

## NON-OFFICIAL SIGNS IN PUBLIC RIGHT-OF-WAY POLICY

Draft 5.16.17

### PURPOSE

Marion Code of Ordinances states:

*Chapter 176.31 Sign Regulations:*

1. *Purpose. The regulation of signs by this Code is intended to promote and protect the public health, safety and welfare; by creating a more attractive economic and business climate within the commercial and office areas of the City; by enhancing and protecting the physical appearance of all areas of the City; and by reducing the distractions, obstructions and hazards to pedestrian and auto traffic caused by the indiscriminate placement and use of signs.*

It is the policy of the City of Marion, Iowa to respond in an orderly and expeditious manner in accordance with Chapter 176.31 to enforce both public concerns and City enforcement of any violation of such code thereby reducing additional distraction for drivers, improving visibility at intersections, and enhancing the public environment by removing unattended signs contributing to an unkempt look to City Streets.

### APPLICABILITY

Marion Code of Ordinances states:

*Chapter 62.09 Obstructing View at Intersections:*

*It is unlawful to allow any tree, hedge, billboard or other object to obstruct the view of an intersection by preventing persons from having a clear view of traffic approaching the intersection from cross streets. Any such obstruction shall be deemed a nuisance and in addition to the standard penalty may be abated in the manner provided by Chapter 50 of this Code of Ordinances.*

*Chapter 176.31 Sign Regulations:*

*7C. No sign or sign structure shall be erected at any location so as to, by reason of its size, shape, design, location, content, coloring, or manner of illumination, constitute a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers by obscuring or otherwise physically interfering with any official traffic control device. Nor shall any sign be placed in a*

*fashion or that may be confused with an official traffic control device. No rotating beacon, beam or flashing illumination resembling an emergency light shall be used in connection with any sign display or be visible from an adjacent street. No lights resembling an emergency light, no words used or displayed in such a way as to imitate a public safety or warning sign, and no other lights, words, phrases, symbols, or characters that may interfere with, mislead or confuse vehicle operators shall be used in a location that is visible to vehicular traffic.*

Unofficial signs in the right-of-way are often placed at intersections with greater traffic volumes. Signs placed at these intersections, especially when there are multiple signs, cause an obstruction of view which can reduce the visibility of oncoming traffic. This makes for an unsafe situation for drivers, bicyclists and pedestrians. Per the City of Marion Code of Ordinances Chapter 62.09 and the Code of Iowa, Section 321.259, Unauthorized Signs, Signals, or Markings, unauthorized signs in the right-of-way are deemed a nuisance and should be removed.

#### *Chapter 176.31 Sign Regulations:*

*7A. No sign or sign structure shall be placed on or over any street or highway right-of-way other than an official traffic or street sign and such other signs approved for placement by the controlling public agency. If the controlling agency is the City, such approval shall be based on codes and regulations adopted by the City Council pursuant to applicable law.*

Signs other than official traffic or street signs are not allowed in the City right-of-way per the City of Marion Code of Ordinances and supported by the Manual of Uniform Traffic Control Devices (MUTCD) Section 1A.08, Authority for Placement of Traffic Control Devices. This includes, *but not limited to*, signs such as For Sale, Garage Sale, Advertising, Special Event or Political signs. Signs placed between the curb and the sidewalk, or within 15' of the curb where sidewalks do not exist, or on City Property are considered in the right-of-way and will be removed.

## DEFINITIONS

“Sign” means any device fixed to, painted on, or incorporated into the building surface or displayed from or with a building or structure, or free standing upon the site and which is visible from the public right-of-way and designed to convey or direct a message to the public concerning the identification of the premises, to advertise or promote the interests of any private or public firm, person, organization, or other entity, or to draw attention to the use on the premises.

“Right-of-way” means the entire width of a platted street or alley in use or undeveloped and is a parcel of land intended to be occupied for streets, sidewalks, utilities, and other public purposes.

“City Property” means any property or area that has been acquired or dedicated to the City for the public interest.

“*Private Streets*” means streets that are not dedicated City right-of-way and constitutes private property maintained by individuals or groups other than the City.

“*Way-finding sign*” means a sign commonly associated with information and directions necessary or convenient for persons coming to a property or destination positioned with official designation by City Council.

#### **EXCEPTIONS / WAIVER APPROVAL**

A U.S. Supreme Court decision, *Reed v. Town of Gilbert*, June 18, 2015, determined it was unconstitutional for a jurisdiction to regulate signs by content. Regulations must provide for the enforcement of any policy to include all non-regulatory signs.

Way-finding signs shall be approved by City Council and be provided a waiver until such time as City Council finds the necessity to remove. A waiver may be provided as a provision associated with a City Project approved by City Council.

Waivers shall be obtained by an established process to include completion of an application and formal approval by Marion City Council.

Those signs located on Private Streets are exempt from this policy as they are located on private property and are to be regulated per City Sign Code.

#### **RETENTION**

Signs shall be retained by the City, however due to storage limitations the City will not guarantee the availability of signs for release back to their owners.

Signs may be picked up at City Hall, 1225 6<sup>th</sup> Avenue, upon paying a fee as required, until such time as they have been disposed of at the City’s discretion.

Signs that are retrieved by their owner following removal will be stamped with an official stamp marking them as having been in violation of City Code and this policy. Signs that have been stamped as being in violation and picked up by City staff a second time will not be available for return.

#### **DESIGNATED CUSTODIANS**

Signs may/will be picked up by any City Employee during the commission of their regular daily duties provided they do so in a safe and orderly manner including the proper safety equipment and training.

Staff shall at a minimum have on a high visibility vest or jacket and have their City badge on their person and before exiting the vehicle flashing lights shall be activated (hazards lights, flashing light bar, beacon, etc.).

Contact regarding the sign policy shall be directed to the Engineering or Planning and Development Departments for more information: 319-743-6340 (6320).

## **PENALTIES**

Signs removed from City owned property and City right-of-way shall include the following:

- 1) First Offense shall provide for disposal of the removed sign or stamped and returned to the owner.
- 2) Second Offense (removal of a stamped sign) shall provide for disposal of the removed sign.
- 3) Frequent Offenses by an individual, business, or other private entity shall provide for disposal of the removed sign and designation of a nuisance by staff and enforcement/fines as directed by City Code.

## **DISCLAIMER**

The City of Marion staff reserves the right to remove any unauthorized sign in the City right-of-way or City owned property without formal complaint and without notification of sign owner. Although it is not staff's sole responsibility to collect unauthorized signs, staff is directed by City Council to use a portion of their designated work day to collect unauthorized signs that are placed in the City right-of-way or on City owned property.

Staff will provide the public with regular notification and education of the current code through the City website and newsletters.

## ***MUTCD and Iowa Code Stipulations***

*Section 1A.08 of the MUTCD ("Authority for Placement of Traffic Control Devices") states the following: "Traffic control devices, advertisements, announcements, and other signs or messages within the highway right-of-way shall be placed only as authorized by a public authority or the official having jurisdiction, for the purpose of regulating, warning, or guiding traffic ... Any unauthorized traffic control device or other sign or message placed on the highway right-of-way by a private organization or individual constitutes a public nuisance and should be removed. All unofficial or nonessential traffic control devices, or other signs or messages should be removed."*

*Furthermore, the Code of Iowa, Section 321.259 ("Unauthorized Signs, Signals, or Markings")*

*states the following: "No person shall place, maintain, or display upon or in view of any highway, any sign, signal, marking, or device which purports to be or is an imitation of or resembles an official parking sign, curb, of other marking, traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic control device or any railroad sign or signal, if such sign, signal, marking, or device has not been*

*authorized by the department and local authorities with reference to streets and highways under their jurisdiction and no person shall place or maintain, nor any public authority permit upon any highway, any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information of a type that cannot be mistaken for official signs. Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.”*

*Considering these provisions and requirements unofficial and/or unauthorized signs, and other traffic control devices or markings within public right-of-way should be removed or caused to be removed as soon as possible. Political Signs Section 306C.22 of the Iowa Code contains provisions specifically addressed to a class of signs described as political signs and regulates the size and duration of these signs. Political signs may be erected and maintained on private property, provided the property owner agrees and the sign conforms to general provisions contained in the Code for other advertising devices. A sample county political sign policy is included in the appendix. Advice of legal counsel and close adherence to local ordinances is advised.*

*Section 306.23 of the Iowa Code describes conditions in which special event signs may be erected on private property. Specific requirements for placement, size, location, and duration are included in this code section. For more advice on this topic, contact Advertising Management, Office of Traffic and Safety, Iowa Department of Transportation, Ames, Iowa, 515-239-1296.*

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