

## Sign Code Regulations:

2015 Supreme Court decision in Reed vs Gilbert affects Municipalities abilities to regulate sign codes based on content. The Court concluded that its decision does not limit a municipality's ability to regulate signage, so long as the regulation is content neutral. For instance, "size, building materials, lighting, moving parts, and portability" may be regulated without reference to a sign's message. Further, "on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner."

Municipalities are not powerless to enact sign regulation, and the Court provided a non-inclusive list of content neutral criteria:

- Rules regulating the locations in which signs may be placed;
- Rules distinguishing between lighted and unlighted signs;
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change;
- Rules that distinguish between the placement of signs on private and public property;
- Rules distinguishing between the placement of signs on commercial and residential property;
- Rules distinguishing between on-premises and off-premises signs;
- Rules restricting the total number of signs allowed per mile of roadway; and
- Rules imposing time restrictions on signs advertising a one-time event.



◀ Back to the  
*Connection* frontpage

[www.azleague.org](http://www.azleague.org)

[Calendar of Events](#)

[Municipal Job Opportunities](#)

◀ Back to the  
*Connection* frontpage

## Legal Corner: Zoning 101 - The Rights Involved

**By: William Bock, General Counsel,  
League of Arizona Cities and Towns**

**September 2013**

You have probably heard that Arizona is a "Property Rights" state. I'm not exactly sure what that means, but I guess that means that our citizens want to protect their property rights. In my experience in the legal world it means that people assert their rights vigorously, especially if government is trying to interfere with those rights.



### **But what are those rights?**

In a common law concept that has been developed over hundreds of years, whenever someone owns a parcel of property, in addition to the actual dirt on the ground, they own what is called a Bundle of Rights. That Bundle includes the rights of:

1. Possession
2. Control of the property
3. Enjoyment
4. Exclusion
5. Disposition

In other words, you have the right to possess the property, and control its use. You have the right to enjoy and use your property, and exclude people from entering or using it. And finally you have the right to dispose of your property—sell, will, transfer or otherwise dispose of or encumber the property.

And when you own a parcel of property you own not only the dirt, but you own the sub-surface rights under the ground, and the air rights above the ground. The rights discussed above attach to all of your property.

But then along comes the government. Municipalities (cities, towns and counties) possess what is called police power. Police power is the government's right to protect the public's health, safety and welfare. All cities and towns have this power. One of the tools that government can use to protect the public's health, safety and welfare is the zoning power. In Arizona, the municipality's power to zone comes from the state, through the Zoning Enabling Act, which is found in A.R.S. 9-462.

Because the zoning power puts restrictions on a person's Bundle of Rights in the property, zoning laws are said to be in

derogation of the common law. As a result, any zoning law is construed strictly by the courts in favor of the property owner. And because a person's property rights are being either being restricted or taken away, there are strict due process requirements of notice and hearings to give people whose property is being affected notice as to what is being proposed, and the ability to appear before a city or town and be heard.

In fact, the Fifth Amendment of the U.S. Constitution provides that no person shall be deprived of life, liberty, or PROPERTY, without the due process of law. That is why we have the hearings and notice requirements for zoning. All of those zoning commissions hold in rezoning cases are because of the due process requirements. The Fifth Amendment also says that private property shall not be taken for public use without just compensation.

### **So what is zoning?**

The basic zoning that we have today is called Euclidian Zoning. It derives its name from a U.S. Supreme Court case involving Euclid, Ohio. In the 1920s, Euclid decided to enact zoning laws to control the use of property in the town to protect everyone's property from being harmed by other uses by other property owners. The Euclidian zoning scheme basically divides the city into various zones, with only certain types of uses allowed in each zone. In other words, all residential uses are in one area, commercial and industrial uses in other areas. It was protecting the public's health, safety and welfare by separating incompatible uses. The idea is to prevent a factory being built right next to a residential use. If someone is using their bundle of rights, and if they are not stopped by a zoning law, there would be no way to prevent a fast food restaurant from building on the vacant lot next to your home.

The Euclid zoning ordinance was challenged, with the plaintiff's arguing that a zoning ordinance was unconstitutional because it took a person's property rights. It restricted what they could do with their property. The US Supreme Court ruled that the zoning ordinance was a valid use of the police power, and there was a rational relationship between the zoning ordinance and the protection of public health, safety and welfare, and the zoning ordinance was constitutional.

In addition to establishing zones that govern what use you can have in a certain area of a city or town, zoning laws can limit the size and height of a building; control the type of landscaping you can have; control how you can get into and out of your property; regulate the hours during which you can operate a business. Zoning laws have become more sophisticated and complex as we have moved forward. We now have Planned Community Districts, form-based zoning, overlay zoning districts for things such as historic preservation and airport height restrictions, special planning districts, etc. All of these new zoning tools are used to further regulate the use of property, and to provide zoning tools that can meet the needs of the residents, developers, and property owners. All of these tools have the purpose of protecting the public's health, safety and welfare.

But, not everyone in Arizona believed that the public's health, safety and welfare rights should be protected in that way, while at the same time destroying or harming the private Bundle of Rights that people own with their property.

That brings us to the Fifth Amendment again-that a person's property cannot be taken without just compensation. The case

law in the United States, and Arizona had developed to the point that unless a regulation-like a zoning ordinance---created a situation where a property had no economically viable use (i.e. worthless) then there was no taking, and the property owner got nothing. An example of that was when one city in Arizona placed a golf course zoning overlay on a golf course. The only use allowed was a golf course. It was done to protect the owners of the property adjacent to the golf course. They wanted to keep the open space created by a golf course. The owners of the property claimed the golf course was not making enough money, and they wanted to build a subdivision in place of the golf course. They claimed that the city was taking their property. Under the law at that time, the golf course was still economically viable-it just didn't make as much money as they wanted or as they used to. The city was allowed to impose the golf course overlay without paying any money in damages to the owners.

Not because of the golf course case, but no doubt because of the state of the law of takings, in 2006 the voters of Arizona passed an initiative called Proposition 207. This basically changed the way that "takings" cases work in Arizona. Instead of the property having to be almost valueless before there could be a taking, Prop 207 allows a property owner to recover damages for "any reduction in their property value" which results from a land use regulation such as a zoning ordinance. I think this was the best example of Arizona being a property rights state.

Prop 207 has caused cities in Arizona to be more cautious about passing zoning ordinances that could result in liability to the city or town. This is especially true with regard to overlay zoning districts, which can cover hundreds of properties with regulations-thus increasing the exposure to liability.

On the other hand, just because there is a Prop 207 doesn't mean that every zoning ordinance reduces property values, and that every zoning ordinance will have a plaintiff trying to sue the city. Because zoning laws protect health safety and welfare, and keep incompatible uses away from each other, good zoning schemes usually increase the value of property. That has kept the number of Prop 207 lawsuits held in check.

That is the legal framework surrounding the use of zoning by municipalities. It is an intersection of private property rights and the police power of cities and towns. Zoning is much more complicated and has many more nuances and issues that are beyond this article. We will discuss various aspects of planning and zoning in future articles. If you have a specific question about zoning that you would like discussed in a future article, please contact me at the League.

---

League of Arizona Cities and Towns  
1820 W. Washington St.  
Phoenix, AZ 85007  
Phone: 602-258-5786  
Fax: 602-253-3874  
<http://www.azleague.org>

If you have ideas for this newsletter or encounter difficulty reading this email, please contact Amy Price at [aprice@azleague.org](mailto:aprice@azleague.org) with your concerns.