

ORDINANCE NO. 2020

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA REVISING CERTAIN SIGN REGULATIONS IN DIVISION 38.560 OF THE BOZEMAN MUNICIPAL CODE AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Bozeman (the “City”) has adopted land development and use standards to protect public health, safety and welfare and otherwise execute the purposes of Section 76-2-304, MCA; and

WHEREAS, the City has adopted regulations controlling the size, location, type, materials, height, maintenance and construction of all signs and sign structures not located within a building, or within a building and visible from the exterior; and

WHEREAS, in 2015 the Supreme Court of the United States in *Reed v. Town of Gilbert* struck down the Town of Gilbert’s sign regulations, finding they regulated signs based on their content in violation the U.S. Constitution’s first amendment guarantee of free speech; and

WHEREAS, federal courts since the decision in *Reed* have held that *Reed* did not extend to regulation of commercial speech and that the restrictions on commercial speech continue to be evaluated under prior case law; and

WHEREAS, City staff reviewed the City’s sign code for consistency with *Reed* and recommended amendments to the code; and

WHEREAS, the Zoning Commission held a public hearing on the proposal to amend division 38.560 on June 4, 2019 and forwarded a recommendation of approval to the City Commission; and

WHEREAS, it is in the interests of the city and public welfare to establish sensible, fixed, uniform and objective zoning regulations for signs.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA:

Section 1

That section 38.560.010 of the Bozeman Municipal Code be amended as follows:

Sec. 38.560.010. – Findings ~~Intent~~ and purpose.

A. Findings.

1. Signs obstruct views, distract pedestrians and motorists, displace alternative uses for land, and may create hazards that threaten the public health and safety. Such a safety threat is particularly significant for signs that are structurally inadequate, confuse drivers or pedestrians, or interfere with official directional or warning signs.
2. Signs may also threaten the public welfare by harming property values and creating aesthetic concerns, especially where the accumulation of signs creates visual clutter or obstruct scenic vistas.
3. The ability to erect signs serving certain functions, such as address signs and directional signs, are important because they enable residents and visitors to efficiently and safely reach their intended destinations.
4. The regulation of the physical characteristics of signs in the city has a positive impact on the safety and appearance of the community.
5. The purposes described in this section are compelling interests and the regulations in this division 38.560 are narrowly tailored to serve those interests while allowing adequate alternative avenues for speech.

AB. Purpose. It is the ~~intent~~ and purpose of this division 38.560 to promote the health, safety and welfare of the residents and visitors of the city by regulating and controlling the size, location, type, quality of materials, height, maintenance and construction of all signs and sign structures not located within a building, or within a building and visible from the exterior for the following reasons:

1. To ensure that pedestrians and motorists are protected from damage or injury caused by or partly attributable to the distractions and obstructions which are caused by improperly situated or dangerously distracting signs;

12. To preserve the Bozeman area's natural scenic beauty and character as expressed in adopted city plans and policies;
 23. To contribute to inviting entrances into the city by eliminating clutter associated, in part, with the unrestricted proliferation of signs, lights and stringed devices;
 34. To encourage area beautification through creative, interrelated design of signage, landscaping, buildings, access and parking that enhances the community's built and natural environment;
 45. To give all persons, organizations and businesses an equal opportunity to have a sign that will help people find the goods and services they need; and
 5. ~~To ensure that pedestrians and motorists are protected from damage or injury caused or partly attributable to the distractions and obstructions which are caused by improperly situated signs. The city commission intends to provide a reasonable balance between the right of an individual to identify their business and the right of the public to be protected from the visual discord that results from the unrestricted proliferation of signs. Section 38.340.070 establishes certain exemptions, and alternative procedures utilizing design review. The deliberations and decisions of the design review board must be directed to accomplish the intent and purpose of this section. It is determined that the regulations contained herein are the minimum necessary to further the interests of this chapter; and~~
 6. To encourage economic development~~protect the public health and safety by minimizing distractions to the traveling public.~~
- C. The provisions of this division 38.560 provide a reasonable balance between a person's right to identify their organization or business, or to freely express thoughts and ideas, and the interest of the public to be protected from the visual discord and distraction that results from the unrestricted proliferation of signs. Section 34.340.070 establishes certain exemptions, and alternative procedures utilizing design review. The deliberations and decisions of the design review must be directed to accomplish the purposes of this section.
- D. This division 38.560 must be interpreted in a manner consistent with the the Federal and State Constitution's guarantee of free speech.

Section 2

That section 38.560.030 of the Bozeman Municipal Code be amended as follows:

Sec. 38.560.030. - Prohibited signs.

- A. All signs not expressly permitted under this division 38.560, or exempt from ~~regulation~~ the provisions of this division 38.560, are prohibited in the city. Such signs include, but are not limited to:
1. Portable signs (except as allowed under chapter 34, article 5 V);
 2. Roof signs;
 3. Revolving signs, except as permitted in section 38.560.060;
 4. Beacons, spotlights;
 5. Flashing, blinking, or animated signs, ~~or LED or other electronic messaging signs except for incidental signs as defined in section 38.700.110 of this chapter;~~
 6. LED or other electronic messaging signs except for incidental signs as defined in section 38.700.100 of this chapter;
 - ~~67.~~ Pennants, streamers, wind socks, pinwheels, or similar items;
 - ~~78.~~ Stringed flags;
 - ~~89.~~ Inflatable signs and tethered balloons (except as permitted per section 38.560.040);
 - ~~910.~~ Signs located in public rights-of-way (except for those specifically permitted in this division 38.560); and
 - ~~1011.~~ Signs that (a) contain structural components such as size, location, movement, coloring, or manner of illumination that are similar to or which may be confused with or construed as a traffic control or hazard warning device or (b) interfere with the travelling public's view of a traffic or hazard warning sign or signal resemble an official traffic sign or signal, and signs that resemble traffic signs because they predominately display the words "STOP," "GO SLOW," "CAUTION," "DANGER," "WARNING," or similar words that are commonly used by agencies of government and construction contractors to draw attention to traffic or roadway hazards.

Section 3

That section 38.560.040 of the Bozeman Municipal Code be amended as follows:

Sec. 38.560.040. – Permitted ~~t~~Temporary and special event signs; permit required.

- A. Excluding those signs subject to section 38.560.050, T~~emporary~~ signs as defined in 38.700.180 and special event signs, such as banners, tethered balloons and inflatable signs, but excluding those subject to section 38.560.050, may be allowed permitted only as follows:

1. ~~Temporary Special event signs are~~ may be permitted only with an approved temporary sign permit in the zones described in section 38.560.060.A.1 and 2.
2. ~~Applicants for temporary signs must apply for, and have approved, a temporary sign permit~~
32. All temporary signs must comply with size, height, and location requirements of this division 38.560.
3. A property may have temporary sign(s) on display for no more than 30 cumulative days per calendar year (January 1 to December 31). A new business or nonprofit organization, during its initial calendar year in business or in existence, may display temporary sign(s) for a maximum of 60 consecutive days.
4. ~~For special commercial events, temporary signs may be displayed for a consecutive period not to exceed 15 days, for a maximum of 30 days per calendar year, from January 1 to December 31. There must be a period of at least seven days between each 15-day display period.~~
5. ~~Temporary signs which identify a new business may be displayed for a period not to exceed 60 days, additional temporary signs must not be allowed until the next calendar year. Only one temporary sign identifying a new business will be permitted for the life of the business. A subsequent temporary sign identifying a new business may be permitted when business ownership has transferred to another owner, or when the business moves to a new location on a different zone lot.~~
6. ~~Temporary signs that identify a new business may be displayed until the business erects a permanent sign, only if the business is in the process of obtaining a permanent sign, or 60 days, whichever comes first. If the business has previously had a temporary sign in the same location, the business will be allowed a maximum of an additional 30 days of temporary signage.~~
74. Itinerant vendors as defined in 12.01.010.A will receive information about allowable temporary signs at the time ~~they~~ the vendor ~~applies~~ for a business license, but ~~no a temporary sign permit is not required if the itinerant vendor is operating less than for seven days or less.~~
85. ~~Temporary signs that are~~ A person who conducts seasonal operations in nature, such as garden greenhouses, boat showrooms, or ski rental facilities, may apply for a longer term temporary sign permit which may be approved for a period not to exceed 180 days.
9. ~~Businesses may promote events in the community, such as the County Fair or Sweet Pea Festival, by applying for and receiving a temporary sign permit for their location. When notice of the event and non-sponsorship related information occupies more than 75 percent of the banner area, such a temporary sign will not count towards the temporary~~

and special event signage limit of 30 days per year.

Section 4

That section 38.560.050 of the Bozeman Municipal Code be amended as follows:

38.560.050. – Signs exempt from permit requirements.

A. The following signs are exempt from the permitting requirements of this division 38.560 but must comply with the criteria for signs allowed by this division 38.560, except section 38.560.060. In order to be exempt from sign permit requirements, such signs must not be internally illuminated, cause glare, cast light onto adjacent property, be placed in sight vision triangles, or otherwise impede or obstruct the view of the traveling public:

~~31.~~ All zones.

- a. Government and public utility signs. Directional, warning, street, traffic control, informational or temporary ~~special event~~ signs that are erected, installed or placed by or on behalf of or required by any transportation agency of a federal, state, county or city government. Public utility signs showing locations of underground facilities or public telephones, and safety signs on construction sites are included within this exemption.
- b. Incidental signs as defined in 38.700.100. ~~A sign, generally informational, that has a purpose secondary to the use of the zone lot on which it is located, such as "no parking," "entrance," "loading only," and other similar directives. No sign with a commercial message, which is designed with the intent to be legible from a position off the zone lot on which the sign is located, will be considered incidental.~~
- c. Ghost signs. A ghost sign as defined in division 38.700 may be, but is not required to be, stabilized, rehabilitated or preserved to its original condition, design and size. A ghost sign may not be altered in any way that changes its original design, wording, or size.
- d. Sign on property that is for sale, rent, or lease. One temporary sign in addition to that otherwise allowed by this section 38.560.050 may be located on property when the owner consents and the property is being offered for sale, rent, or lease for a period not exceeding 15 days following the closing date. The sign may not exceed nine square feet in total area and may be no more than five feet high.

~~12.~~ Residential zones (R-S, R-1, R-2, R-3, R-4, R-5, RMH, REMU [single-household, two- to four- household, townhouse, and apartments]).

- a. Non-commercial ~~Temporary, non-illuminated~~ signs that do not exceed nine square feet per individual sign in total area at any particular time and, if freestanding, five feet in

- height. ~~No more than one such sign shall be displayed per street frontage. A total sign area of not more than 32 square feet may be displayed at the same time.~~
- b. ~~Businesses working at a residentially zoned lot, such as landscapers or window treatment installers, may post an identifying temporary commercial sign only during the period the business is actively working on the site and up to three days after the business' work on the site is completed when they are physically at the residence, and the sign must be removed immediately when the working party leaves the property. Each Ssuch sign on a single lot at any particular time may not exceed nine square feet per individual sign in total area and, if freestanding, may not exceed five feet in height. A total sign area of not more than 32 square feet may be displayed at the same time. Not more than one such sign per street frontage per lot is allowed. Such signs are not considered off-premises advertising so long as the identified business is actively engaged on the site.~~
23. Commercial and manufacturing zones (R-O, B-1, B-2, B-2M, B-3, UMU, M-1, M-2, BP, PLI, NEHMU, REMU [mixed-use, non-residential]).
- a. Window signs, provided that such signs do not occupy more than 25 percent of the area of the window in which it is displayed. ~~If itthe window sign(s) exceeds 25 percent of the area of the window, it will be classified as a wall sign. For the purposes of this section, a window is a transparent glass opening in a wall separated from other glass openings by mullions or other dividers of four inches or less in width.~~
- b. Signs within a structure or building or other enclosed area of property when such signs are not legible when viewed from outside the structure or property.
- c. ~~Non-commercial Ttemporary non-illuminated signs (e.g., real estate sale, for rent or lease, political campaign, non-commercial speech sign); such signs must not exceed 32 square feet in sizetotal area, must be no more than five feet high and must be at least five feet from the property line when the required setback is in excess of five feet. Only one sign of each subject per street frontage per lot is allowed.~~
- d. ~~A temporary, non-illuminated sign identifying the bBusinesses working at a construction site may be posted temporary commercial signs on the site with the property owner's permission. The signs for multiple businesses will be aggregated among all those working on the site and in total Each such sign on the site may not exceed 32 square feet in sizetotal area, may be no more than five feet high and must be at least five feet from the property line. All parties to the development, including but not limited to banks, architects, contractors, developers, future occupants of the lot, real estate agent, and landscape companies, must be on a single sign per street frontage per lot. Such signs are not considered off-premises advertising so long as the identified business is actively engaged on the site.~~

- e. ~~No more than four on-premises directional signs not exceeding four square feet in area and five feet in height; such signs may not contain any commercial messages.~~

Section 5

That section 38.560.060 of the Bozeman Municipal Code be amended as follows:

Sec. 38.560.060. - Signs permitted upon the issuance of a sign permit.

- A. The following on-premises signs ~~are~~ may be permitted in the indicated zones with an approved sign permit:

**Table 38.560.060
Non-Residential Sign Standards**

Zoning District	B-1	B-2, B-2M	B-3	UMU	M-1	M-2
Maximum sq. ft. area	80 per building	400 per lot	250 per lot	250 per lot	250 per lot	250 per lot
Allowed sq. ft. sign area per linear foot of building frontage first 25 feet	1.5 or 2 ¹	2 or 3 ¹	2	2 or 3 ¹	2 or 3 ¹	2 or 3 ¹
Allowed sq. ft. sign area per linear foot of building frontage > 25 feet	1	1.5	1.5	1.5	1.5	1.5
Monument max. size sq. ft.	32	32	32	32	32	32
Monument max. height	5'	5'	5'	5'	5'	5'
Monument setback	5'	5'	5'	5'	5'	5'
Pole style max. height	Prohibited	13'	13'	13'	13'	13'
Pole style setback	Prohibited	15'	15'	15'	15'	15'
Pole style clearance	Prohibited	8'	8'	8'	8'	8'
Pole sign max. sq. ft.	Prohibited	32	32	32	32	32

Projecting sign max. area	8'	8'	12'	8'	8'	8'
Projecting sign max. distance	4'	4'	6'	4'	4'	4'
Rotating sign max area	2.5 sq. ft.	2.5 sq. ft.	2.5 sq. ft.	2.5 sq. ft.	Prohibited	Prohibited

¹ The larger value of the two listed applies when a building is located on a lot such that there is no parking or other vehicular use area between the building façade and the street right-of-way or between the building façade and a public pedestrian right-of-way adjacent to a street.

1. A comprehensive sign plan pursuant to 38.560.080 ~~is required~~ must be approved prior to installation of signage for all commercial centers or buildings consisting of two or more tenant spaces on a lot and must comply with section 38.560.080.
 2. Freestanding signs. One freestanding sign ~~is~~ may be permitted per zoned lot as defined in section 38.700.4070 of this chapter. Signage area used for freestanding signs is counted towards the maximum allowed signage area.
 3. Wall signs.
 - a. Regardless of the allowance for additional area, the maximum area may not exceed the amount allowed for the district.
 - b. Lots fronting on two or more streets ~~will be permitted~~ may be allowed signage area for each building frontage.
 - c. Canopy, window and awning signs are ~~classified~~ considered as wall signs. Wall signs may not project above the top of a wall or parapet.
 4. Projecting signs. One projecting sign per tenant ~~is allowed~~ may be permitted, unless otherwise approved through a comprehensive sign plan. Projecting signs must provide a minimum sidewalk clearance of eight feet.
 - a. A rotating sign located within the building does not need to provide the minimum sidewalk clearance height. A rotating sign exceeding a rotational speed of one full rotation in two seconds are prohibited.
 - ~~5. Residential building identification signs. For properties used for multi-household residential buildings, one residential identification wall sign per street frontage is permitted. No sign may exceed eight square feet in area.~~
 - ~~65.~~ Ghost signs as defined in division 38.700 do not apply toward the maximum square foot signage areas of Table 38.560.060.
- B. Residential zones (R-S, R-1, R-2, R-3, R-4, R-5, RMH, R-O, REMU). The following on-premises signs ~~are~~ may be permitted in the indicated zones ~~subject to a~~ with an approved sign permit:

1. Subdivision and residential complex ~~identification~~-signs. For residential subdivisions consisting of more than four residential ~~lots~~ units and for residential complexes with more than four ~~dwelling~~ residential ~~units~~ and more than one building, one low profile, freestanding, ~~neighborhood identification sign per development entrance is allowed~~ may be permitted. No sign may exceed 16 square feet in area or five feet in height from the finished grade. The sign must be set back at least five feet from the property line.
 2. Residential building ~~identification~~-signs. For properties used for multi-household residential ~~buildings~~, one ~~residential identification~~ wall sign per street frontage ~~is~~ may be permitted. No sign may exceed eight square feet in area.
 3. Signs appurtenant to residential principal, special and conditional uses, and home occupations.
 - a. Signs not to exceed four square feet in total area may be permitted for p~~Principal residential uses and permitted home occupations are permitted commercial message signage not to exceed four square feet in area; however, such signs may not be located in any required setback area. In addition, home occupations are~~ may be permitted a single one-square foot sign on a mailbox or lamppost or one and one-half square feet of freestanding signage located a minimum of five feet from the property line.
 - b. ~~Principal residential uses are~~ may be permitted non-commercial speech signs which if such signs do not exceed 320 square feet in total area nor five feet in height. Such signs must be set back at least 45 feet from the property line.
 - c. Permitted ~~Conditional~~ non-residential type uses, such as churches, community centers, veterinary uses, golf courses, day care centers and schools ~~are~~ may be permitted signage as if the underlying zoning were B-1.
 - d. Permitted ~~Conditional~~ and special residential type uses such as homes used as bed and breakfasts ~~homes~~, and fraternity and sorority houses, ~~are~~ may be permitted signage as if the underlying zoning were R-O. Such signs may be illuminated only during the hours of operation.
 4. Planned unit developments. Commercial establishments within planned unit developments where the underlying zoning is residential ~~are~~ may be permitted signage as if the lot were in a B-1 zone.
- C. *Special districts and zones.* The ~~guidelines provisions of this division 38.560 apply to all for the underlying zoning districts apply unless otherwise addressed below:~~
1. Neighborhood conservation overlay district. Within this district, prior to the installation of a sign, the city must approve all signage is subject to issuance of a certificate of appropriateness for all non-temporary signage after review for compliance with the design guidelines for the neighborhood conservation overlay district.

2. ~~Interchange zone. Signage may exceed the maximum total signage area permitted by section 38.560.060.A by up to 25 percent upon review and approval of a deviation by the review authority, upon the recommendation of the appropriate design review advisory body, and upon receipt of a comprehensive sign plan. Each lot is permitted one freestanding sign.~~
- a. ~~Low profile signs. One low profile sign per zoned lot. The maximum area for a low profile sign is 40 square feet. The sign must be set back a minimum of five feet with a maximum height of eight feet.~~
- b. ~~Pole style signs. A pole style freestanding sign must be set back a minimum of 15 feet and will maintain at least an eight-foot minimum vertical clearance. Pole style signs may not exceed a total area of 40 square feet or 16 feet in height, provided however, that for every two feet said sign is set back from 15 feet beyond the street right of way, the height measured at grade may be increased one foot, not to exceed a total of 32 feet, and the area may be increased by two and one-half square feet for every two feet that said sign is set back 15 feet beyond the street right of way up to a maximum of 120 square feet.~~
32. Downtown business district(B-3). Permits for signs in the downtown business district as defined in 34.05.020.A that encroach into the public right-of-way must be obtained in accordance with chapter 34, article 5 of the Municipal Code.

Section 6

That section 38.560.160 of the Bozeman Municipal Code be amended as follows:

Sec. 38.560.160. - Signs erected in conjunction with nonprofit activities on public property.

- A. Signs erected on public property ~~in support of~~ by or on behalf of nonprofit organizations activities, such as signs advertising sponsors of youth and sports activities, are allowed only with the prior consent of the director of the department of the city or other government agency responsible for the property only as follows:
1. The sign ~~is~~ may be permitted only on structures ~~at developed facilities in public parks or other publicly owned lands.~~
 2. The sign may be erected two weeks prior to the commencement of the activity and must be removed within two weeks after the cessation of the activity for which the sign was erected.
 3. Each individual sign may be no larger than 32 square feet. Freestanding signs must be setback a minimum of 15 feet from the property line and have a maximum height of five feet. Signs attached to walls or scoreboards are not subject to the five foot height limitation.

However, signs attached to walls or scoreboards may not exceed the height of the wall or scoreboard to which they are attached. All signs must be oriented towards spectators attending the activity.

4. The sign may not:
 - a. Be individually illuminated; nor
 - b. Be placed in sight vision triangles or otherwise impede or obstruct the view of the traveling public.
5. Applicants for such signs must apply for, and have approved, a ~~special~~-temporary sign permit detailing the ~~nature~~ physical characteristics of the sign to be erected and the duration of the activity or date of the event sign will remain in place. Applications and review procedures must be made per section 38.560.180.

Section 7

That section 38.560.210 of the Bozeman Municipal Code be amended as follows:

Sec. 38.560.210. - Substitution.

Any sign allowed under this division 38.560 may contain, in lieu of any other message or copy, any lawful non-commercial message ~~that does not direct attention to a business operated for profit, or to a product, commodity or service for sale or lease, or to any other commercial interest or activity,~~ so long as the sign complies with the size, height, area and other requirements of this division 38.560. ~~Authorized decision-making bodies may not consider the content of speech or the viewpoint of the speaker when taking action to approve or deny sign permits or other application for signs.~~

Section 8

That section 38.700.170 of the Bozeman Municipal Code be amended as follows:

~~*Special event sign.* A temporary sign which advertises special civic events and activities such as street fairs, community festivals, parades, farmers' markets and charity benefits.~~

Section 9

That section 38.700.180 of the Bozeman Municipal Code be amended as follows:

Temporary sign. Any advertising display that appears to be intended or is determined by the code official to be displayed for a limited period of time rather than permanently attached to the ground or a structure.

Section 10

Repealer.

All provisions of the ordinances of the City of Bozeman in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other provisions of the ordinances of the City of Bozeman not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 11

Savings Provision.

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provisions of the Bozeman Municipal Code not amended by this ordinance shall remain in full force and effect.

Section 12

Severability.

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

Section 13

Codification.

This Ordinance shall be codified as indicated in Sections 1-9.

Section 14

Effective Date.

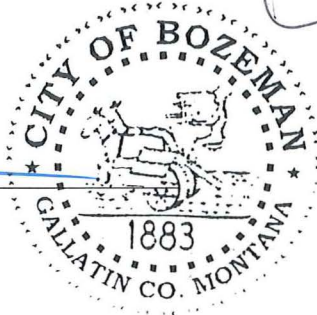
This ordinance shall be in full force and effect thirty (30) days after final adoption.

PROVISIONALLY ADOPTED by the City Commission of the City of Bozeman, Montana, on first reading at a regular session held on the 10th day of June, 2019.


CYNTHIA L. ANDRUS
Mayor

ATTEST:


ROBIN CROUGH
City Clerk



FINALLY PASSED, ADOPTED, AND APPROVED by the City Commission of the City of Bozeman, Montana on second reading at a regular session thereof held on the 24th of June, 2019. The effective date of this ordinance is July 24, 2019.



CYNTHIA L. ANDRUS
Mayor

ATTEST:


ROBIN CROUGH
City Clerk



APPROVED AS TO FORM:


KAREN STAMBAUGH
Acting City Attorney