type	Maximum Size	Location	Sign Removal	# of signs at
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				one time
A-frame	12 sq ft (max height 4')	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 per business
Banner	24 sq ft	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 per business
Freestanding	24 sq ft	-Shall not be located any closer to any ROW than its height from grade (1:1); -Must be out of site triangle	72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.	1 per business

5. *Section 3-712 Temporary Signs* is removed.

6. *Definitions*

- a. Sign, Address Marker. A sign that identifies the address of the property on which the sign is located. Address markers shall not contain or display information other than the address of the property.
- b. Sign, Blade. A temporary sign constructed of cloth, canvas, plastic, fabric, or similar light-weight, nonrigid material and supported by a single vertical pole mounted into the ground or on a portable structure. Also known as feather signs.
- c. Sign, Off-premise or Billboard signs. Signs advertising, displaying, or promoting a product, promotion, property, merchandise, sale, transaction, or use that is not located on or available at the property associated with the sign which may or may not expose the sign's supporting structure. If the property is leased, then an off-site sign would be a sign which is located upon the immediate frontage or store front area which is different than the advertiser.

CITIZEN PARTICIPATION:

Notice of the public hearing to be held at the Planning Commission meeting was posted on the state and city websites and three public places on February 16, 2023. At the time of this report writing, staff has received no public comment.

STAFF REVIEW/FINDINGS:

The proposed amendment meets the following findings:

1. It addresses permanent and temporary signage in all residential zones, including Planned Developments.
2. It is consistent with the intent of the existing regulations for signs.
3. It addresses the issue of content based regulations identified in the Supreme Court decision in Reed v. Town of Gilbert.

FISCAL IMPACT:

This action will not have a financial impact on this fiscal year's budget expenditures.

MOTION TO RECOMMEND APPROVAL:

I move that the Planning Commission recommend **APPROVAL** of the proposed amendment to Article 7 Signs in the Development Code updating several regulations relating to temporary signage in residential and commercial zones.

ALTERNATIVE MOTION:

I move that the Planning Commission recommend **APPROVAL** of the proposed amendment to Article 7 Signs in the Development Code updating several regulations relating to temporary signage in residential and commercial zones with the following changes: (the Planning Commission will need to draft appropriate changes).

ATTACHMENTS:

1. Ordinance
2. Practice Temporary Signs – American Planning Association

ATTACHMENT 1:

**AN ORDINANCE OF THE HIGHLAND CITY COUNCIL AMENDING ARTICLE 7
SIGNS OF THE HIGHLAND CITY DEVELOPMENT CODE RELATING TO
TEMPORARY SIGNAGE IN RESIDENTIAL AND COMMERCIAL ZONES AS
SHOWN IN FILENAME TA-23-03.**

WHEREAS, all due and proper notices of public hearings and public meetings on this Ordinance held before the Highland City Planning Commission (the “Commission”) and the Highland City Council (the “City Council”) were given in the time, form, substance and manner provided by Utah Code Section 10-9a-205; and

WHEREAS, the Planning Commission held a public hearing on this Ordinance on February 28, 2023 and

WHEREAS, the City Council held a public hearing on this Ordinance on March 7, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE Highland City Council as follows:

SECTION 1: **ADOPTION** Article 7 Signs of the Highland City Development Code is hereby amended as shown on “Exhibit A” attached hereto and incorporated herein.

SECTION 2: **REPEALER CLAUSE** All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 3: **SEVERABILITY CLAUSE** Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 4: **EFFECTIVE DATE** This Ordinance shall be in full force and effect from March 7, 2023 and after the required approval and publication according to law.

PASSED AND ADOPTED by the Highland City Council, March 7, 2023

HIGHLAND CITY, UTAH

Kurt Ostler
Highland City Mayor

ATTEST:

Stephannie Cottle
Highland City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Sarah D. Petersen	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐

EXHIBIT A

3-704 General Regulations

No sign, unless specifically allowed by this code shall be erected in the City of Highland. The following articles shall serve as guidelines for any sign erected in Highland City:

1. All signs shall be constructed, mounted or attached in a safe and secure manner.
2. No sign shall be designed to emit sound, smoke or steam.
3. Signs within Commercial Zones shall be specifically regulated by that zone as required by this Section (3-707).
4. In all Zones, a church or quasi public organization may erect one sign on the premises occupied by such organization to identify the name of the organization and announce activities thereof. Signs allowed by this paragraph shall not exceed 16 square feet in area.
5. Reserved.
6. Signs may be erected in any zone advertising property for sale or lease which is located on that property. Size and location is defined by zone within this code.
7. All signs shall include wording and/or pictures that conform to high community standards. Lettering shall be sufficiently large to be read at posted maximum speeds so as not to cause a traffic hazard.
8. No commercial sign shall be allowed on any property without a current Highland City Business License.
9. Commercial signs in residential zones are prohibited except as outlined in this code.
9-a. Signs for home occupations in residential zones are prohibited.
10. Signs shall not project above the roof line of any building.
11. Relationship to Buildings: Signs shall be compatible with the predominant visual elements of the building, including but not limited to construction materials, color or other design features. Signs in commercial centers, offices and other similar facilities shall be part of a sign program and shall provide a compatible visual design common in theme to all applicable buildings and uses.
12. In commercial zones where there is more than one (1) sign, all signs shall be complementary to each other in the following ways:
 - a. Type of construction materials.
 - b. Letter size, color and style of copy.
 - c. Method used for supporting sign (wall or ground base).
 - d. Shape of signs and related components.
 - e. Method of illumination.
13. The following signs shall not be permitted within Highland City unless otherwise specifically identified in this Code:
 - a. Animated signs of any kind
 - b. Balloons or other inflatable signs
 - c. Beacons
 - d. Billboards
 - e. Chalkboards/Blackboards
 - f. Changeable copy signs of any kind
 - g. Flashing signs
 - h. Marquees (excluding government or quasi-government)
 - i. Mobile signs
 - j. Off-premise signs (~~including~~ excluding directional signages as outlined in Section 3-706)
 - k. Projecting signs
 - l. Roof signs
 - m. Rotating or revolving signs
 - n. Signs in traffic safety sight areas

- o. Signs which simulate in color or design a traffic sign or signal, or which use words, symbols or characters in such a manner to interfere with, mislead or confuse pedestrian or vehicular traffic.
- p. Snipe signs
- q. Temporary signs installed without a permit
- r. Windblown signs
- s. Vehicle signs

14. All signs must be directly related to a product, promotion, property, merchandise, sale, transaction, or use located on or available at the property associated with the sign, and any sign that promotes, advertises, or displays a product, promotion, property, merchandise, sale, transaction, or use that is not located on or available on the property associated with the sign shall be considered an off-premise sign.

15. All signs shall comply with all applicable truth in advertising laws and regulations, including but not limited to the Utah Truth in Advertising Act, Title 13, Chapter 11a, Utah Code.

3-705 Safety And Location Standards For Signs

1. No sign shall be erected in such a manner that any portion of the sign or its support will interfere with the use of any fire escape, exit, or standpipe, or obstruct any required stairway, door, ventilator, or window.
2. No sign shall be erected at any intersection improved for vehicular traffic, within a triangular area on each corner of the intersection formed by the property lines at points on each property line 40 feet from the intersection of the property lines (within the traffic safety sight area).
3. No sign shall be erected or maintained which has less horizontal or vertical clearance from any communication or electric power line than that prescribed by the laws of the state of Utah or any other applicable law, regulation or ordinance.
4. No sign shall be erected in such a manner that any portion of the sign or its support will extend over a public driveway or right-of-way. In no case shall a sign be erected in such a manner that any portion of the sign or its support will extend within or over a public or private walkway or public driveway that endangers the health, safety, or welfare of the public or exceeds the maximum height of the zone it is located in.
5. Signs and sign structures shall be designed and constructed to resist wind forces as specified in the Building Code or as otherwise determined to be safe by the Building Inspector.
6. Wall signs for shopping centers or office buildings may only be placed within a designated sign area usually designed as a band or area above the entrance or entrances for each business.
7. Signs shall be designed to provide an un-obstructed clear view of the public right-of-way to any pedestrians, bicyclists, or motor vehicles.
8. No signs shall be permitted to be erected or maintained on public property except for the following signs:
 - a. Political signs in a park strip fronting on private property, subject to the private property owner's permission;
 - b. Government and traffic safety signs exempt from the requirements of this chapter under Section 3-714(1).

3-706 Signs In Residential, ~~And~~ Agricultural, and Planned Development Zones

Commercial signs in residential zones are prohibited except as outlined in this Section. ~~In addition to any other permitted sign or signs, signs for special purposes set forth in this Section shall be permitted as provided herein:~~

- ~~1. A sign may be erected to advertise the individual sale, rent, or lease of property on which the sign is located and shall not exceed an area of six square feet or six feet in height. One additional sign~~

~~may be allowed on property with multiple frontages on a public street and shall not exceed six square feet or six feet in height.~~

- ~~2. One name plate or marker, not to exceed two square feet in area, shall be allowed for each dwelling to indicate only the occupant's name and the property address. Said name plate shall not contain an occupational designation, except that the nameplate or marker may include an occupational designation if the home occupation permit has been issued for the premises pursuant to Section 3-620.~~
- ~~3. One "No Solicitation" sign, not to exceed two square feet in area, shall be allowed in accordance with Municipal Code Section 5.16.170.~~
- ~~4. One development promotional sign may be placed on the premises of each subdivision having five or more lots or dwelling units to advertise the sale of new lots within a new subdivision. A real estate development promotional sign shall require a sign permit. Said sign may have an area of up to a maximum of thirty two (32) square feet in size, a maximum of eight (8) feet in height (12 feet maximum height including four (4) additional feet for the support structure), and a minimum setback of thirty (30) feet from an existing right-of-way. An approved development sign may continue in service, if properly maintained, from the date of the sign permit approval to the shorter of:

 - ~~a. Two years, or~~
 - ~~b. Until eighty percent (80%) of the lots offered for sale are sold one time.~~
 - ~~c. Said sign shall be removed immediately following its expiration period. Signs that are not removed per these requirements shall be in violation of this chapter and shall be subject to Section 3-713 and 3-714 of this Code.~~~~
- ~~5. If the original development sign becomes dilapidated or not maintained at a high standard it shall be required to be removed prior to the allotted time period. A new sign may be installed after obtaining an additional sign permit for the new sign which may continue for the time period which existed with the original development sign.~~
- ~~6. Each model home sign shall be allowed within the immediate front yard with a maximum size of sixteen (16) square feet with a height from ground level not to exceed 10' and shall not be located any closer to any right-of-way than its height from grade. No model home shall display banners, vendors, flags, or balloons.~~

1. Permanent Signs.

<u>Property Type</u>	<u>Allowed Sign Types</u>	<u>Maximum Size</u>	<u>Location</u>	<u># of signs</u>
<u>Single Family Lot</u>	<u>Name plate, address marker</u>	<u>2 sq ft</u>	<u>Private property/on the dwelling</u>	<u>2 per lot</u>
<u>Subdivision</u>	<u>Monument sign, sign integrated into a permitted fence structure</u>	<u>To be determined during the development review process</u>	<u>To be determined during the development review process.</u>	<u>To be determined during the development review process</u>

2. Temporary Signs. All signage listed in the table below shall require a temporary sign permit application. Temporary signs that are not permitted as defined below are specifically not permitted within Highland City.

<u>Property Type</u>	<u>Allowed Sign Types</u>	<u>Maximum Size</u>	<u>Location</u>	<u>Sign Removal</u>	<u># of signs at one time</u>
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<u>Vacant/Under construction (>1 acre)</u>	<u>Freestanding, a-frame</u>	<u>6 sq ft (max height 6')</u>	<u>-Shall not be located any closer to any ROW than its height from grade (1:1);</u> <u>-Must be out of site triangle;</u> <u>-No more than 2 signs may be located along each road frontage</u>	<u>72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.</u>	<u>1 of each sign type (freestanding & a-frame) per road frontage</u>
<u>Vacant/Under construction (1-5 acres)</u>	<u>Freestanding, a-frame</u>	<u>24 sq ft (max height 8')</u>	<u>-Shall not be located any closer to any ROW than its height from grade (1:1);</u> <u>-Must be out of site triangle;</u> <u>-No more than 2 signs may be located along each road frontage</u>	<u>72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.</u>	<u>1 of each sign type (freestanding & a-frame) per road frontage</u>
<u>Vacant/Under construction (>5 acres)</u>	<u>Freestanding, a-frame, banner</u>	<u>32 sq ft (max height 12')</u>	<u>-Shall not be located any closer to any ROW than its height from grade (1:1) with a minimum of 10' setback from ROW, unless integrated into a permitted fence structure;</u> <u>-Must be out of site triangle;</u> <u>-No more than 3 signs may be located along each road frontage</u>	<u>72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.</u>	<u>1 of each sign type (freestanding, a-frame, & banner) per road frontage</u>
<u>Single Family Lot</u>	<u>Freestanding, a-frame</u>	<u>12 sq ft (max height 6')</u>	<u>-Shall not be located any closer to any ROW than its height from grade (1:1);</u> <u>-Must be out of site triangle;</u> <u>-No more than 2 signs may be located along each road frontage</u>	<u>72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.</u>	<u>1 of each sign type (freestanding & a-frame) per road frontage</u>

<u>Multi-family Unit (>6 units/acre)</u>	<u>Freestanding, a-frame</u>	<u>6 sq ft (max height 6')</u>	<u>-Shall not be located any closer to any ROW than its height from grade (1:1);</u> <u>-Must be out of site triangle;</u> <u>-No more than 2 signs may be located along each road frontage</u>	<u>72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.</u>	<u>1 of each sign type (freestanding & a-frame) per road frontage</u>
<u>Public Property</u>	<u>Freestanding, a-frame, banner, blade sign</u>	<u>As approved by Zoning Administrator</u>	<u>As approved by Zoning Administrator</u>	<u>72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.</u>	<u>As approved by Zoning Administrator</u>
<u>Off-site directional signage</u>	<u>Freestanding or a-frame; a banner sign may only be permitted if integrated into a permitted fence structure</u>	<u>6 sq ft (max height 6')</u>	<u>-May only be located on private property;</u> <u>-Shall not be located in any ROW;</u> <u>-Must receive written permission from the private property owner</u>	<u>24 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.</u>	

a. Violation. Signs that are not removed prior to the ~~expiration-sign removal~~ date of the ~~model home~~ shall be in violation of this chapter and shall be subject to Section 3-716~~3~~ and 3-717~~4~~ of this Code.

3. Temporary on-premise signage that is less than six (6) square feet total on a single family or multi-family lot is exempt from the requirement of a sign permit and fee; however, failure to comply with above regulations shall be in violation of this chapter and shall be subject to Section 3-716 and 3-717 of this Code.

4. Temporary agricultural signs shall be exempt from the requirement of a sign permit and fee; however, failure to comply with above regulations shall be in violation of this chapter and shall be subject to Section 3-716 and 3-717 of this Code.

1. _____

2. _____ Funeral Homes. Funeral Homes adjacent to an arterial street are permitted one unlit monument sign not to exceed four feet in height and twenty square feet in size per sign. Said sign shall include a one foot base of rock or brick consistent in design and material to the building and shall be landscaped in accordance with Section 3-709.5.

3-707 Signs In Commercial Zones and Commercial Uses in Planned Development Zones

1. Permanent Signs. All signs within commercial zones and commercial uses in Planned Development zones shall require a sign permit with exception of those stated as such below. All permanent signs within commercial zones shall be installed by a licensed sign contractor according to State Law. All permanent signs shall require the approval of the Zoning Administrator. All permanent signs within commercial zones of a sign type that has not been previously approved shall require specific approval by the Highland City Planning Commission. In addition to any other permitted sign or signs, signs for special purposes set forth in this Section shall be permitted as provided herein:

~~1. Signs may be erected to advertise the individual sale, rent, or lease of property on which the sign is located. Said signs shall be limited to one sign per street face and shall not exceed an area of 12 square feet, 4 feet in height, and 5 feet from right-of-way. A freestanding sign shall not exceed 5 feet in total height including supports.~~

2.a. If group occupancies in office buildings, commercial buildings, or industrial buildings are permitted, directory signs may be erected displaying the names of the occupants of a building who are engaged in a particular profession, business, or industry. There may be one directory sign per office building either upon the exterior wall near the primary entrance or upon a monument sign. A maximum of 1% of leased/owned space or owned front wall area or 20 square feet (whichever is smaller) may be used. If there is more than one business in a building than the building front wall area must be divided for all sides of the building. Said signs are part of the conditional use permit and must be approved by Highland City prior to installation.

~~3. Signs may be erected in connection with commercial construction projects and used for the purpose of publicizing the future occupants of the building, the architects, the engineers, and contractors participating in the project and other similar information. Said signs shall not exceed thirty-two (32) square feet, 8 feet in height (12 feet maximum with support structure), and 30 feet from the right-of-way. No such free-standing sign shall exceed twelve feet in height. A sign may continue in service, if properly maintained, from the date of the sign permit approval to the shorter of:~~

~~a. Two years, or~~

~~b. Until eighty percent (80%) of the lots or spaces offered for sale are sold or leased one time.~~

~~c. The Building Inspector approves a final inspection of the construction project. Said sign shall be removed immediately following its expiration period. Signs that are not removed per these requirements shall be in violation of this chapter and shall be subject to Section 3-713 and 3-714 of this Code.~~

4.b. Directional signs may be erected for the purpose of facilitating or controlling the efficient or safe movement of pedestrians or vehicles on or into private property, provided they are located on the property to which they pertain. No such sign shall exceed four (4) square feet in area and shall not require a permit. A maximum of two directional signs may be erected upon any commercial property. Additional directional signs shall require a permit and shall not exceed six in number. Directional signs located on an individual parcel for an individual business may include a business or identifying insignia but shall not include any promotional advertising.

5.c. Gas Station Canopies. Gas stations may install signage on canopies over pump islands. Signs placed on a gas station canopy shall be limited to 3% of each side. Any signage shall be installed within the "band" around the canopy and shall not extend above or below the canopy in any manner. The number of signs that may be placed on gas station canopies shall be limited to three sides. Signs placed on a gas station canopy shall not project more than four inches.

- ~~6-d.~~ One address ~~plate or~~ marker, not to exceed two square feet in area, shall be allowed for each unit to indicate only the occupant's address and shall be included with every business. Address ~~plates or~~ markers shall not require a sign permit.
- ~~7-c.~~ Kiosk. A kiosk must be of a high quality architectural style with several prominent architectural features form adjacent buildings incorporated into its design. There shall be a maximum of four (4) kiosks incorporated into the Town Center. A kiosk may be a maximum of eight (8) feet in height and four (4) feet in width per side.
- ~~8-f.~~ Vehicle Fueling Signs
- ~~a.i.~~ Vehicle Fueling Signs is to mean a sign containing prices and grades of fuel for sale at a service station.
- ~~b.ii.~~ A vehicle fueling station may ~~may~~ have one fuel price monument sign per street frontage. The maximum sign area shall be 58 square feet on one street and 30 square feet on the other. The maximum height of the signs shall be eight feet excluding a required two-foot stone or brick base.
- ~~e.iii.~~ Vehicle fueling stations may use up to one-half (1/2) of the allowed monument sign area for a reader panel only to identify the current price of fuel being sold.
- ~~d.iv.~~ Vehicle Fueling Signs may not be located closer than 100 feet from a street intersection and shall be located outside of the clear vision triangle.
- ~~e.v.~~ Sign lighting shall be shielded in a manner that the illumination source is not visible from any contiguous lot or real property.

The following table will define differences for permanent and permitted signs within each separate commercial zone in Highland City. (Amended: 8/15/06, 4/3/07, 7/15/08)

Table 3-707A

ZONE	PO ZONE	TOWN CENTER	C-1 ZONE	CR ZONE	RP ZONE	PU ZONE	PI ZONE
Monument Sign	Height 6 ft. max. Size: 24 (business)/60 (identification) sq ft max. Frontage: 130 ft. min. Number: one sign to be a building directory for each building and one to advertise the office park in general. Material: stone, wood (accent), masonry (brick,	Height: 6 ft. max. Size: max. 42 sq. ft. per side; 2.5 ft. deep max. Frontage: Building advertised shall be within 50 feet or SR-92 or SR-74. Location: between building and adjacent highway, not in ROW. Minimum 100 feet from intersection of highways and 60' from another monument sign. Material: stone, wood (accent), architectural concrete), architecturally suited metals.	Height: 6 ft. max. Size: max 42 sq. ft. per side; 2.5 ft. deep max. Frontage: Building advertised shall be within 50 feet of SR-92 or SR-74. Location: between building and adjacent highway, not in ROW. Minimum 100 feet from intersection of	Height: 6 ft. max. Size: max 42 sq. ft. per side; 2.5 ft. deep max. Frontage: Building advertised shall be within 50 feet or SR-92 or SR-74. Location: between building and adjacent highway, not in ROW. Minimum 100 feet from intersection of highways and	Height: 6 ft. max. Size: max. 42 sq. ft. per side; 2.5 ft. deep max. Frontage: Building advertised shall be within 50 feet of SR-92 or SR-74. Location: between building and adjacent highway, not in ROW. Material: stone, wood (accent),	Not Permitted	Height: 10 ft. max. Size: Up to 250 sq. ft. 33% may be digital or electronic Frontage: 130 ft. min. Location: Min 300' from an adjacent monument sign.

	architectural concrete), architecturally suited metals		highways and 60' from another monument sign Material: stone, wood (accent), architectural concrete), architecturally suited metals.	60' from another monument sign Material: stone, wood (accent), architectural concrete), architecturally suited metals.	architectural concrete), architecturally suited metals.		
Wall Sign	See Section 3-708	See Section 3-708	See Section 3-708	See Section 3-708	See Section 3-708	See Section 3-708	See Section 3-708
Window Sign*	Not Permitted	Area: 50% of window max.	Area: 50% of window max.	Area: 50% of window max.	Not Permitted	Not Permitted	Area: 50% of window max.
Awning	Size: 50% of door/window sq ft max. see 3-711(2) Clearance: 8 ft min. above grade Location: above door or window. Material: see 3-711 (3, 4)	Size: 50% of door/window sq ft max. see 3-711(2) Clearance: 8 ft min. above grade Location: above door or window. Material: see 3-711(3, 4)	Size: 50% of door/window sq ft max. see 3-711(2) Clearance: 8 ft min. above grade Location: above door or window. Material: see 3-711(3, 4)	Size: 50% of door/window sq ft max. see 3-711(2) Clearance: 8 ft min. above grade Location: above door or window. Material: see 3-711(3, 4)	Size: 50% of door/window sq ft max. see 3-711(2) Clearance: 8 ft min. above grade Location: above door or window. Material: see 3-711(3, 4)	Not Permitted	Not Permitted
Arcade Sign	Size: 3 sq ft max. Number: one per business. Clearance: 8 ft min. Location: under arcade only and min. of one (1) foot clearance on each side. Material: professionally painted/carved	Size: 3 sq ft max. Number: one per business. Clearance: 8 ft min. Location: under arcade only and min. of one (1) foot clearance on each side. Material: professionally painted/carved wood, architecturally suited metals.	Size: 3 sq ft max. Number: one per business. Clearance: 8 ft min. Location: under arcade only and min. of one (1) foot clearance on each side. Material: professionally painted/carved	Size: 3 sq ft max. Number: one per business. Clearance: 8 ft min. Location: under arcade only and min. of one (1) foot clearance on each side. Material: professionally painted/carved	Size: 3 sq ft max. Number: one per business. Clearance: 8 ft min. Location: under arcade only and min. of one (1) foot clearance on each side. Material: professionally painted/carved	Not Permitted	Not Permitted

	wood, architecturally suited metals.		wood, architecturally suited metals.	wood, architecturally suited metals.	wood, architecturally suited metals.		
Marquee Sign	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Height: 20 ft max. Size: Up to 160 ft. (per side) 33% may be digital or electronic. Frontage: Min 300' from an adjacent marquee sign. Sign may be located adjacent to a right-of- way but may not extend over it.
Commercial Center Freestanding Sign	Not Permitted	Height: 15 ft. max., 3 ft. min. stone base Size: 243 sq ft max. per side including a min. 3' rock base Frontage: 10 ft. min. Building advertised shall be min. 100' > 1 lot deep from SR-92 or SR- 74. Location: One (1) on SR-92; one (1) on SR- 74. Minimum 400 feet from intersection of highways and 50 feet from a monument sign. Material: Natural — stone, wood, masonry, architecturally suited metals, Plastic (if	Height: 15 ft. max., 3 ft. min. stone base Size: 243 sq ft max. per side including a min. 3' rock base Frontage: 10 ft. min. Building advertised shall be min. 100' > 1 lot deep from SR-92 or SR- 74. Location: One (1) on SR-92; one (1) on	Height: 25 ft. max., 3 ft. min. stone base Size: 400 sq ft max. per side including a min. 3' rock base Frontage: 10 ft. min. Building or development advertised shall be min 100' > 1 lot deep from SR-92 or SR- 74. Location: One (1) on SR-92; one (1) on SR- 74. Minimum 300 feet from	Not Permitted	Not Permitted	Not Permitted

		inside pan-channel type lettering) same per zone	SR-74. Minimum 400 feet from intersection of highways and 50 feet from a monument sign. Material: Natural — stone, wood, masonry, architecturally suited metals, Plastic (if inside pan-channel type lettering) same per zone	intersection of highways and 50 feet from a monument sign. Material: Natural — stone, wood, masonry, architecturally suited metals, Plastic same per zone			
* In the case of multiple windows on one side of a building, a business can utilize 100% of one window and leave 100% of the other window open, making it sufficient to meet the 50% requirement. - (Ord: #2010-17, 10/05/2010)							

2. Temporary Signs. All signage listed in the table below shall require a temporary sign permit application and, if applicable, must receive written permission from the property owner of the property on which the sign is placed. Temporary signs that are not permitted as defined below are specifically not permitted within Highland City.

<u>Sign Type</u>	<u>Maximum Size</u>	<u>Location</u>	<u>Sign Removal</u>	<u># of signs at one time</u>
<u>A-frame</u>	<u>12 sq ft (max height 4')</u>	<u>-Shall not be located any closer to any ROW than its height from grade (1:1);</u> <u>-Must be out of site triangle</u>	<u>72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.</u>	<u>1 per business</u>
<u>Banner</u>	<u>24 sq ft</u>	<u>-Shall not be located any closer to any ROW than its height from grade (1:1);</u> <u>-Must be out of site triangle</u>	<u>72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.</u>	<u>1 per business</u>

<u>Freestanding</u>	<u>24 sq ft</u>	<u>-Shall not be located any closer to any ROW than its height from grade (1:1);</u> <u>-Must be out of site triangle</u>	<u>72 hours after the use/promotion/sale relating to the sign is no longer applicable as interpreted by the Zoning Administrator.</u>	<u>1 per business</u>
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3-712 (Reserved) Temporary Signs

This Section shall require a temporary sign permit application and provides for commercial and retail establishments an opportunity to temporarily advertise on special occasions only. A temporary sign shall not be permitted to advertise specific items (ex: roses, beer, gas, soda, etc.). A person or business applying for a temporary sign, other than a temporary garage sale or yard sale sign for the property within a residential or agricultural zone, must possess a current business license within Highland City.

Temporary signs that are not permitted as defined in this Section are specifically not permitted within Highland City. Temporary signs that may be applied for are used exclusively for:

1. ~~Temporary Grand Opening Signs.~~ A person may obtain a permit for a Temporary grand opening sign upon approval of the Zoning Administrator for a specific period of time not to exceed 60 days. It shall be the responsibility of the applicant to first obtain a permit for such a sign and to remove the same sign after expiration of the term of the permit. Temporary Grand Opening signs shall only be available one time per business or change in ownership.

2. ~~Temporary Promotional Signs.~~ Temporary promotional signs may be permitted upon approval of the Zoning Administrator for a specific period of time not to exceed six (6) days (Monday B Saturday). Temporary promotional signs shall only be placed in a location specified by the City Council (ex: part of the allotted window front, directly in front of leased space and within 10 feet of the entrance, etc.). It shall be the responsibility of the applicant to first obtain a permit for such a sign and to remove the same sign after expiration of the term of the permit. Temporary signs shall only be available B five (5) times per year per business. Unless otherwise specified within this code only the following list of temporary signs shall be permitted and all others shall be specifically not permitted:

a. ~~Banner Signs.~~ Banner signs not to exceed twenty four (24) square feet in size. Banner signs shall only be permitted to be placed within the approved banner supports or on the building within the leased space of the business of which the sign is associated as designated by the City Council. A banner sign may not be attached in any way to a significant supporting structure (columns), significant architectural feature, or above an eave, parapet or roof line of a building.

b. ~~A frame Signs.~~ A frame signs must be placed within fifteen (15) feet from the primary entrance for the business advertising on it. A frame signs may not exceed 48" in height and 36" in width. A frame signs may not be placed in a manner that would impede pedestrian or vehicular access.

3. ~~Temporary Agricultural Signs:~~ designated to be displayed no longer than forty five days.

a. ~~A temporary agricultural sign shall be no larger in area than sixteen square feet and stand no higher than ten feet from the ground.~~

b. ~~These signs shall not be placed within any road right of way, shall not obstruct the view of vehicular traffic or pedestrians, shall not be placed on any traffic regulatory sign, and shall not be lighted.~~

c. ~~These signs shall advertise only produce, fruit, livestock or other crops produced in Highland City.~~

d. ~~Temporary agricultural signs shall be exempt from requirement of sign permit and fee; however, failure to comply with above regulations shall constitute littering, punishable as a misdemeanor. All nonconforming signs shall be removed at the expense of the person or persons responsible for their~~

erection. If no person can be found it shall be assumed the person at the location advertised shall be responsible.

4. ~~One temporary "A frame" sign not to exceed 32" x 48" may be permitted for a model home. The sign shall be placed behind the sidewalk on model home private property and only displayed while the realtor of the model home is present to let passers by know they are open.~~

5. ~~Temporary Garage Sale or Yard Sale Signs. (Amended 11/15/05)~~

a. ~~Garage sale or yard sale signs shall not exceed six (6) square feet in area and shall stand no higher than six (6) feet from the ground, shall not be lighted, shall not be placed in any road right of way, shall not obstruct view of vehicular traffic or pedestrians, or shall not be placed on any traffic sign or utility pole.~~

b. ~~Garage sale or yard sale signs shall only be displayed for a period not to exceed 48 hours.~~

c. ~~Garage sale signs shall require a temporary sign permit. (Amended 11/15/05)~~

d. ~~Temporary garage sale or yard sale sign permits shall be available five (5) times per year.~~

e. ~~Garage or yard sale signs shall only be placed on property where the garage sale is occurring.~~

f. ~~Off site directional signs for garage or yard sales are specifically prohibited with exception to specific "community announcement" locations as approved by the Highland City Council.~~

~~(Amended 11/15/05, 4/3/07)~~

HISTORY

~~Amended by Ord. Q 2013 15 on 11/19/2013~~

~~Amended by Ord. Q 2017 09 on 5/2/2017~~

~~Amended by Ord. Q 2020 30 on 9/15/2020~~

3-714 Exceptions

1. This Chapter shall have no application to signs used exclusively for:

- a. The display of official notices used by any court or public body or official, or the posting of notices by any public officer in the performance of a duty, or by any person giving legal notice.
- b. Directional, warning, or information signs of a public nature, directed and maintained by a public authority or public utility.
- c. Any sign of a non-commercial nature when used to protect the health, safety or welfare of the public.
- d. Any flag, pennant, or insignia of any nation, state, city, or other political subdivision.
- e. Any sign legally mandated by state, federal, or municipal law.
- f. Any temporary sign of a non-commercial nature which is displayed for addressing community events or community groups for the purpose of announcing special events which may benefit the community as a whole. Temporary community event signs shall only be placed in areas designated by the city for such purposes and be approved by the City Zoning Administrator. These signs will be identified by an attached label indicating when the sign shall be removed.
- g. Monument signs may be installed within public property identifying public points of interest (parks, library, City Hall, etc.) by Highland City.

2. Political Signs shall be permitted as follows:

- a. Political signs are allowed in all zoning districts.
- b. The maximum sign area for any political sign shall be thirty-two (32) square feet and the maximum height shall be eight (8) feet.
- c. Political signs are not permitted on private property or in a park strip fronting on private property without the private property owner's permission. Signs may be taken down by the private property owner.

~~e.d. Political signs are not permitted on public property or in a park strip fronting on public property.~~

~~d.c.~~ Political signs shall not be permitted in the clear vision triangle.

3-718 Sign Definitions

The following list of definitions shall define sign types and sign locations. The following definitions shall only apply to items pertaining to signs and specifically to this Section.

1. Sign. Means any device, notice or medium, including its structure and other components, which is visible from any street or from any site other than the one on which it is located and which is used or is capable of being used to attract attention for advertising, identification, or information purposes.
- ~~4.~~2. Sign, Address Marker. A sign that identifies the address of the property on which the sign is located. Address markers shall not contain or display information other than the address of the property.
- ~~2.~~3. Sign, Agricultural. Means a sign placed to advertise produce, fruit, livestock or other crops grown in Highland City, Utah. (Ord. 1981-8 § Ord. 1980-9 §1).
- ~~3.~~4. Sign, A-frame signs. means a sign which is self-supporting, easily moved, and not permanently attached to the ground. It is shaped similar to the graphic shown to the right with a maximum dimension of 4'x3' when folded (see Fig. 3-718.1).

Figure 3-718.1



- ~~4.~~5. Sign, Animated signs of any kind. An animated sign is a sign that is usually in the shape of a known object and designed to move in some fashion, to wave, to rotate, and depicts action through a change of lighting or other effect.
- ~~5.~~6. Sign, Arcade. An arcade sign is a sign that hangs underneath an arcade at a pedestrian scale. An arcade sign is positioned perpendicular to the right-of-way becoming visible to pedestrians walking along a sidewalk or designated walkway (see Fig. 3-718.2).

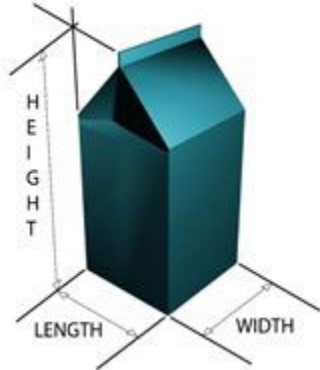
Figure 3-718.2



- ~~6.~~7. Sign, Area. The area of a sign that is used for display purposes, excluding the minimum frame and supports. The sign area includes the entire area within any type of perimeter or border which

may enclose the outer limits of any writing, representation, emblem, logo, figure or character. The area of the sign having no perimeter or border shall be computed by enclosing the entire area within a parallelogram, triangle or circle. (Where the sign has two or more faces, the area of the third face and all additional faces shall be included in determining the area of the sign). In computing sign area only one side of back to back or double-face sign covering the same subject shall be computed when the two faces diverge by an angle of not more than 30 degrees. For signs that do not have a frame or a separate background, sign area shall be computed on the basis of the least rectangle, triangle or circle large enough to frame the display (see Fig. 3-718.3).

Figure 3-718.3



- ~~7.8.~~ Sign, Awning. An awning sign is a non-illuminated sign which is usually painted or screen printed onto the surface of an awning made of flexible material and which does not extend vertically or horizontally beyond the limits of the awning. A sign which is painted on, attached to, or constructed in or on the surface of an awning. (see Fig. 3-718.4)
- ~~8.9.~~ Sign, Backlit Awning. Technically, a backlit awning is a piece of reinforced polyvinyl chloride fabric stretched over a canopy-type frame and backlit from the interior by fluorescent or high-output lighting (see Fig. 3-715.4).

Figure 3-718.4



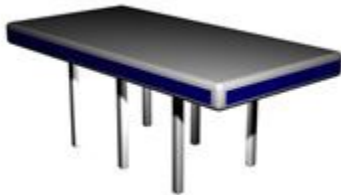
- ~~9.10.~~ Sign, Balloons or other inflatable signs. An inflatable sign is a balloon or any object of any size required to be blown up or have air pass through it to advertise or attract attention to a specific place.
- ~~10.11.~~ Sign, Banner. A banner sign is made of lightweight material such as cloth, paper or flexible plastic and is usually not enclosed in a rigid frame. A sign which is composed of lightweight material, including nylon, vinyl, cloth, canvas or similar fabric, and which is attached to a rod at the top and secured at the bottom (see Fig. 3-718.5).

Figure 3-718.5



- ~~11~~.12. Sign, Beacons. A beacon is a light or light device which revolves, rotates, or stands still and illuminates the night sky or flashes at ground level to direct traffic to its location.
- ~~12~~.13. Sign, Billboards. Billboard signs can be supported by tall poles which enable the sign to be seen from a distance. These are known as “high-rise” signs. Any sign that is standing on or erected into the ground. Such signs are usually, but not necessarily, supported from the ground by one or more exposed poles or similar uprights, with or without braces. Billboards are typically but not necessarily self supporting. Billboards are not permitted within Highland City.
14. Sign, Blade. A temporary sign constructed of cloth, canvas, plastic, fabric, or similar light-weight, nonrigid material and supported by a single vertical pole mounted into the ground or on a portable structure. Also known as feather signs.
- ~~13~~.15. Sign, Canopy. A canopy is a rigid, roof-like structure which is entirely supported from a building, which may be below the level of the main building roof line or which may provide an enclosed bulkhead thereto, and projects beyond the building face to provide weather protection. A canopy sign is a sign which is painted on, attached to, or constructed in or on the face or structural element of a canopy (see Fig. 3-718.6).

Figure 3-718.6



- ~~14~~.16. Sign, Chalkboards/Blackboards. Chalkboards and blackboards are typically used by food services to advertise daily specials. They are either mounted on a wall or supported as an A-frame type structure.
- ~~15~~.17. Sign, Changeable copy. A sign that contains lettering which can be changed manually through the use of detachable letters, characters, numbers, or graphics but does not include a billboard. Also, a sign that contains lettering which can be changed automatically by electronic switching of lamps or illuminated tubes. Said sign is a freestanding or wall sign, or whether said sign projects from and is supported by a building (see Fig. 3-718.7).

Figure 3-718.7



- ~~16~~18. Sign, Copy. Means the letters, characters, numbers or graphics which make up the message on a sign, but does not include background color.
- ~~17~~19. Sign, Dilapidated. Any sign that has been weathered, is illegible, not maintained, the structural integrity is lost, is unattractive due to lack of maintenance, has been abandoned, or has fallen down.
- ~~18~~20. Sign, Electric. A sign which has any portion thereof lighted by artificial light in any manner or which rotates or otherwise moves. An electronic message center is a sign on which differing copy is shown on the same lamp bank, i.e., an electronic or electrically controlled device which displays the time and temperature or other messages.
- ~~19~~21. Sign, Entrance or Exit. Means one entrance or exit sign placed at each driveway entering or leaving the premises.
- ~~20~~22. Sign, Freestanding. See Billboards. Any sign that is standing on or erected into the ground and exposes its supporting structure(s). Such signs are usually, but not necessarily, supported from the ground by one or more poles, braces, cables or similar uprights which are typically exposed. Any sign which is entirely self-supporting and is temporarily attached to the ground (see Fig. 3-718.8).

Figure 3-718.8



- ~~21~~23. Sign, Flashing. Means any sign which is intermittently on and off or which revolves in a manner to create the illusion of being off and on; excepting, however, time and temperature signs, school flashing signs, revolving freestanding signs and electronic signs.
- ~~22~~24. Sign, Guide. Means signs and sign structures which serve as directional guides to recognize areas of regional importance and patronage. To clarify and define such areas of regional importance and patronage four types of areas are intended to be included:
1. Recreational and entertainment centers of recognized regional significance;
 2. Any historical landmark;
 3. Parks, schools, or churches;
 4. Public safety facilities.
- ~~23~~25. Sign, Height. As applied to a sign, means the vertical distance from grade which exists or existed immediately prior to the installation of a sign to the furthest point, object, or structure at the top of a sign. See fig. 3.711.3 Sign Area.
- ~~24~~26. Sign, Identification. A sign giving the name, address number and location of the occupants of a building or buildings, and may also include a map or plan to locate such buildings, if it is a general directory sign.
- ~~25~~27. Sign, Illuminated. A sign which has any portion thereof lighted by artificial light, including floodlighting or reflecting lighting of any kind.

~~26~~28. Sign, Indirectly illuminated. Any sign which is partially or completely illuminated at any time by a light source which is so shielded as to not be visible at eye level.

~~27~~29. Sign, Kiosk. Means a freestanding structure with one or more sides to be used for advertising or as a directory. A kiosk may be approved by the Planning Commission only within the Town Center. (see Fig. 3-718.9).

Figure 3-718.9



~~28~~30. Sign, Logo. Means a symbolic representation not including any words, names, or numbers unless part of a registered trademark which is used exclusively to simplify advertising of a product, business, service, or activity, and which contains no additional identification, information or message.

~~29~~31. Sign, Marquee. Marquee signs are signs which form a part of a marquee or canopy and includes any flat roofed structure attached to and supported by a building and projecting over public property. A light detachable structure similar to an awning, which projects over an entrance, and is supported entirely or partially from the ground.

~~30~~32. Sign, Mobile. A sign that can be moved easily from one place to another and any sign mounted on a trailer or moveable wheels. Mobile signs include A-frame signs, automobiles, trailers, boats, small freestanding signs and any other object that contains advertising upon it which can be easily moved.

~~31~~33. Sign, Monument. Signs that are permanently mounted onto the ground and do not show the supporting structure(s). Monument signs must contain a minimum of one (1) foot of masonry above grade and attached to the bottom of the sign to screen any supporting structure (see Fig. 3-718.10).

Figure 3-718.10



- ~~32.34.~~ Sign, Name Plates. Means signs identifying the name, occupation and/or professions of the occupant of the premises.
- ~~33.35.~~ Sign, Non-accessory. A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than on the premises, and only incidentally on the premises, if at all.
- ~~34.36.~~ Sign, Obsolete. Means a commercial sign for a business or activity which is no longer operated on the premises. All obsolete signs shall be removed immediately upon the business owner vacating the premises. The property owner may be responsible for immediate removal of any obsolete signs if the business owner did not remove them after vacating the space.
- ~~35.37.~~ Sign, Off-premise or Billboard signs. Signs advertising, displaying, or promoting a product, promotion, property, merchandise, sale, transaction, or use that is not located on or available at the property associated with the sign ~~merchandise or services other than those available for sale on the premises with which the sign is located~~ which may or may not expose the sign's supporting structure. If the property is leased, then an off-site sign would be a sign which is located upon the immediate frontage or store front area which is different than the advertiser.
- ~~36.38.~~ Sign, Pedestrian Entrance. Means a door or entry located on the first story of a building used by the public to enter the premises, but does not include a door used only by staff, a door used only as an exit from the premises, or a door to a vehicular parking garage or loading bay.
- ~~37.39.~~ Sign, Permanent. Means any wall sign or monument sign within Highland City.
- ~~38.40.~~ Sign, Permit. A filed application with the City including authorization in writing issued by the Director pursuant to this by-law.
- ~~39.41.~~ Sign, Political. A sign to the expression or communication of constitutionally protected speech, other than commercial speech, and excluding any permitted billboard.
- ~~40.42.~~ Sign, Premises or Business. Means a sign which directs attention to a business commodity, service or other activity which is sold, offered or conducted on the premises upon which the sign is located or to which it is affixed.
- ~~41.43.~~ Sign, Projecting. Any sign attached to a building or other structure and extending in whole or in part perpendicular beyond any wall of the building or structure. A projecting sign is a sign which is attached to, and projects from, a structure or building face (see Fig. 3-718.11).

Figure 3-718.11



- ~~42.44.~~ Sign, Public Interest. A sign on private property that displays information pertinent to the safety or legal responsibilities of the general public such as “Warning” and “No Trespassing” signs.
- ~~43.45.~~ Sign, Readerboard. A sign on which copy can be changed manually. It usually consists of a panel on which individual letters or pictorials are mounted. See “Changeable Copy.”
- ~~44.46.~~ Sign, Real Estate. A sign that is used to offer for sale, lease, or rent the premises upon which such sign is placed.

- ~~45.47.~~ Sign, Roof. Any sign which is erected, constructed, and maintained upon or over the roof or over a parapet of any building or structure. Any sign that is mounted onto the ground but has the supports passing through any portion of the roof of a building or structure shall be considered a roof sign. Any sign which extends above any portion of the eave or parapet of a building.
- ~~46.48.~~ Sign, Rotating or revolving signs. A sign all or a portion of which, that rotates or revolves around an axis in whole or in part or includes visible moving physical elements to direct attention to its location excepting, however, time and temperature signs.
- ~~47.49.~~ Sign, Signs in traffic safety sight areas. Signs are not permitted within a traffic safety sight area as shown to the right. A traffic safety sight area is an area at a corner of a street. The area is within a triangle measured from a point where the property line would meet (see figure to the right) and then measured 40 feet back (see Fig. 3-718.12).

Figure 3-718.12



- ~~48.50.~~ Sign, Snipe. Means any sign of a material such as cardboard, paper, pressed wood, plastic or metal which is attached to a fence, window, tree, utility pole, portable stand or temporary structure, or any sign which is not securely fastened to a building or firmly anchored to the ground, excluding permitted political signs or real estate signs.
- ~~49.51.~~ Sign, Temporary. A sign which is not permanently mounted to a building, foundation, or ground support which has not received approval by the Planning Commission or City Zoning Administrator as a permanent sign. A temporary sign is any sign which is not a monument or wall sign.
- ~~50.52.~~ Sign, Temporary Garage or Yard Sale. Means a sign placed to advertise a garage or yard sale of items owned and being sold by the family or neighborhood at the place shown on said sign. Does not include any sign that indicates the presence or operation a home occupation or other commercial activity

Sign, Wall. Any sign posted or painted upon, suspended from or otherwise affixed to an exterior wall, fascia, canopy, or marquee with the face of the sign approximately parallel with the wall or fascia to which it is attached (see Fig. 3-718.13).

Figure 3-718.13



- ~~51.~~53. Sign, Windblown signs. A sign which is animated by the wind and is not considered to be a flag which represents a nation, state, community or religion or other personal belief.
- ~~52.~~54. Sign, Window. Means a sign placed in or upon any window of any structure utilized for commercial purposes to advertise business or products which blocks view through transparent area of window (see Fig. 3-718.14).

Figure 3-718.14

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PRACTICE TEMPORARY SIGNS



Temporary Sign Regulations in a Post-Reed America

By Wendy E. Moeller, AICP, and Alan Weinstein

Any community planner who has had the responsibility of administering and enforcing a zoning code has likely had to deal with the often complex issue of temporary signs—those signs that seemingly pop up overnight and proliferate if unchecked.

These same planners may understand the need for the signage to advertise local events, business activities, elections, and the like, but they are also charged with regulating the temporary signs to prevent their excessive use, often to preserve community character.

According to a recent survey of local governments, more than 80 percent of respondents stated that staff enforcement of their temporary sign regulations was one of their community's biggest issues, and almost a third responded that content neutrality—the regulation of signs without consideration of the content of the sign message—was an ongoing issue (Moeller 2015). A more in-depth review of the responses showed that even those communities that did not feel content neutrality was an issue had some level of content regulation in their existing sign regulations, most often the regulation of real estate or election signs. This is particularly noteworthy, given that the

regulation of a sign's content was the subject of the U.S. Supreme Court's June 2015 ruling in *Reed v. Town of Gilbert, Arizona*, a case with a number of ramifications for sign regulations across the country.

This article summarizes the ruling in *Reed* and introduces how it impacts a core aspect of temporary sign regulations, which is how we define signs. This is followed by the best practices communities can utilize to help regulate temporary signs in a post-*Reed* America.

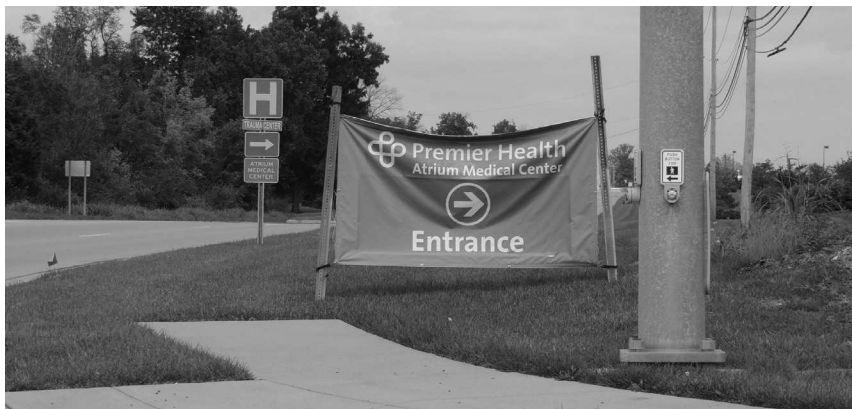
REED V. TOWN OF GILBERT, ARIZONA

The U.S. Supreme Court's decision in *Reed v. Town of Gilbert* on June 18, 2015, is, undoubtedly, the most definitive and far-reaching statement that the Court has ever made regarding the day-to-day regulation of signs. While the sign code provisions challenged in *Reed* involved only the regulation of temporary noncommercial signs, the Court's 6–3 majority

decision, written by Justice Clarence Thomas, likely applies to the regulation of permanent signs as well as temporary signs, business signs as well as residential signs, and possibly, on-site versus off-site signs.

The rules that Justice Thomas announced in *Reed* could not be more straightforward. A sign regulation that “on its face” considers the message on a sign to determine how it will be regulated is content-based. Justice Thomas emphasized that if a sign regulation is content based “on its face” it does not matter that the government did not intend to restrict speech or to favor some category of speech for benign reasons. He wrote: “In other words, an innocuous justification cannot transform a facially content-based law into one that is content-neutral.” Further, a sign regulation that is facially content neutral is also a content-based regulation if it is justified by—or that has a purpose related to—the message on a sign. For example, a code provision that allows more lawn signs between mid-August and mid-November would be facially content neutral but might be challenged as being justified by or have a purpose related to allowing “election campaign” messages.

Whether content-based “on its face” or content neutral but justified in relation to content, Justice Thomas specified that the regulation is presumed to be unconstitutional and will be invalidated unless the government can prove that the regulation is narrowly tailored to serve a compelling governmental interest. This is known as the “strict scrutiny” test and few, if any, regulations survive strict scrutiny. This may be particularly true in regard to sign regulations, given that a number of federal courts have previously ruled that aesthetics and traffic safety, the “normal” governmental



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Temporary signs are an important tool for businesses and residential uses alike, so it is important to have reasonable rules for temporary signs in your land-use regulations.



Wendy E. Moeller

interests supporting sign regulations, are not “compelling interests.”

Justice Thomas’s opinion calls into question almost every sign code in this country: Few, if any, codes have no content-based provisions under the rules announced in *Reed*. For example, almost all codes contain content-based exemptions from permit requirements for house nameplates, real estate signs, political or election signs, garage sale signs, “holiday displays,” etc. Almost all codes also categorize temporary signs by content, and then regulate them differently. For example, a real estate sign can be bigger and remain longer than a garage sale sign. Or the code allows the display of more election signs than “ideological” or “personal” signs, but the election signs must be removed by a certain number of days after the election, while the personal or ideological signs can remain indefinitely.

Many sign codes also have content-based provisions for permanent signs. Because the *Reed* rules consider “speaker-based” provisions to be content based, differing treatment of signs for “educational uses” versus “institutional uses” versus “religious institutions” could be subject to strict scrutiny. The strict scrutiny test could also apply for differing treatment of signs for “gas stations” versus “banks” versus “movie theaters.”

Reed does not, however, cast doubt on the content-neutral “time, place, or manner” regulations that are the mainstay of almost all sign codes, provided they are not justified by—and do not have a purpose related to—the

Justice Thomas’s opinion calls into question almost every sign code in this country: Few, if any, codes have no content-based provisions under the rules announced in *Reed*.

message on the sign. Justice Thomas acknowledged that point, noting that the code at issue in *Reed* “regulates many aspects of signs that have nothing to do with a sign’s message: size, building materials, lighting, moving parts and portability.” Justice Alito’s concurring opinion, joined by Justices Kennedy and Sotomayor, went further.

While disclaiming he was providing “anything like a comprehensive list,” Justice Alito noted “some rules that would not be content based.” These included rules regulating the size and location of signs, including distinguishing between building and freestanding signs; “distinguishing between lighted and unlighted signs”; “distinguishing between signs



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with fixed messages and electronic signs with messages that change”; distinguishing “between the placement of signs on private and public property” and “between the placement of signs on commercial and residential property”; and rules “restricting the total number of signs allowed per mile of roadway.”

But Justice Alito also approved of two rules that seem at odds with Justice Thomas’s “on its face” language. Alito claimed that rules “distinguishing between on-premises and off-premises signs” and rules “imposing time restrictions on signs advertising a one-time event” would be content neutral. But rules regarding “signs advertising a one-time event” clearly are facially content based, as Justice Kagan noted in her opinion concurring in the judgment, and the same claim could be made regarding the on-site/off-site distinction. Further, neither Justice Thomas nor Justice Alito discussed how courts should treat codes that distinguish between commercial and noncommercial signs, a point raised by Justice Breyer in his concurring opinion.

In fact, the lower federal courts are already dealing with claims that codes that differentiate between commercial and noncommercial signs or that regulate on-site and off-site signs differently are content based and

subject to strict scrutiny. To date, only one federal district court has accepted the claim that the on-site/off-site distinction is content based under *Reed*, with several other courts rejecting that claim. No decision to date has extended the *Reed* decision to include the regulatory distinction between signs bearing commercial versus noncommercial messages.

Keep in mind, however, that even content-neutral “time, place, or manner” sign regulations are subject to intermediate judicial scrutiny rather than the deferential “rational basis” scrutiny applied to regulations that do not implicate constitutional rights such as freedom of expression or religion. Intermediate scrutiny requires that a government demonstrate that a sign regulation is narrowly tailored to serve a substantial government interest and leaves “ample alternative avenues of communication.” Because intermediate scrutiny requires only a “substantial,” rather than a “compelling,” government interest, courts are more likely to find that aesthetics and traffic safety meet that standard. That said, courts have struck down a number of content-neutral sign code provisions because the regulations were not “narrowly tailored” to achieve their claimed aesthetic or safety goals.

REGULATORY BEST PRACTICES

There are a number of comprehensive sign regulations that have been crafted over the years that can serve as a good starting point when considering an update to your own sign regulations. In this post-*Reed* time, many communities are rethinking their approach to signs, and over the course of the next year, we are likely to see new models that better respond to the direction of the Supreme Court. The problem with temporary signs is they are a small, but integral, part of overall sign regulations. This, along with the fact that there are variable state rules related to certain temporary signs (e.g., election signs), makes it difficult to create a model temporary sign code that can stand on its own and be seamlessly added to a community’s sign regulation. However, there are a number of general best practices for the regulation of temporary signs in light of *Reed*.

Distinguish Between Temporary Sign and Temporary Message

Few sign regulations make a clear distinction between a temporary message and a temporary sign. A temporary sign is where the entire sign structure is either fully portable or



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🕒 Communities can still regulate the types of signs allowed (e.g., A-frame signs or blade signs), setbacks, size, and other structure type requirements.

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is not intended to be permanently installed. A temporary message is where the sign structure itself is permanent but the message may be temporary. The most common types of temporary messages we see in communities are electronic message centers and manual reader boards. In such cases, the sign should be regulated as a permanent structure but the

community might control how often the message may change. While these examples seem straightforward, the line between the two can be a bit blurred. An example of this situation is when business owners or communities hang banners or other signs on light poles or similar structures. To address this issue, the community should consider the supporting structure and whether it is designed in a manner to accommodate the message, even though it may be changed out through the year. A community’s banner signs attached to light poles are an excellent example where the light poles are designed with permanent fixtures on which the banners are hung. In these instances, the community should regulate the light pole, and any related fixtures that support the message, as a permanent structure with allowable temporary messages, rather than regulating it as temporary sign.

Think of the Bigger Picture

Reed may have related to an issue with a temporary sign, but the ruling has implications for all sign regulations. Generally speaking, it is impractical to completely separate out all the rules that apply to temporary signs as a distinct set of regulations. Consequently, when you consider overhauling how you regulate temporary signs, it is important to step back and take a comprehensive look at the overall sign code. First, given the implications of *Reed*, communities should take a look at all of their sign regulations to see where they may be regulating content, and consider if they are making a large number of exemptions to accommodate various types of signs. Second, one of the major driving forces of your sign regulations should be the purpose statement that sets clear direction for how and why a community regulates signs. This purpose statement needs to apply to all the different sign types, not just to temporary signs. Furthermore, your community might consider that if one of the purposes of the sign regulations is to promote businesses but limit temporary signs, then perhaps a better approach is to consider allowing more temporary messages on a permanent sign. Finally, evaluating your sign regulations as a whole will help you identify where you might have conflicts, such as allowing for larger temporary signs over permanent signs or making various exceptions based on content or permanency.

Consider the Sign’s Location

There is a long list of temporary sign types,

GLOSSARY

The following is a sampling of some of the most common content-neutral temporary sign types.

A-Frame Signs (aka Sandwich Board Signs or Sidewalk Signs)

A freestanding sign ordinarily in the shape of an “A” or some variation thereof, which is readily moveable and not permanently attached to the ground or any structure. See also the definition of *T-frame signs*.

Air-Activated Graphics

A sign, all or any part of, which is designed to be moved by action of forced air so as to make the sign appear to be animated or otherwise have motion.

Balloon Signs (aka Inflatable Devices)

A sign that is an air-inflated object, which may be of various shapes, made of flexible fabric, resting on the ground or a structure and equipped with a portable blower motor that provides a constant flow of air into the device. Balloon signs are restrained, attached, or held in place by a cord, rope, cable, or similar method. See also the definition for air-activated graphics.

Banner Signs

A temporary sign composed of cloth, canvas, plastic, fabric, or similar lightweight, nonrigid material that can be mounted to a structure with cord, rope, cable, or a similar method or that may be supported by stakes in the ground.

Blade Sign (aka Feather Signs, Teardrop Signs, and Flag Signs)

A temporary sign constructed of cloth, canvas, plastic fabric, or similar lightweight, nonrigid material and supported by a single vertical pole mounted into the ground or on a portable structure.

Freestanding/Yard Signs

Any permanent or temporary sign placed on the ground or attached to a supporting structure, posts, or poles, that is not attached to any building.

Pennants

A triangular or irregular piece of fabric or other material, whether or not containing a message of any kind, commonly attached by strings or strands, or supported on small poles, intended to flap in the wind.

People Signs (aka Human Mascots, Sign Spinners, and Human Signs)

A person, live or simulated, in the public right-of-way who is attired or decorated with insignia, images, costumes, masks, or other symbols that display commercial messages with the purpose of drawing attention to or advertising for an on-premise activity. Such person may or may not be holding a sign. [Note: There is significant debate about whether a people sign is really a sign or whether

they can be regulated by zoning, especially in light of *Reed*. Many communities still regulate these signs, but this requires special consideration.]

Portable Message Center Signs

A sign not permanently affixed to the ground, building, or other structure, which may be moved from place to place, including, but not limited to, signs designed to be transported by means of wheels. Such signs may include changeable copy.

Snipe Signs (aka Bandit Signs)

A temporary sign illegally tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, fences, or other objects.

T-Frame Signs

A freestanding sign ordinarily in the shape of an upside down “T” or some variation thereof, which is readily moveable and not permanently attached to the ground or any structure. See also the definition for A-frame signs.

Vehicle Signs

Any sign permanently or temporarily attached to or placed on a vehicle or trailer in any manner so that the sign is used primarily as a stationary sign.

and each community has its own preferences for what types of signs it wants to allow. When determining what sign types to allow in your community, be sure to consider the character of the area or zoning district where you are allowing the signs. In downtown and pedestrian-focused areas, banners and sidewalk signs are far more prevalent; larger temporary signs, such as yard signs, blade signs, and banners, are more common along high-traffic areas and in more suburban or rural areas. When it comes to historic districts or other unique areas, it is not that uncommon to see a complete prohibi-

tion of temporary signs other than those that might be posted in a window or a banner attached to a building. With an increasing focus on regulating the character of land use, such as in form-based codes, there is more opportunity to write sign regulations specific to the form of development.

Specify Temporary Sign Allowances

It is not realistic or advisable to recommend that a community simply allow “X” amount of sign area and let a property owner determine how much of that area should be utilized for

permanent or temporary signs. It may look like the easiest of solutions, but it ends up being an administrative nightmare for staff. Every time the owner increases or decreases the amount of temporary signs, there is a possibility of creating nonconforming sign issues or, more likely, eliminates all possibility of temporary signs if the owner spends the allowance completely on permanent signs. The latter issue becomes a problem when there is a legitimate need for a temporary sign in a situation where, for example, the property is for sale. Most communities do not want to take an ex-

treme approach of even appearing to prohibit all temporary signs, which they would have to do in the case of a business owner using their full sign allocation for permanent signs. A more reasonable solution is to establish a certain sign area allowance for permanent signs and a separate allowance for temporary signs. The community can then specify what types and numbers of signs are allowed, based on structure type and not content, along with any specific regulations for the individual sign types.

As far as an allowance for temporary signs goes, this is going to vary based on the individual vision and goals of the community. Some communities may want to be very permissive in the amount of signs but hold strict to the types of signs allowed, while others might restrict the amount of sign area permitted but allow for the signs to be posted for longer periods of time. One approach to consider is allowing a limited amount of temporary commercial signage that could be allowed year round but strictly control the permissible types of signs (e.g., banners and yard signs). This allowance will accommodate signs used for real estate, garage sales, and other commercial activities that may be necessary for longer stretches of time or that are often exempted because of their prevalence. Keep in mind, the allowances and types of signs may vary based on the zoning district or neighborhood. This provision could then be supplemented by allowing for some additional temporary signage for a specified number of

days and a set number of occurrences per year. This supplemental signage might provide for other types of temporary signage (e.g., balloon signs, portable signs, additional yard signs, etc.), but the time limits will keep them from becoming permanent signs. In all instances, the community should provide basic requirements for each type of sign, including setbacks, maximum heights, maximum numbers, and separation distances.

Consider Allowing Off-Premise Temporary Signs

Many localities prohibit all off-premise signs. These prohibitions are typically related to a desire to prohibit or at least limit billboard signs. The problem with such prohibitions is that temporary signs often contain off-premise content, such as the advertisement of community events or even certain directional signs. It should be clear at this point that regulating a sign by its content (e.g., real estate signs, directional signs, etc.) is problematic because of *Reed*, but, as noted in the discussion above, there is still a question of whether the ruling also prevents communities from making the distinction between on-premise and off-premise signs.

Consequently, communities are starting to consider whether it is worth the risk to make such a distinction. In order to be as content neutral as possible, some localities are focusing more on the type and size of sign to control

where and how a billboard-style sign might be allowed. Ultimately, a community should consider how people are using temporary signs and determine whether it is appropriate or not to make an on- versus off-premise distinction, especially related to temporary signs. As with any regulation, there is a balancing act of the risk of being challenged versus the benefit of the requirement.

Leave Room for Interpretation

If someone proposes a new type of sign that your regulations may not clearly address, incorporate some language that allows staff to determine if the new sign type is similar in nature to a sign you do regulate, and treat the new sign in the same manner. An example of this is treating a temporary adhesive wall sign in the same manner as a banner that can be attached to a facade. If that doesn't address the sign, the community might have to consider a text amendment to incorporate the new sign type specifically.

ADMINISTRATIVE BEST PRACTICES

The administration of sign regulations is quite often the bane of a planner's existence. A lot of the frustration is often focused on temporary signs and whether to require a permit, establish deadlines, and then enforce those deadlines and any sign-specific regulations. As mentioned earlier, administration and enforcement continues to be a major issue for the vast majority of communities surveyed as part of the research into these best practices. To combat these issues, communities are beginning to take a multipronged approach that focuses on the use of technology, ease of enforcement, and public outreach.

Take Advantage of Technology

Communities can use readily available software to help aid permitting and enforcement of temporary sign regulations, especially deadlines for sign removal. For smaller communities, this might mean using online or free calendar applications that will alert staff to when they need to inspect to determine if a sign has been removed. For larger communities, there are numerous permitting software packages that accommodate online permitting applications that require little to no administrative time. These same packages can also alert staff to specific issues, such as deadlines or application requests that exceed signage allowances for a particular site.



Wendy E. Moeller

While it is necessary to avoid regulating the content of a sign, it is still possible to control temporary signs by the type of structure, such as this portable message center.



Wendy E. Moeller

➡ Seasonal businesses rely heavily on temporary signage that may be in place for extended periods of time.

Enforce Fairly and Consistently

Given that few localities have staff focused exclusively on proactively identifying code violations, most zoning enforcement is complaint driven. To counter this issue, communities should always consider what their enforcement capabilities are when writing any zoning requirement, especially as it relates to signs. Consider whether there are other staff members, outside the planning and zoning department, who could be trained and authorized to assist in enforcement, if necessary. Finally, make sure that your regulations can be fairly and consistently enforced. This can reduce the potential for conflict associated with selective enforcement, and it also tends to lead to better compliance because temporary sign users become increasingly aware of the implications of overstepping the requirements.

Educate Residents and Business Owners

Communities are finding success with administration and enforcement by proactively reaching out to businesses and residents with educational brochures or workshops related to sign regulations to ensure a clear understand-

ing of expectations and requirements. Not all business owners are aware that communities have temporary sign regulations and can risk losing money by investing in the wrong type of sign. Proactive outreach activities allow the communities to educate those owners and possibly save them time.

CONCLUSIONS

Temporary signs have long been a difficult aspect of zoning regulations. Communities want to reasonably control them, but the administrative and enforcement aspects of these ever-changing structures can pose problems, especially when the content comes into play. The *Reed* case provided a response to one element of sign regulations but still leaves some questions. At the same time, the case has also provided communities a very good reason for reevaluating how and why they regulate signs and what changes need to be made to focus on the structure rather than the content.

This article is based in part on the Signage Foundation, Inc. report Best Practices in Regulating Temporary Signs.

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ABOUT THE AUTHORS

Wendy E. Moeller, AICP, is a principal and owner of Compass Point Planning, a planning and development firm based in Cincinnati, Ohio. She is the primary author of *Best Practices in Regulating Temporary Signs*. She was recently elected to serve as the APA Region IV Director and currently serves as a board member of the Signage Foundation, Inc.

Alan Weinstein has a joint appointment at Cleveland State University as professor of law at the Cleveland-Marshall College of Law and professor of urban studies at the Maxine Goodman Levin College of Urban Affairs. He is past chair of the Planning & Law Division of APA and has published and practiced extensively in the area of sign regulation.

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ARE YOUR SIGN REGULATIONS
CONTENT NEUTRAL?

2



PLANNING COMMISSION AGENDA REPORT ITEM #4

DATE: February 28, 2023
TO: Planning Commission
FROM: Rob Patterson, City Attorney
SUBJECT: **PUBLIC HEARING/ORDINANCE:** Text Amendment – Improvement Completion Bonding Requirements
TYPE: **DEVELOPMENT CODE UPDATE (LEGISLATIVE)**

PURPOSE:

The Planning Commission will hold a public hearing to consider a proposal by Highland City Staff to amend sections of Chapter 6 of the Development Code related to the duration and term of performance guarantees and warranty assurances for developments. The Planning Commission will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends the Planning Commission hold a public hearing, accept the findings, and recommend **APPROVAL** of the proposed amendment relating to the duration and term of performance guarantees and warranty assurances for developments.

BACKGROUND:

When a new development is approved, lots cannot be sold and buildings cannot be built until the public improvements (sidewalks, street improvements, utility improvements, landscaping etc.) are either completed or the developer provides a financial assurance to cover the cost of the improvements to ensure that the city can complete the improvements in the event the developer fails to do so. Developers are also required to provide a 10% warranty assurance that lasts for at least 1 year after completion of the improvements to ensure that installed improvements remain in good condition for that time period.

There have been some questions by developers as to the required term or length of an improvement completion assurance (called a performance guarantee in the code). The city's practice has been to require all performance guarantees to be in place for at least two years, but that practice is not spelled out clearly in the city's code. Accordingly, the proposed amendments impose a clear, two-year minimum term, clarify that the city can require an additional guarantee if the original one expires while the project is ongoing, and clarifies the duration, type, and purpose of the improvement warranty assurance.

SUMMARY OF THE REQUEST:

The proposed amendment requires the following for improvement completion/performance guarantees and improvement warranty assurances:

1. Minimum two-year term for performance guarantees

2. Replacement performance guarantee required if the original one expires and project remains incomplete
3. Clarifies that the warranty assurance is not subject to partial release and begins after the improvements are completed by the developer and approved by the city
4. Updated language throughout the code to remove outdated references to “bonds” “securities” etc., and replaced with “performance guarantee” and “warranty assurance” where appropriate.
5. Require the warranty assurance—the 10% amount held for at least 1 year—to be a cash deposit.

CITIZEN PARTICIPATION:

Notice of the public hearing to be held at the Planning Commission meeting was posted on the state and city websites and three public places on February 16, 2023. At the time of this report writing, staff has received no public comment.

STAFF REVIEW/FINDINGS:

The proposed amendment meets the following findings:

1. It is consistent with the current practices and desires of the Engineering Department.
2. It clarifies details outlined in existing Code requirements and updates language to be more consistent throughout code.
3. It conforms to state law requirements and limitations on improvement completion and warranty assurances.

FISCAL IMPACT:

This action will not have a financial impact on this fiscal year’s budget expenditures.

MOTION TO RECOMMEND APPROVAL:

I move that the Planning Commission recommend **APPROVAL** of the proposed amendments to Chapter 6 of the Development Code related to the duration and term of performance and warranty bonds for developments.

ATTACHMENTS:

1. Ordinance

ATTACHMENT 1:

AN ORDINANCE OF THE HIGHLAND CITY COUNCIL AMENDING SEVERAL SECTIONS OF THE HIGHLAND CITY DEVELOPMENT CODE RELATING TO THE DURATION AND TERM OF PERFORMANCE AND WARRANTY BONDS FOR DEVELOPMENTS AS SHOWN IN FILENAME TA-23-04.

WHEREAS, all due and proper notices of public hearings and public meetings on this Ordinance held before the Highland City Planning Commission (the “Commission”) and the Highland City Council (the “City Council”) were given in the time, form, substance and manner provided by Utah Code Section 10-9a-205; and

WHEREAS, the Planning Commission held a public hearing on this Ordinance on February 28, 2023 and

WHEREAS, the City Council held a public hearing on this Ordinance on March 7, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE Highland City Council as follows:

SECTION 1: **ADOPTION** Chapter 6 Guarantee of Performance of the Development Code is hereby amended as shown on “Exhibit A” attached hereto and incorporated herein.

SECTION 2: **REPEALER CLAUSE** All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 3: **SEVERABILITY CLAUSE** Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 4: **EFFECTIVE DATE** This Ordinance shall be in full force and effect from March 7, 2023 and after the required approval and publication according to law.

PASSED AND ADOPTED by the Highland City Council, March 7, 2023

HIGHLAND CITY, UTAH

Kurt Ostler
Highland City Mayor

ATTEST:

Stephannie Cottle

Highland City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Sarah D. Petersen	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐

EXHIBIT A

6-101 Applicability Of Chapter

This Chapter shall govern the provisions, nature, use, and disposition of improvement completion assurances, referred to herein as “performance guarantees” and improvement warranty assurances, referred to herein as “warranty assurances,” which may collectively be referred to herein as “assurances,” that ~~guarantees of performance which~~ are required to be posted with or deposited for the benefit of the City by Chapter 5, Chapter 3, Article 4 (all commercial development), or any other provision of this Code.

6-102 Type And Amount Of ~~Guarantee~~Assurances

1. The performance guarantee ~~or bond~~ shall be one of the following:
 - a. A deposit of cash in a separate escrow account in an amount not less than 110% (both performance guarantee and warranty assurance) of the estimated cost of constructing the required ~~improvement or~~ improvements, as determined by the City. Said account shall be made with a financial institution acceptable to the City Administrator and shall be established in such a manner that any release therefrom shall require the advance written consent of the City, as set forth in this Chapter.
 - b. An irrevocable letter of credit in an amount not less than 110100% of the estimated cost of constructing the required improvement or improvements, as determined by the City. Said letter shall be issued by a financial institution acceptable to the City Administrator and shall contain the terms and conditions required by this Chapter. ~~Two letters of credit may be issued, provided that one is in an amount not less than 100% of the estimated cost of construction to guarantee completion of all required improvements, and the other is not less than 10% of the estimated cost of construction to guarantee the durability of all required improvements.~~
2. The improvement warranty assurance shall be a cash deposit in an escrow account in an amount not less than 10% of the estimated cost of constructing the required improvements. The warranty assurance may be combined with a cash deposit escrow account provided as or for the performance guarantee. The warranty assurance shall be provided at the same time as the performance guarantee and shall not expire, lapse, or be released until after the improvement warranty period. The warranty assurance shall secure the developer’s unconditional warranty as to the workmanship, design, materials, construction, and durability of the improvements.

6-103 Security: Site Improvements/~~p~~Project Completion

The following articles shall apply to all commercial and residential developments within Highland.

1. Site Improvements.

- a. Guarantee. To guarantee the construction, installation, repair, and/or replacement of required public improvements, the permittee shall post both a performance guarantee and warranty assurance as set forth herein in the total amount of 110% for the public improvements and landscaping of which 10% is held after the public improvements and landscaping have been accepted by the city to guarantee those public improvements and landscaping improvements. bond in the form of a cash deposit. The amount of the bond shall be the greater of One thousand Dollars (\$1000.00) or 110% of the reasonable construction or installation costs of each of the following that is applicable to the project. The improvements covered by such assurances shall include the following:

i. Public Improvements as listed, but not limited to:

- (1) Curb, gutter and sidewalk
- (2) Storm sumps
- (3) Asphalt paving
- (4) Fire hydrants
- (5) Fencing
- (6) Landscaping sprinkling systems
- (7) Water and sewer lines
- (8) Driveway approaches
- (9) Any other required improvements

ii. Landscaping (if commercial or public/institutional building or if landscaping or open space is required)

- b. Calculation. In calculating the amount of the bondperformance guarantee and warranty assurance, the City Engineer may accept the amount specified in a construction bid as the reasonable cost of the improvements.
- c. Damage. Theis performance guarantee and warranty assurance site improvement bond shall also guarantee the repair or replacement of any public improvements damaged by the contractor or owner or their agents during construction.
- d. The City shall notify the owner and/or contractor of any such damage and shall require repair or replacement of the damaged public improvements within a reasonable time. Upon the failure of the owner or contractor to make the specified repairs, the City may take whatever legal action it deems appropriate, including foreclosure on the bondperformance guarantee and warranty assurance, to secure the repairs.

- e. ~~Bond~~ Release. All performance guarantees shall be valid and shall not expire for a term of at least two (2) years from issuance, and No bond-performance guarantee shall be released until all improvements are completed and accepted by the City. The warranty assurance shall be valid and shall not expire or be released until after the improvement warranty period.

2. Project Completion.

- a. Security Required. In order to protect the City from incomplete or inadequate installation of the public improvements and Landscaping, the City requires the developer post a performance guarantee and warranty assurance as set forth herein ~~bond~~ in the total amount of 110% for the public improvements and landscaping of which 10% ~~is will be~~ held after the public improvements and landscaping have been accepted by the city to guarantee those public improvements and landscaping improvements. Also, all landscaping requirements associated with each commercial or public/institutional building shall be installed and assurances provided therefor ~~and bonded for~~ prior to the final building inspection associated with a building permit and issuance of a Certificate of Occupancy.
- b. Construction According to Approved Plans. All construction shall be completed according to the approved plans on which the building permit(s) was issued. The approved plans shall also include the site improvements shown on the approved site plan. Deviations from the approved plans must be approved in advance by staff, provided that requested deviations to the site plan do not increase or decrease the approved building square footage by five percent (5%) and that the project as a whole does not exceed the total approved square footage (zero sum). If changes are requested that exceed a five percent (5%) increase or decrease, the plans must be submitted by the applicant to be reviewed and approved in the same manner as the original plan approval recommended by the Planning Commission and approved by the City Council prior to approval of a building permit.
- c. Security for Completion. No certificate of occupancy will be issued unless the building and the site improvements associated with that building are completed, or the developer has provided adequate security-assurances to guarantee completion and durability of the associated site improvements. When the site improvements and the building cannot be completed simultaneously due to weather conditions or other factors beyond the control of the developer (excluding financial inability to complete the project) the City may issue a certificate of occupancy or use inauguration for the project, provided the following conditions are met:
 - i. The building, buildings, or portions thereof, to be occupied have been constructed in accordance with the approved plans for those buildings and are in full compliance with applicable building and fire codes, and are completed to the extent that only exterior site improvement work remains unfinished; and,

- ii. The Building Inspector determines that occupancy of the buildings, or portions thereof, prior to completion of required site improvements, is safe and that access for emergency vehicles is adequate with the site improvements unfinished; and,
 - iii. The developer posts adequate security assurances for the benefit of the City to insure completion and durability of the site improvements in full compliance with the approved plans before occupancy or inauguration of use.
- d. Amount of Security. The total amount of security assurances to be posted under this Chapter by the developer shall be determined by the City Engineer, and shall be equal to 110% of the amount reasonably estimated by the developer and City Engineer as being necessary to complete remaining site improvements as shown on the approved plans. In the event that the developer disputes the cost estimate of the Engineer, the developer may prove a lower construction cost by providing binding contracts between the developer and contractor or subcontractor appropriate to perform the required work at a stated, fixed price. Bid proposals are not satisfactory for this purpose. If the contracts submitted are acceptable in form, the amount of security assurances required shall be 110% of the total contract price of all such contracts submitted, plus 110% of the estimated reasonable cost of performing any work not covered by the contracts. Specifications in such contracts shall be sufficiently clear to identify the work called for under the contract.
- e. Terms of Security. The terms of any bond assurance offered to the City shall state a date certain by which the developer agrees to have site improvement work completed in accordance with the plans. After completion of ~~those~~ improvements covered by the assurances and the developer's obtaining from the City a final inspection approval, which are bonded for and acceptance by the city, the ~~e~~City shall ~~reimburse-release~~ the bond-performance guarantee, up to in the amount of 100% of the contract price and retain the remaining 10%, consisting of the warranty assurance, to guarantee those improvements ~~per Section 6-108 (below).~~ In the event that the developer has not completed required site improvements ~~work~~ by that date, the City may, at its option and on its schedule, draw on the bond assurances, by its own act, and shall not be required to obtain consent of developer to withdraw funds for completion of the work shown on approved plans. The City shall in no way be a guarantor of the developer to any person, nor shall the City be responsible or liable for the completion of the improvements. The City's actual costs in administering the completion of work in the event of a default by the developer shall be reimbursed from the bond assurances or the developer.
- f. Form of Security. Assurances and other ~~S~~security arrangements offered in lieu of simultaneous completion of buildings and site improvements shall be in a form and contain such terms and conditions as required by this Chapter.

- g. Payment of Interest. Any interest accruing on an ~~an assurance-bond~~ shall, inure to the benefit of the developer upon release and not to the City, provided all improvements have been installed as required; otherwise interest will inure to the ~~Ceity~~.

6-104 Performance ~~Bond-Guarantee~~ - Subdivider

1. Prior to recordation of a final plat, after it has received City Council approval, the subdivider shall ~~either~~ complete all of the public improvements required in the subdivision ~~or -Prior to recordation, the subdivider shall-~~ enter into an ~~bond~~-agreement with the City to ~~provide assurances that~~ insure completion ~~and durability~~ of all public improvements required to be installed in the subdivision. The ~~bond~~-agreement shall be in a form and contain such provisions as approved by the City Attorney's Office. The agreement shall include but not be limited to:
 - a. Incorporation by reference of the final plat and all data required which is used to compute the cost of the improvements by the City Engineer.
 - b. Completion of the improvements within a period of time not to exceed one year from the date the agreement is executed.
 - c. The improvements shall be completed to the satisfaction of the City Engineer and according to City standards, as established by the City and accepted.
 - d. The ~~bond~~-amount ~~of all assurances~~ shall be 110% of the City Engineer's estimated cost of the public improvements to be installed.
 - e. The City shall have exclusive control over the ~~bond-assurance~~ proceeds ~~such that and~~ they may be released only upon written approval of the City Engineer ~~and they shall be released upon written demand of the City Engineer. No other person, including the developer or the issuer of the assurance, may have any right to limit when or how the City can demand release of the assurance proceeds.~~
 - f. If the ~~bond-assurance~~ proceeds are inadequate to pay the cost of the completion of the improvements, ~~which costs include administrative and legal costs~~, according to City standards for whatever reason, including previous reductions, then the ~~subdivider-developer~~ shall be responsible for the deficiency. Building permits shall not be issued in the subdivision until the improvements are completed, ~~in accordance with state law.~~
 - g. If upon written demand of the City after expiration of the time period, ~~the bond assurance~~ proceeds are not transferred to the City within 30 days of the demand, then the City's costs of obtaining the proceeds, including the City Attorney's Office costs or outside attorney's fees and court costs, shall be deducted from the ~~bond-assurance~~ proceeds.
 - h. Upon receipt of the ~~bond-assurance~~ proceeds, after the expiration of the time period, the costs of completion shall include reimbursement to the City Engineer

and all other City departments for the costs of administration of the completion of the improvements.

i. The ~~subdivider~~ developer agrees to hold the City harmless from any and all liability which may arise as a result of the improvements which are installed until such time as the City accepts the improvements and the improvement warranty period has expired.

i.j. The performance guarantee shall be valid and shall not expire for a term of at least two (2) years from issuance. The warranty assurance shall be valid and shall not expire or be released until after the improvement warranty period.

6-105 Performance ~~Bond~~ Guarantee - Contractor

1. All public improvements required under this Title shall be installed by a contractor or subcontractors licensed by the State of Utah.
2. Prior to the installation of such improvements, the contractor or subcontractor shall obtain the necessary permits from the City and file a performance guarantee and warranty assurance ~~bond~~ in an total amount equal to 110% of the cost of installation of the improvements, as set forth in this Chapter.

6-106 Final Disposition And Release of Performance Guarantee

1. The ~~subdivider~~ developer, or other person giving the ~~performance guarantee assurances required provided for~~ by this Chapter, shall be responsible for all materials and workmanship of the improvement. At the completion of the work, the person giving the ~~assurances guarantee~~ shall submit to the City Engineer record drawings as required by section 5-9-111 one Mylar copy of the drawings of record, a digital copy of as-builts in accordance with the city electronic format of the improvement and a certificate of completion. The applicant shall request in writing the condition of the improvements covered by the assurances ~~bonded for~~ and the ~~e~~City's acceptance thereof. The City shall have fifteen working days, in writing, to respond. The City Engineer shall then make a preliminary inspection of the improvements. If the condition of material or workmanship shows unusual depreciation or does not comply with the acceptable standards of durability, or if any outstanding liens are not paid, the City Engineer may declare the person giving the guarantee in default.
- ~~1.2.~~ Upon the City's receipt of record drawings and certificate of completion, and the City's successful inspection and acceptance of the improvements at the request of the developer, the performance guarantee shall be released and the improvement warranty period shall begin. For the duration of said warranty period, the developer shall provide an unconditional warranty that the installed and accepted improvements comply with the City's written standards for design, materials, and workmanship and shall not fail in any material respect, as a result of poor workmanship or materials.

6-107 Partial Release Permitted

The City Engineer may, upon application of the person giving the guarantee, authorize from time to time a partial release of the performance guarantee in accordance with the following schedule, provided that at no time shall the 10% amount provided as a warranty assurance be released prior to expiration of the improvement warranty period:

Percent of Work Completed	Maximum Percentage of <u>Performance Guarantee</u> of Performance Eligible for Release
25%	Up to 20% of Original Bond <u>Performance Guarantee</u>
50%	Additional 20% of <u>Performance Guarantee</u> Original Bond
75%	Additional 20% of <u>Performance Guarantee</u> Original Bond
100% and a satisfactory final inspection	<u>All Remaining Amount of Performance Guarantee, Less Amounts Retained as Warranty Assurance</u> Additional 20% of Original Bond

6-108 Duration Of Assurances ~~Guarantee~~ — ~~Durability Retainage~~

1. The duration of the performance guarantee covering the construction and installation of the required improvements shall be for a period of at least two (2) years from the date of issuance. In the event that the performance guarantee expires or is otherwise released without the written approval of the City Engineer, and there remain incomplete or defective improvements or landscaping, the City Engineer may require the responsible party to provide another performance guarantee insuring the completion of all remaining improvements in accordance with this Chapter. The City may withhold building permits, certificates of occupancy, or other approvals, to the extent permitted by state law, related to subdivisions, developments, and other projects for which a performance guarantee has not been properly provided or is otherwise not in place.
- ~~1.~~ 2. The duration of the improvement warranty period insuring the durability, condition, material, and workmanship of completed improvements and landscaping, shall be one (1) year, beginning on the date following the completion of all improvements and final acceptance of the same in writing by the City Engineer, provided that unless one of the following apply, then the City Engineer shall require the improvement warranty period to be extended, and the warranty assurance bond to be held, for a period of two (2) years if the city has substantial evidence on record of:
 - a. Prior poor performance by the applicant: OR

- b. That the area upon which the infrastructure will be constructed contains suspect soil and the city has not otherwise required the applicant to mitigate the suspect soil.

~~The warranty time period shall begin on the date following the completion of all improvements and final acceptance by the City Engineer.~~

~~2.3. The warranty assurance, consisting of a cash deposit in the amount A retainage~~ of not less than 10% of the total estimated cost of constructing and installing the required improvements ~~amount of the original 110% guarantee~~ shall be provided with the performance guarantee and retained by the City until the completion of the improvement warranty period as security for the developer's warranty of the completed improvements. Such ~~retainage-warranty assurance~~ shall be a guarantee of the durability of all improvements. If, at the end of ~~during~~ the improvement warranty period, the durability, condition, material, and workmanship of said improvements are found to be satisfactory, the City Engineer shall authorize release of ~~said retainage~~ the warranty assurance. If, however, during said period the condition, or material, or workmanship of the improvement or improvements fails or shows unusual depreciation, or if it becomes evident that certain work was not completed or was not completed according to all City, State, and other applicable standards, or that said improvements do not otherwise comply with accepted standards of durability, said condition shall be corrected by the person giving the warranty assurance ~~performance guarantee~~. If the corrections are not made within a reasonable time, the City Engineer may, in accordance with this Chapter-Section 6-106, declare such person in default and use the ~~retainage-warranty assurance proceeds~~ to defray the cost of any required work.

6-109 Default

1. When the City Engineer shall determine that the person posting the performance guarantee or warranty assurance has failed or neglected to satisfactorily install the required improvements or make required corrections, or to pay all liens in connection with said improvements, the City Engineer may, declare the performance guarantee or warranty assurance, or any unreleased portion thereof, forfeited and thereafter may install or cause the required improvement to be installed or repaired using the proceeds of the guarantee-assurances to defray the expense thereof. The City Engineer will give 30 days written notice to the person giving the ~~performance-guarantee-assurances~~ prior to declaring the assurance bond in default.
2. In the event that the unreleased portion of the guarantee-assurances is not sufficient to pay additional costs and expenses of such installation or repair, the City may commence to declare legal action against the person giving the guarantee for any additional costs and expenses of such installation or repair, including all costs of administration, attorney fees, and enforcement.