

## **A Framework for On-Premise Sign Regulations**

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## INTRODUCTION

### The purpose of this Model Code Project

The purpose of this project is to convey to communities (Councils, planning commissions, appeals boards, and the administrative staff including planners) the appropriate framework for formulating on-premise sign regulations that fully respect the comprehensive purposes of signs from the perspective of both community and business interests. Among others, these purposes are:

- To serve a legitimate business advertising function.
- To use signs to identify and advertise a facility as a means of “way-finding” assuring that the signs efficiently direct the motorists from the highway/roadway to the adjacent facilities.
- To assure that signs are sized and arranged to minimize clutter and prevent unsafe conditions.
- To assure that signs and their message are of sufficient size to be legible and comprehensible by the intended audience which is typically a passing motorist.

This document is most applicable to smaller communities – say those with populations up to several hundred thousand. These communities “typically” possess the variety of **character areas** that are the basis for this Model Code (See Part I). While larger cities may have many similar character areas they may

also have a wider variety of unique areas that warrant special considerations that are not addressed in this model.

This document is particularly important since there is a prevailing community tendency to limit sizes of signs to the extent that they cannot be comprehended by the motorist on the adjacent highway; and to impose limitations based on concerns about traffic safety that cannot be readily supported.

Therefore, to achieve the above fundamental purpose, it is also the purpose of this Model Code project to reduce the tensions between the community and businesses in a way that recognizes the importance of signs to the community and its businesses. Specifically, the additional purposes of this project are:

- To achieve a reduced level of administrative and design review, and time periods for review, prior to a sign application being approved.
- To assure that a reasonable time is provided for non-conforming signs to remain before they must be brought into compliance.
- To encourage communities to acknowledge the importance and benefits of electronic message signs to the industry and businesses and that they can be accommodated without compromising the public’s interests.

- To convey to communities that to be effective, the bottom of the freestanding sign (pole signs) must be above parked or moving vehicles. Conversely, ground type signs are often blocked by vehicles and landscaping.
- To have communities realistically evaluate their existing codes – particularly enforcement – rather than reaching a “knee jerk” conclusion that poor enforcement of the existing regulations should trigger a new code with more restrictive regulations.

This Code refers to local governments as “communities” or “cities”. It is important to recognize, however, that local governments may have different legal structures with associated differences in their authority regarding land use regulation in various states. In particular, some local governments are municipal corporations which tend to have greater land use regulatory authority than unincorporated areas such as townships. Thus, it is important to determine the form of local government and the extent of that government’s land use regulatory authority when considering the recommendations in this Model Code.

### **The Process**

This document has been prepared by Alan C. Weinstein, Inc. in association with D. B. Hartt, Inc. Planning and Development Consultants with funding provided by the Signage Foundation. Technical assistance has been provided by an ad hoc review committee of the Signage Foundation. As this document was developed the Committee attended several review sessions with the Consultants to assure that the recommendations reflected a balance between the legitimate interests of the Signage Foundation and the communities in which signs are placed.

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## PART I. THE FRAMEWORK FOR FORMULATING SIGN REGULATIONS

### Fundamental Considerations

The basic regulatory framework (Part III) is guided by principles that have been developed by both planners and various groups within the sign industry. Over the last twenty or so years the standards applicable to each of these factors have been documented in several books and other publications. Additionally these principles were recently supported by the American Planning Association in its *2004 Planning Advisory Service Report No. 527, "Street Graphics and the Law."*

The purpose of this first section is to summarize the numerous interrelated factors that contribute to whether a sign is able to fulfill its primary purpose: to be able to be read by its intended audience. It is not our intention, however, to duplicate the extensive documentation that has been previously published and is available for further review.

Some of these factors are related to the **design of the sign** itself; others are related to the **sign's location** which, likewise, influences its readability to the intended viewer – whether the viewer is a motorist on the adjacent road or a pedestrian on the adjacent street or even walking on the site of the business.

With respect to sign design, readability and comprehension are influenced by:

- The size of the lettering or logos – minimum size of the letters has been

established based on the distance that the viewer is from the sign.

- The relationship of the lettering/logos – which is the message area - to the background area – often referred to as the “white space” or “negative space” - of the sign.
- The thickness and spacing of the letters.
- The number of elements – words, syllables, symbols, logos, etc. - that can be comprehended in the short period of time that the viewer (typically the motorist) likely has available. This is particularly relevant to wall signs that need to be seen and comprehended instantaneously.
- Color contrasts between the message and the background.
- Letter style.
- Lighting.

The number of elements that can be comprehended is also influenced by the familiarity of the message – the words, fonts, and logos. When a sign is familiar it is “taken-in” as a whole and, therefore, more information can be comprehended in the viewing time available. Since the motorist has a limited time to view the sign, particularly if multiple signs need to be visually scanned and sorted in the same time-frame, the signs must:

- Be within the viewer’s “cone of vision” – both to the side of the highway and vertically so the eyes and head of the motorist won’t waiver too far from the roadway.



- Be at a height that will not be easily blocked by obstructions – mainly other cars and trucks on the roadway or parked nearby.
- Have increased letter sizes when the signs are located farther from the viewer who is typically on the adjacent street.

All of these variables are important considerations in order to permit signs that “work” – *i.e.*, achieve their intended purpose of being able to be read by their intended audience. Some of these factors influence the size of the sign. Other factors influence the quality of the sign’s design, as in, for example, the relationship between the lettering and the background area of the sign. Even reasonable and thoughtful consideration of all of these factors does not dictate or suggest a single minimum size and height standard that should be incorporated in a community’s sign regulation for each situation.

However, the size and height ranges, included in the ***Model Regulatory Guidelines, Part III*** of this document, represent reasonable parameters that satisfy the criteria referred to above, for those signs that incorporate the “normal range” of words and elements that are needed and expected, and balance public and private interests. The community must be cognizant of all of these factors, including considering the ranges in Part III when formulating new or amended sign regulations.

### **Principles of a Sign Code**

Based on the preceding fundamental considerations, the following are the important principles that should guide the development of all sign codes.

The sign code should:

1. Include regulations for all types of on-premise signs, including: commercial (office, retail, etc.), industrial, multi-family

developments, institutional and public uses (including those public and institutional uses that are typically in residential districts), and entry signs for large subdivisions.

2. Include regulations for other “attention getting devices” such as balloons, banners, etc.
3. Include all of the following:
  - A statement of the purposes to be achieved
  - Definitions
  - Standards for measuring sign areas
  - Regulations governing sign placement, height, and area
  - Enforcement
  - Regulations for temporary signs
  - Prohibited signs
  - Regulations for non-conforming signs
  - Administrative provisions, variances and appeals
4. Be content-neutral to the greatest degree practicable so as to avoid favoring some types of signs – or sign users – over others. This means that sign regulations will not be based upon a sign’s message. Instead, the regulations will be based upon the sign’s function and its placement on the building or site. The meaning and implications of “content neutrality” are further explained in Part II of this document
5. Include standards that address the variety of use/character areas that are typically found in communities. This framework document cannot address the specific zoning districts for a community since they vary so widely from community to community. This document, however, does describe “typical character areas” and the suggested standards for each area, to be used as a guide in determining for



themselves what precise standards are best for their community. Related to this, it is possible, even likely, that communities of different sizes (with different characteristics) may legitimately advance different sign regulations, even when the zoning districts in the distinctly different communities are similar. The typical character areas, which are described more fully in the next section, include:

- Downtowns.
  - Small Localized Retail areas that are likely to be in close proximity to residential areas and which are typically characterized by:
    - Having a traditional neighborhood form, or
    - Being a more “suburban style” center.
  - General Commercial Areas along major arterials.
  - Highway/Interchange Commercial.
  - Office Districts.
  - Industrial Parks.
  - Mixed Use Developments.
6. Have separate requirements for different types of signs (*e.g.* wall signs, free standing signs, projecting signs, and window signs) because each type of sign has different needs and impacts from the others. This is in contrast to a single maximum allowance for signage on each site that can be divided or shifted between wall and freestanding signs. This approach insures that both wall and freestanding signs are in proportion to the building and/or the site. Otherwise, for example, if a code allows most of the total permitted sign area for a site to be on the freestanding sign, the freestanding sign(s) could be too large for the site.

In addition, the “single allocation” approach to sign regulation is difficult to

administer because each time a new sign is requested, zoning administrators have the responsibility to monitor how the site’s, or each tenant’s, sign allotment has been distributed among the various sign type and location possibilities. This is particularly cumbersome for multiple tenant properties when tenant signs routinely change and the historical records may not clearly document the available sign area allocations for new proposals. The separate formulas are more easily monitored, even over time, when the historical records may not be clear.

7. Establish the area and height requirements for **wall and freestanding signs** based on the “nature and character” of the Character Areas. In all cases, however, the signs shall be in such location and of such size so the sign message is easily discerned and the intended audience, generally the passing motorist, can react and make necessary traffic maneuvers safely.
8. Have procedures that permit bonuses to sign areas, sign height, and number of signs based on unique design considerations when such additional signage will not compromise the public interest or not set a precedent that could then be requested and applied routinely in other more conventional locations in the community.
9. Consider the need to establish a reasonable program for the elimination of legal-non-conforming signs (*e.g.* amortization) provided:
  - The time for removal is 10 years or longer;
  - The Code incorporates provisions that permit the extension of the time limits for compliance based on considerations such as the value of the sign and

the length of time the sign has been in place; the amount of depreciation claimed; the length of the current lease or expected occupancy; the degree of non-compliance; and

- The owner or tenant is permitted to replace the panels/inserts on non-conforming signs when uses or ownership is changed and there is no other change, such as structural change to the existing non-conforming sign; and
- The provision is made for signs that have landmark status (see also Appendix A).

The amortization of non-conforming signs is far less an issue for both the business and the community when the sign regulations comport with the principles and suggested standards in this model.

### **Description of the Typical Character Areas**

The Model Code will develop the suggested regulations for each of the typical “character areas” described herein. These character areas have been selected because they incorporate the diversity of development patterns that generally prevail in most communities – both large and small. The needs of special districts, such as entertainment districts (*e.g.* Las Vegas, Times Square), tourist destinations (*e.g.* Carmel California, Disney World), historical districts (*e.g.* Gettysburg, Charleston) or neighborhood conservation districts, which may occur in a few selected locations, are not included in this document. The unique characteristics of these areas are not typical of the vast majority of the communities across the United States and therefore, the sign regulations require unique attention to adequately address the local needs.

**Downtown** – In traditional downtowns, buildings are primarily placed at the street line with the parking to the rear or in parking decks. The building width extends across all, or at least

most, of the lot frontage. The buildings could be multiple stories with, typically, retail on the first floor and residential or offices above.



*Downtown*

**Small, Localized Retail** – These are usually older commercial areas that may have one of the following two characteristics:

- The retail areas are generally older and have the **traditional neighborhood form**. That is, the form and character are similar to a traditional downtown. These commercial areas are often located in close proximity to and thus convenient to surrounding residential areas. Although these areas are smaller than downtowns, their form and design characteristics are similar; therefore, the permissible sign allowances should also be similar.
- However, some of these small commercial areas may be newer and have been developed with what is now considered the **suburban form**. These are similar to the general commercial areas, described below, except that these more localized commercial areas are apt to be on more minor streets and will likely be in close proximity to residential areas.



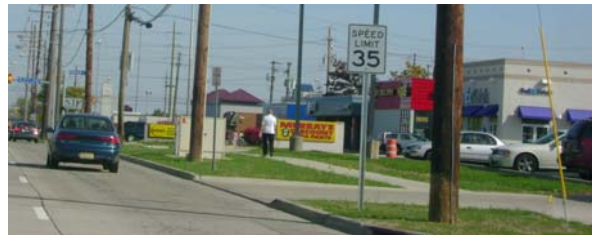
*Traditional Neighborhood Form*



*Suburban Form*

**General Commercial Areas** – The buildings are typically setback from the street with parking in the front of or surrounding the building. These commercial areas are usually on a major arterial street. The commercial area often includes a variety of large and small facilities. Multiple commercial facilities may be grouped on a single site or single businesses may be developed on an independent site.

Typically these areas are comprised of one story buildings.



*General Commercial*

### **Highway/Interchange Commercial** –

These commercial areas are similar in arrangement to a General Commercial Area except they are located at freeway interchanges. Uses are more apt to be a concentration of highway service uses - such as motels, restaurants, and gasoline service stations - that expect a significant customer base from the passing motorists on the freeway. This compares to the general retail which expects its support primarily from the surrounding market area.





*Highway/Interchange Commercial*

**Office Districts** – Generally, office districts are a concentration of multiple story office buildings in a campus atmosphere even if the multiple adjacent sites are in separate ownerships. Buildings are typically setback from the road and each site has its own requisite parking to meet its needs. Office concentrations are most often located on a major arterial and near freeway interchanges providing convenient access throughout the region. Office areas may include supporting retail services.



*Office Park*

**Industrial Parks** – Generally, industrial parks are a concentration of single story industrial buildings in a campus atmosphere even if the multiple adjacent sites are in separate ownership. Industrial parks are usually on or near a

major arterial. The parks may have a combination of large and small buildings and sites.



*Industrial Park*

**Mixed Use Developments** – Mixed use developments are multiple story buildings with a mix of retail, office and residential uses integrated into the same building. Retail is encouraged or required on the first floor with the offices or residential above. A mixed use development may be designed with or as part of a traditional neighborhood form or as a more typical suburban configuration.



*Mixed Use Development*

### **The Relationship Between Highway Characteristics and Sign Standards**

The foregoing principles and implementation of the model regulations (Part III) can be accomplished without compromising any legitimate public health and safety purposes even when the regulations are related to the character areas and not the highway's characteristics.

Governing the sign standards solely by road factors such as the speed of traffic or the number of lanes creates both administrative and political difficulties if the road conditions or characteristics were to change. Therefore, the wiser approach is to regulate the size and height by "character districts". Even with road changes, the signs will be approximately the right size and height.

The sizes and heights for the various signs recommended in these guidelines are based on previous studies that have documented the letter height, design clarity, and areas needed to assure that the signs can be read and comprehended. These sources are included in Appendix C.



## PART II. LEGAL CONSIDERATIONS

### Local Government Regulation of Business Signs

#### 1. Overview

Local government authority to regulate signs is based on the “police power.” “Police power” is a shorthand term for government’s authority to enact laws and regulations to preserve public order and harmony and to promote the public health, safety and welfare. Zoning and other local regulatory powers are derived from the “police power.”

Local governments routinely regulate signs through either a “sign code” ordinance or provisions for sign regulation in a zoning ordinance. While sign regulations apply to several different types of signs, including “on-premise” residential, institutional and business signs and “off-premise” outdoor advertising signs (commonly called billboards), this discussion is limited to the regulation of “on-premise” business signs.

Sign regulations normally place limits on the location, number, size (both in area and height), and illumination of business signs. They also specify standards for the construction, erection, and maintenance of sign structures. The basic enforcement tool for

local business sign regulation is to require a business to obtain a permit prior to erecting a new sign or modifying the structure of an existing sign. Obviously, a permit is issued only when the proposed sign or modification complies with the provisions in the code. In some communities, the sign regulations also require periodic examination of existing signs to insure they are properly maintained.

#### 2. Regulation of Size, Number and Location of Business Signs

As previously noted, a sign code will normally regulate the location, number, size, etc. of business signs. It is common for sign regulations to vary depending on the zoning district in which a business is located. For example, businesses located in a “Highway Business” District might be allowed larger or higher signs than businesses located in a “Local Business” District. Such differences in regulatory treatment between districts may be justified by differences in such factors as the size and speed of the districts’ roadways or the typical setbacks from the right-of-way in the district. In some instances, variations in regulatory treatment depend on the nature of the business itself; *i.e.* one type of business (*e.g.*, an auto dealership) may be allowed more or bigger signs than another type of business (*e.g.*, an appliance store); in some cases



the signs should reflect the site's acreage and not merely based on road frontage. As we discuss later, however, regulatory distinctions based on the type of business can raise significant legal issues.

### 3. Permit Application Requirements

Almost all sign codes require that a business apply for and obtain a permit before erecting or modifying a "permanent" business sign. It is not unusual, however, for sign codes to exempt from these permit requirements certain "temporary" business signs that will be displayed for a relatively brief period. For example, many sign codes allow a business to display a vinyl or cloth banner advertising a special event (*e.g.*, "Annual Sale" or "Model-year Closeout") for periods ranging from a few days to several months. Most sign codes also totally exempt signs displayed inside store windows from the permit requirement (at least up to some maximum percentage of the window area, *e.g.*, 25% or 35%) and such signs may remain in place indefinitely.

The permit process usually begins with the applicant obtaining a permit application from a zoning or building official in the local government office. Permit applications normally require the applicant to submit various information related both to the construction and installation of the sign and the site where it will be installed or erected. Submission requirements will vary from community to community. For example, while some codes will require only a sketch or photograph of the property where a sign will be installed, others require the submission

of a formal site plan. The application must be filled out completely and accurately, and the accompanying application fee paid in full, before the application will be reviewed.

### 4. Permit Review Procedures

There are two basic procedures for local government review of a sign permit: administrative approval, which stresses quantitative criteria, and design review, which goes beyond quantitative criteria to consider qualitative guidelines.

Administrative approval involves a straightforward objectively based decision. An administrator reviews a permit application to determine if it complies with the numerical standards stated in the sign code and approves or rejects the application based on whether the proposed sign will be in compliance.

Design review, in contrast, supplements numerical standards with qualitative guidelines that attempt to "fine-tune" sign approval decisions by evaluating the relationship between any given sign and its proposed site based on specified criteria. For example, a design review process might try to achieve greater "compatibility" between structures and signs by adding design standards related to sign materials, lighting and design. Proponents of design review claim that the addition of this discretionary process promotes creativity by applicants and permits greater flexibility in sign approval. Critics of design review argue that the process creates uncertainty about permit approvals and signifi-

cantly increases both the cost and time required to obtain a permit approval.

It is possible, however, to have an optional design review process, one that is voluntarily entered into by applicants, rather than a mandatory one. This option allows the applicant to choose between designing a sign strictly according to numerical standards (which sometimes are very restrictive) or going through a design review process that allows for larger signs, more flexibility, or both. For example, the numerical standard for a projecting sign might consist of a maximum allowable area of “x” square feet. This would probably produce a simple, rectangular sign, maximizing the copy area. Such a sign might say “Elder Day Club.” Under an optional design review process, the sign area could be increased by a certain percentage. But the sign would need to include a unique, eye-catching logo that would add liveliness to the streetscape. Such a method rewards both businesses and sign producers for creative efforts.



*Illustration of bonus area for creative, ‘eye-catching’ logos*

## 5. Sign Variances

A variance is a legal device that allows a local government to provide a property owner with relief from the normal application of some restriction in the zoning code, such as minimum lot or building size, height limits, or setback requirements. Variances are granted when government determines that there are special circumstances, unique to the property in question, that would create practical difficulties if the zoning code were enforced as written.

Requests for a variance due to the peculiarities of the property involved are also appropriate when sign regulations are applied to specific properties. A commonly occurring situation is where adherence to the sign code would seriously compromise the visibility of a sign and thus potentially harm the economic viability of the business. This situation can occur, for example, where a significant grade difference exists between the property and an adjacent or nearby street or highway from which the business is

expected to draw significant vehicular traffic, and a business sign limited to the height, type, or location permitted by the ordinance would not be fully visible from that street or highway. In such cases, there is little reason why a variance increasing the allowable height of the sign should not be granted.

In California, the problem posed to businesses by the situation described above was addressed by the state legislature in a statute that provides:

*Regardless of any other provision of this chapter or other law, no city or county shall require the removal of any on-premises advertising display on the bases of its height or size by requiring conformance with any ordinance or regulation introduced or adopted after March 12, 1983, if special topographic circumstances would result in a material impairment of visibility of the display or the owner's or user's ability to adequately and effectively communicate with the public through use of the display. Under these circumstances, the owner or user may maintain the advertising display at the business premises and at a location necessary for continued public visibility at the height or size at which the display was previously erected and, in doing so, the owner or user is in conformance.<sup>1</sup>*

## **Legal Issues in Regulation of Business Signs**

### **1. Overview**

While there can be no doubt that, as a general matter, “police power” authorizes local government regulation of business signs, specific regulations may be unlawful because they violate

rights guaranteed by the federal, or a state’s, constitution or those granted by federal or state statutes.

The most common legal concerns about the validity of a local government’s regulation of business signs are based on one or more of the following constitutional provisions and statutes which are discussed below:

- a. The First Amendment’s guarantee of “freedom of expression.”
- b. The Fifth Amendment’s (or a state law’s) protection of property rights.
- c. The Fourteenth Amendment’s separate guarantees of due process of law and equal protection under the law.
- d. The Lanham Act’s protection of federally registered trademarks.

### **2. First Amendment Issues: Content-Based vs. Content-Neutral Sign Regulations**

The single most important concern in sign regulation is whether the regulation is “content-based” versus being “content-neutral.” A content-neutral regulation will apply to a sign regardless of the content of the message displayed. The most common form of content-neutral regulation is so-called “time, place or manner” regulation which, as the name suggests, does no more than place limits on when, where, and how a message may be displayed on a sign. In contrast, a sign regulation that bases the regulatory treatment of the sign on the content of the message displayed – or the

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<sup>1</sup> California Business and Professions Code Section 5499.

identity of the entity displaying the sign – is “content-based.” Provisions in sign ordinances that are content-based are not invalid *per se*. Rather, courts apply a more stringent level of judicial review to provisions in sign ordinances that are content-based (strict scrutiny) vs. provisions that are content-neutral (intermediate scrutiny).

When local governments enact sign regulations that are entirely – or even predominantly – content-neutral, courts have little difficulty upholding the regulations against a legal challenge. Conversely, content-based regulations that are found to regulate on the basis of content in a manner that allows for any degree of “censorship” (*i.e.*, preferring some kinds of sign content over other kinds), have been ruled invalid.

Recent rulings where courts have struck-down content-based sign codes include cases from Ohio,<sup>2</sup> Michigan,<sup>3</sup> and Washington.<sup>4</sup> One case, from the Cleveland, Ohio suburb of North Olmsted, was a particularly egregious example of content-based provisions. The district court’s decision provided several examples of the way the use classifications categorize, define, and/or limit signs by their content. One example noted that a “directional sign” in front of a business could contain words such as “Enter Here” or

“Entrance,” but could not display the McDonald’s “golden arches” logo or the words “Honda Service.” A second described how an “identification sign” could include only the “principal types of goods sold or services rendered” but “the listing of numerous goods and services, prices, sale items, and telephone numbers” was prohibited; thus, a Dodge dealership’s sign could display its name - Great Northern Dodge - but was prohibited from displaying the “Five Star Dealer” designation it had been awarded by the Daimler-Chrysler Corporation.



*Directional sign with logo. North Olmsted’s content-based sign code would not allow this sign because it includes McDonald’s “golden arches” ... even though that feature could enhance traffic safety without significantly affecting aesthetics.*

But where a sign code’s “content” provisions were far less egregious, and intended to make the sign code more “workable,” rather than to censor, courts have rejected challenges based on the claim that a sign code contained content-based provisions. Recent examples of these decisions include cases from Maine,<sup>5</sup> Oregon,<sup>6</sup>

<sup>2</sup> North Olmsted Chamber of Commerce v. City of North Olmsted, 108 F.Supp.2d 792 (N.D. Ohio 2000) and XXL of Ohio, Inc. v. City of Broadview Heights, 341 F.Supp.2d 765 (N.D. Ohio 2004).

<sup>3</sup> King Enterprises v. Thomas Township, 215 F.Supp.2d 891 (E.D. Mich. 2002)

<sup>4</sup> Ballen v. City of Redmond, 466 F.3d 736 (9th Cir. 2006).

<sup>5</sup> B&B Coastal Enterprises, Inc. v. Demers, 276 F.Supp.2d 155 (D. Maine 2003).

<sup>6</sup> G.K. Ltd. Travel v. City of Lake Oswego, 436 F.3d 1064 (9th Cir. 2006).

and Pennsylvania.<sup>7</sup> The position of the courts in these cases has been that local government needs some leeway in navigating the dangerous passages of First Amendment law. Thus, when there are a limited number of content-based provisions that are not intended to censor or restrict speech, courts are tending to uphold the code against a challenge that it is unconstitutionally content-based.

### **3. First Amendment Issues: Sign Permitting Procedures as an Unlawful Prior Restraint**

This issue is related to the content-neutral issue above. When a government regulation requires an official approval as a pre-condition to “speaking” – for example, displaying a sign – courts are concerned that the approval requirement could be an unlawful “prior restraint” on freedom of expression by prohibiting or unnecessarily delaying the communication. Obviously, a sign code requirement that a permit must be obtained to display a sign raises concerns about the prior restraint issue. If a sign code is content-neutral, it is highly unlikely a court will find an unlawful prior restraint; however, courts are far more likely to find that the permitting process for signs is an unlawful prior restraint if a sign code is found to be content-based

Recent court decisions involving prior restraint challenges to reasonable sign permitting procedures in cases where the code is content-neutral, have almost uniformly upheld reasonable procedures under the rationale announced by the U.S. Supreme Court

in a 2002 case, *Thomas v. Chicago Park District*.<sup>8</sup> These recent decisions have also shown that courts are reluctant to strike down a permitting procedure based merely on a claim that the procedure could be – rather than has been – used to discriminate among applicants.

For example, in a case from Florida,<sup>9</sup> the plaintiff argued that the lack of specific time limits in the city's sign ordinance conferred excessive discretion on city officials, thereby potentially chilling speech before it occurs. While acknowledging the possibility city officials could delay the processing of certain permit applications, and thereby arbitrarily suppress disfavored speech, the court concluded that “[w]e will not, however, address hypothetical constitutional violations in the abstract. As the Supreme Court noted in *Thomas*, we believe ‘abuse must be dealt with if and when a pattern of unlawful favoritism appears, rather than by insisting upon a degree of rigidity that is found in few legal arrangements.’” “quoting *Thomas v. Chicago Park District*.

### **4. First Amendment Issues: Total Prohibition on a Category of Signs**

Sign codes can be subject to strict scrutiny when they impose a total prohibition on an entire category of signs, even where the regulation is not content-based. In a 1994 case,<sup>10</sup> the U.S. Supreme Court struck down a total prohibition on lawn signs in a St. Louis suburb's sign code. Even

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<sup>7</sup> *Riel v. City of Bradford*, 485 F.3d 736 (3d Cir. 2007).

<sup>8</sup> 534 U.S.316 (2002).

<sup>9</sup> *Granite State Outdoor v. City of St. Petersburg*, 348 F.3d 1278 (11th Cir. 2003).

<sup>10</sup> *City of Ladue v. Gilleo*, 512 U.S. 43 (1994).

though the code did not regulate the signs based on their content, the Court ruled that the signs homeowners place on their lawns constitute an important and distinct medium of expression for political, personal or religious messages. Thus, the city's total ban on such signs, in conjunction with the city's failure to provide adequate substitutes for such an important medium, was an unconstitutional restriction on expression.

Challenges to a complete ban on pole signs have had mixed results depending on the specific facts in the case. In the previously noted *North Olmsted* case, an Ohio federal district court found that a selective ban on pole signs that carried commercial messages was unconstitutional. But a Ninth Circuit Court of Appeals case from a Portland, Oregon suburb<sup>11</sup> found that a content-neutral prohibition on pole signs was permissible.

#### 5. First Amendment Issues: "Vagueness" and "Overbreadth"

Even where a sign regulation is otherwise valid, it may be struck down if a court finds the language so vague that it is unclear what type of expression is actually regulated or so broadly worded that it has the effect of restricting speech to a greater extent than necessary to achieve the goals of the regulation.

These two principles - termed "void for vagueness" and "overbreadth" - require that government regulation of expression be precise. This insures that: (1) individuals will know exactly

what forms of expression are restricted and (2) laws that legitimately regulate certain forms of expression are not so broadly written that they also illegitimately regulate other types of expression. These two principles are closely related, and courts often find that an ordinance violates both; however, there have been very few successful challenges to on-premise sign codes based on vagueness and overbreadth.

#### 6. Fifth Amendment Issues: Removal and Amortization of Nonconforming Signs

Provisions for the removal - or coming into compliance -- of nonconforming signs are normally included as part of a sign ordinance. Examples of limitations on a nonconforming sign that are clearly lawful include: a prohibition on increasing the area or height of a nonconforming sign and requiring that a replacement sign structure conform to the new regulations when a nonconforming sign structure is removed.

As a general matter, local governments in most states may require timely compliance with all land development regulations so long as due regard is given to substantial investments. Courts generally agree that local governments may validly require owners of nonconforming structures and uses to bring them into compliance upon the happening of prescribed events. For example, conformity with the sign ordinance may be required as a precondition to expanding the nonconforming sign, as a precondition to reconstruction of the sign after its substantial destruction, before taking ac-

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<sup>11</sup> *G.K. Ltd. Travel v. City of Lake Oswego*, 436 F.3d 1064 (9<sup>th</sup> Cir. 2006)

tion that would extend the life of the nonconforming sign and after the sign has been abandoned.

Many codes also require that a sign be brought into conformity if there is a change in the message displayed on the sign. Court decisions are mixed on whether such a provision is content-based. There are several state court decisions that have ruled such a provision is unlawful, including cases from Alabama,<sup>12</sup> Arizona,<sup>13</sup> New Hampshire,<sup>14</sup> New Jersey,<sup>15</sup> and New York.<sup>16</sup> Such a provision was recently upheld, however, by the Ninth Circuit in a case from a Portland, Oregon suburb.<sup>17</sup>

Regardless of whether such a provision is adjudged content-neutral; however, there is really no compelling argument in favor of cutting short the non-conforming status of a sign absent a simultaneous change in ownership of the business *and* the sign face. Otherwise, the retention of nonconforming status can be more a matter of luck than anything else. For example, as actually happened in the *North Olmsted* case, a Chrysler dealer lost the non-conforming status of a sign when the corporate name changed to Daimler-Chrysler while the

Toyota, Ford, Buick, etc. car dealers' signs retained their non-conforming status because there were no corporate name changes.

Amortization is another widely used technique to effect the removal of nonconforming signs. Amortization provisions normally permit a nonconforming sign to remain in place for a sufficient period to amortize its cost before requiring its removal. Except where there is an express statutory requirement that "just compensation" be paid, the majority of courts have been willing to allow the use of amortization as a constitutionally acceptable method for achieving the removal of nonconforming signs and amortization periods ranging from ten months to ten years have been upheld by state and federal courts.

While amortization has been upheld as a general matter, it is important that any amortization requirement contain an appeal provision that allows the owner of a specific sign to obtain an extension of the period required to come into conformity by demonstrating it would be a financial hardship to meet the original requirement. Communities may also want to consider whether placing an amortization provision in a sign ordinance simply sends the wrong message to businesses; that is, if the prospect exists that a business may be forced to replace its signage, it will have little incentive to install signs that are well-crafted and aesthetically pleasing.

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<sup>12</sup> Budget Inn of Daphne, Inc. v. City of Daphne, 789 So.2d 574 (Ala. 2000).

<sup>13</sup> Motel 6 Operating Ltd. Partnership v. City of Flagstaff, 195 Ariz. 569, 991 P.2d 272 (1999).

<sup>14</sup> Ray's Stateline Market, Inc. v. Town of Pelham, 140 N.H. 139, 665 A.2d 1068 (1995).

<sup>15</sup> Rogers v. Zoning Bd. of Adjustment of the Village of Ridgewood, 309 N.J.Super. 630 (App.Div. 1998), aff'd 158 N.J. 11, 726 A.2d 258 (N.J. 1999).

<sup>16</sup> Kevin Gray East Coast Auto Body v. Village of Nyack, 566 N.Y.S.2d 795 (N.Y.App.Div. 1991).

<sup>17</sup> G.K. Ltd. Travel v. City of Lake Oswego, 436 F.3d 1064 (9th Cir. 2006).



## 7. Fifth Amendment Issues: Sign Permitting Fees

Local government may lawfully charge a sign permit fee so long as the amount of the fee is reasonably related to the costs actually incurred in the administration and enforcement of the permit system. In other words, it is legal to require sign owners to pay all reasonable costs incurred by a local government associated with the operation of a sign code, including permitting requirements and enforcement. For example, this includes the administrative costs for processing and reviewing applications and renewals, and the cost of inspections, such as the salaries of inspectors.

Note, however, that if a sign permit fee is challenged, local government will bear the burden of proving that the fee charged bears a reasonable relationship to the actual costs of administering the permit system. If the fee has been calculated properly, this is not a problem, but courts will invalidate sign permit fees if a local government fails to show that the fee was reasonably related to the costs of enforcement.<sup>18</sup>

## 8. Fourteenth Amendment Issue: Challenging Aesthetics and Traffic Safety

In its first ruling on a broad-based challenge to a local sign code,<sup>19</sup> the U.S. Supreme Court ruled that local governments could normally regulate signs based on concerns about traffic

safety and aesthetics without having to provide any evidence that their sign regulations in fact served those interests. After that decision, courts were extremely deferential to government claims that its regulations are based on aesthetics and/or traffic safety concerns.

Some recent decisions, however, have looked more closely at government's claim that its sign regulations are easily justified merely by reference to traffic safety and aesthetics as substantial governmental interests.

In a recent case from a Cincinnati, Ohio suburb,<sup>20</sup> the majority of the judges on a federal appeals court ruled that a village could not justify its restrictions on "for sale" signs posted on vehicles merely by citing *Metromedia's* approval of aesthetics and traffic safety concerns as justifying sign regulations. The majority noted that the *Metromedia* court had declined to disagree with the "accumulated common-sense judgments of local lawmakers and of the many reviewing courts [that found] that billboards are real and substantial hazards to traffic safety;" but in this case, the record demonstrated "no comparable legislative or judicial history supporting the conclusion that restrictions placed on 'For Sale' signs posted on vehicles address concrete harms or materially advance a governmental interest."<sup>21</sup>

The dissenting judges in this case argued that requiring any evidence that the prohibition substantially advanced the government's interest in traffic

<sup>18</sup> See, e.g., *South Suburban Housing Center v. Greater South Suburban Bd. of Realtors*, 935 F.2d 868 (7th Cir. 1991).

<sup>19</sup> *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981).

<sup>20</sup> *Pagan v. Fruchey*, 492 F.3d 766 (6th Cir. 2007).

<sup>21</sup> 492 F.3d at 774-75.

safety would burden government with “pointless formalities.” Rather, the dissenters claimed “The justification for forbidding the placement of for-sale automobiles on the public streets – for inspection by potential buyers – is simply obvious: people may be drawn to stand in the street for non-traffic purposes.”<sup>22</sup>

In another case,<sup>23</sup> a federal district court ruled that a Los Angeles ban on new billboards did not directly advance the city’s claimed interests in traffic safety and aesthetics given the city’s exempting from the ban new off-site signs on thousands of kiosks, transit shelters and benches from which the city would derive revenue.

In an associated case from a Seattle suburb,<sup>24</sup> the sign code had a restriction on portable signs that had numerous exemptions, including one for real estate signs. The regulation was challenged by a store owner who had hired an employee to stand on the sidewalk wearing a sign to attract the attention of motorists. While the federal appeals court acknowledged that the challenged regulation served the city’s interests in aesthetics and traffic safety, it ruled that the city’s failure to demonstrate why real estate signs compromised those interests so little that they could be lawfully displayed meant that the regulation failed under what is known as the “reasonable fit” analysis, which the Supreme Court

adopted in a 1993 case from Cincinnati.<sup>25</sup>

Other recent decisions, however, have followed *Metromedia’s* deferential stance. In particular, two recent cases have upheld bans on electronic message centers (EMCs) by accepting the local governments’ assertion that the ban served traffic safety and aesthetic interests without requiring any evidentiary showing from the local governments.<sup>26</sup>

## **9. Fourteenth Amendment Issue: Permit Review Procedures**

There are two basic procedures for local government review of a sign permit: administrative approval, which stresses quantitative criteria, and design review, which goes beyond qualitative criteria to consider qualitative guidelines.

Administrative approval involves a straightforward objectively based decision. An administrator reviews a permit application to determine if it complies with the numerical standards stated in the sign code and approves or rejects the application based on whether the proposed sign will be in compliance.

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<sup>22</sup> 492 F.3d at 779.

<sup>23</sup> *Metro Lights, L.L.C. v. City of Los Angeles*, 488 F.Supp.2d 927 (C.D. CA 2006).

<sup>24</sup> *Ballen v. City of Redmond*, 466 F.3d 736 (9th Cir. 2006).

<sup>25</sup> *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993).

<sup>26</sup> See, *Naser Jewelers, Inc. v. City of Concord*, 2008 WL 276529 (D.N.H.), *aff’d*, 538 F.3d 17 (1st Cir. 2008) and *Chapin Furniture Outlet v. Town of Chapin*, 2006 WL 2711851 (D.S.C.), *vacated and remanded for dismissal on other grounds*, 2007 WL 3193854 (4th Cir.); *Marras v. City of Livonia*, 575 F.Supp.2d 807 (E.D. Mich. 2008); *Carlson’s Chrysler v. City of Concord*, 938 A.2d 69 (N.H. 2007).

Design review, in contrast, supplements numerical standards with qualitative guidelines that attempt to “fine-tune” sign approval decisions by evaluating the relationship between any given sign and its proposed site based on specified criteria. For example, a design review process might try to achieve greater “compatibility” between structures and signs by adding design standards related to sign materials, lighting and design.

Proponents of design review claim that the addition of this discretionary process promotes creativity by applicants and permits greater flexibility in sign approval. Critics of design review argue that the process can become unduly subjective – or even “mask” other agendas – and even when relatively well-administered it can create uncertainty about permit approvals and significantly increase both the cost and time required to obtain a permit approval.

It is possible, however, to have an optional design review process, one that is voluntarily entered into by applicants, rather than a mandatory one. This option allows the applicant to choose between designing a sign strictly according to numerical standards (which sometimes are very restrictive) or going through a design review process that allows for larger signs, more flexibility, or both. For example, the numerical standard for a projecting sign might consist of a maximum allowable area of “x” square feet. This would probably produce a simple, rectangular sign, maximizing the copy area. Such a sign might say “Sam’s Seafood.” Under an optional

design review process, the sign area could be increased by a certain percentage. But the sign would need to include a unique, eye-catching logo, such as a jumping fish, that would add liveliness to the streetscape. Such a method rewards both businesses and sign producers for creative efforts.

#### **10. Fourteenth Amendment Issue: Sign Variances**

A variance is a legal device that allows a local government to provide a property owner with relief from the normal application of some restriction in the zoning code, such as minimum lot or building size, height limits, or setback requirements. Variances are granted when government determines that there are special circumstances, unique to the property in question, that would create practical difficulties if the zoning code were enforced as written.

Requests for a variance due to the peculiarities of the property involved are also appropriate when sign regulations are applied to specific properties. A commonly occurring situation is where adherence to the sign code would seriously compromise the visibility of a sign and thus potentially harm the economic viability of the business. This situation can occur, for example, where a significant grade difference exists between the property and an adjacent or nearby street or highway from which the business is expected to draw significant vehicular traffic, and a business sign limited to the height, type, or location permitted by the ordinance would not be fully visible from that street or highway. In such cases, there is little reason why a variance increasing the allowable

height of the sign should not be granted.

#### 11. Lanham Act Issue: Protection of Federally-registered Trademarks

The federal Lanham Trademark Protection Act provides substantial legal protection to companies that have registered their trademark logos, symbols and colors with the federal government. In 1982, Congress amended the Act (15 U.S.C. § 1121(b)) to prohibit the enforcement of state or local regulations that would require the “alteration” of a federally registered trademark.

Local government sign regulations can implicate the Lanham Act whenever they require a business owner to change the color, typescript, or shape of a registered trademark displayed on a business sign. The ability to display a trademark on a business sign without “alteration” is important to business owners, of course, because it allows them to take full advantage of the national advertising and business goodwill associated with the unaltered trademark.



*Example of a typical corporate trademark*

While the language in the 1982 Amendment prohibits state and local

governments from requiring the “alteration” of a trademark, the Amendment does not specifically mention sign regulations. As a result, the two federal appellate courts that have considered Lanham Act challenges to local sign regulations have reached opposite decisions. In a case from a suburb of Rochester, New York,<sup>27</sup> the federal appeals court for the Second Circuit rejected a Lanham Act challenge to a local sign code that required a business owner to change the color or some other element of a federally registered trademark. But in a case from Tempe, Arizona,<sup>28</sup> the federal appeals court for the Ninth Circuit upheld such a challenge.

Thus, for the moment, the only business owners who are assured they have the right to display a federally registered trademark on their business signs are those in states comprising the Ninth Circuit Court of Appeals: California, Oregon, Washington, Arizona, Nevada, Idaho and Montana, plus Alaska & Hawaii. Business owners in states comprising the Second Circuit Court of Appeals -- New York, Connecticut & Vermont -- clearly have no such protection, while business owners in all other states lack clear guidance on whether they are or are not protected by the Lanham Act.

Despite the legal uncertainties outside the Ninth and Second Circuits, from a traffic safety standpoint there is little to be said for any local regulation altering a trademark/logo on a sign.

<sup>27</sup> *Lisa’s Party City, Inc. v. Town of Henrietta*, 185 F.3d 12, 15 (2d Cir. 1999).

<sup>28</sup> *Blockbuster Videos, Inc. v. City of Tempe*, 141 F.3d 1295 (9th Cir. 1998).

Such logos, with their distinctive colors and designs, are easily and quickly recognized by motorists and allow for quick decision-making, and thus safe traffic maneuvers, while driving.

## 12. Note on Availability of Damages and Attorneys' Fees Under 42 U.S.C. § 1983

When a local government violates an individual's constitutional rights, that individual is entitled to sue the local government in federal court under a federal statute, Section 1983 of the Civil Rights Act of 1871.<sup>29</sup> Section 1983 clearly applies when local government unlawfully interferes with a business owner's property and/or first amendment rights associated with a lawfully erected business sign. In addition to making municipalities potentially subject to money damages for violation of a business owner's constitutional rights,<sup>30</sup> a successful demonstration of a violation of constitutional rights pursuant to a Section 1983 claim may entitle the injured party to attorneys' fees<sup>31</sup> and punitive damages,

depending on the motive and intent of the government official and whether the official has absolute or qualified immunity;<sup>32</sup> however, municipalities by law cannot be liable for punitive damages under Section 1983.<sup>33</sup>

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<sup>29</sup> The statute provides that every "person who under color of any statute, ordinance, regulation, custom, or usage of any State ... subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...." 42 U.S.C. § 1983.

<sup>30</sup> Section 1983 provides that parties sued under the statute "shall be liable to the party injured in an action at law" and the Supreme Court has ruled that, by analogy to the common law of torts, damages are available for a "constitutional tort" under this section; *see Carey v. Piphus*, 435 U.S. 247 (1978).

<sup>31</sup> 42 U.S.C. § 1988 provides that reasonable attorneys' fees and costs may be awarded to the prevailing party in a lawsuit brought under 42 U.S.C. § 1983. Thus, for example, in a case from a suburb of Cleveland, Ohio, the court awarded \$308,825.70 in attorneys' fees and

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costs to a Realtors' association that had successfully challenged a sign ordinance's ban on real estate lawn signs. *See Cleveland Area Bd. of Realtors v. City of Euclid*, 965 F.Supp. 1017 (N.D. Ohio 1997).

<sup>32</sup> As a general matter, local officials have absolute immunity regarding adjudicatory matters and qualified immunity for other matters; *see, e.g., Desert Outdoor Advertising v. City of Moreno Valley*, 103 F.3d 814 (9th Cir. 1996).

<sup>33</sup> *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).



## PART III. MODEL REGULATORY GUIDELINES

### Section 100. Purpose of the Regulations

1. To promote the creation of an attractive visual environment that promotes a healthy economy by:
  - a. Permitting businesses to inform, identify, and communicate effectively; and
  - b. Directing the general public through the use of signs while maintaining attractive and harmonious application of signs on the buildings and sites.
2. To protect and enhance the physical appearance of the community in a lawful manner that recognizes the rights of property owners by:
  - a. Encouraging the appropriate design, scale, and placement of signs.
  - b. Encouraging the orderly placement of signs on the building while avoiding regulations that are so rigid and inflexible that all signs in a series are monotonously uniform.
  - c. Assuring that the information displayed on a sign is clearly visible, conspicuous, legible and readable so that the sign achieves the intended purpose.
3. To foster public safety along public and private streets within the community by assuring that all signs are in safe and appropriate locations.
4. To have administrative review procedures that are the minimum necessary to:
  - a. Balance the community's objectives and regulatory requirements with the reasonable advertising and way finding needs of businesses.
  - b. Allow for consistent enforcement of the Sign Code.
  - c. Minimize the time required to review a sign application.

*Comment: This section, using an outline for "typical" sign regulations, establishes suggested standards and criteria that are consistent with the Principles established in PART I and the Legal Considerations in PART II.*

*This model section focuses on the basic framework for business related signs. It has not focused on residential signs, temporary signs, or a normal appeals process. Therefore, this section does not represent the entire sign code that a community may require.*

*Comment: The purposes of the sign regulations are to balance public and private interests in a manner that recognizes the importance of business advertising, through signs, by acknowledging that signs and their message must be visible and comprehensible in order to provide identification and thus assuring that the intended audience is able to find their way.*



- d. Provide flexibility as to the number and placement of signs so the regulations are more responsive to business needs while maintaining the community's standards.

*Comment: The measurement standards should be "reasonably" flexible to insure that sign messages are not unnecessarily restricted as the result of overly stringent methods of measuring height and area. For example, when measuring the height of a freestanding sign, topographical irregularities will be taken into consideration.*

## **Section 101. Measurement Standards**

### **101.01. Determining Sign Area and Dimensions.**

1. For a wall sign which is framed, outlined, painted or otherwise prepared and intended to provide a background for a sign display, the area and dimensions shall include the entire portion within such background or frame.
2. For a wall sign comprised of individual letters, figures or elements on a wall or similar surface of the building or structure, the area and dimensions of the sign shall encompass a regular geometric shape (rectangle, circle, trapezoid, triangle, etc.), or a combination of regular geometric shapes, which form, or approximate, the perimeter of all elements in the display, the frame, and any applied background that is not part of the architecture of the building. When separate elements are organized to form a single sign, but are separated by open space, the sign area and dimensions shall be calculated by determining the geometric form, or combination of forms, which comprises all of the display areas, including the space between different elements. Minor appendages to a particular regular shape, as determined by the Zoning Enforcement Officer or Planning Commission, shall not be included in the total area of a sign.
3. For a freestanding sign, the sign area shall include the frame, if any, but shall not include:
  - a. A pole or other structural support unless such pole or structural support is internally illuminated or otherwise so designed to constitute a display device, or a part of a display device.
  - b. Architectural features that are either part of the building or part of a freestanding structure, and not an integral part of the sign, and which may consist of landscaping, building or structural forms complementing the site in general.

*Comment: One important consideration in determining if a "feature" – landscape or architectural -- should be excluded from the sign area is whether the feature or element, without lettering or logos, would otherwise be constructed – as part of the building or site development. If the answer is "yes," then the area of the feature should be excluded from being part of the sign.*

*The lower portion of a solid base sign should also be excluded from the sign area.*

## Wall Sign Area – Examples of Area Calculations and the Effect of Measurement Alternatives



*Examples*



*Measuring the examples using multiple geometric shapes*



*Representation of sign areas using single geometric shapes equivalent to the areas (square feet) using multiple geometric shapes.*

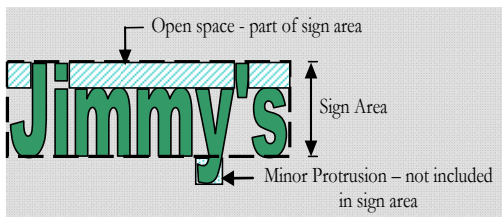
### *Penalty When Using a Single Geometric Area*

**Area - 63%**  
**Letter Height - 47%**

**Area - 40%**  
**Letter Height - 30%**

**Area - 66%**  
**Letter Height - 40%**

*These examples illustrate that when a single geometric shape is required to measure the sign area of a unique, attractive sign, that the size and effectiveness of the sign is penalized (substantially reduced in height and area) compared to measuring the sign with multiple geometric shapes.*



*This illustrates the areas to be included within the calculation of a Sign Area. It is useful to include, in the sign regulations, illustrations that interpret provisions in the code, similar to this one.*

*Comment: When measuring wall signs, multiple geometric shapes should be used, rather than one rectangle. This is to assure that "air space" or "the background wall" are not included as part of the sign area. When reasonable background areas are not excluded then uniquely shaped signs are often penalized. This is because in order to comply with the maximum area (using a single geometric shape) the message area will be smaller than other "conventionally" shaped signs in the vicinity, or even on the same building. Furthermore, the sign may not be adequately visible.*

### Calculation of Freestanding Sign Area



*The black dashed line indicates the sign area*



*In the sign to the left, the frame may or may not be included in the sign area.*

*In the sign above, the solid base is not included in the sign area.*

*Comment: Multiple faced signs are particularly applicable on corner lots when the regulations permit the consolidation of multiple signs into one larger sign "at the corner." One larger sign is often viewed as more preferable than multiple smaller signs.*

4. When two identical sign faces are placed back to back so that both faces cannot be viewed from any point at the same time, and are part of the same sign structure, the sign area shall be computed as the measurement of one of the two faces. When the sign has more than two display surfaces, the area of the sign shall be the area of largest display surfaces that are visible from any single direction.



*The area of a sign, with more than two faces, would be calculated as the area of the largest rectangular plane of the panels that are visible from any single location.*

5. In the event of a dispute in determining the area or dimensions of any sign, a negative decision of the Zoning Enforcement Officer may be appealed, by the applicant's submitting a formal application to the Planning Commission (See also Comment in Section 106).

## 101.02. Determining Sign Height.

1. The height of a freestanding sign shall be measured from the base of the sign or supportive structure at its point of attachment to the ground, to the highest point of the sign. A freestanding sign on a man-made base, including a graded earth mound, shall be measured from the grade of the nearest pavement or top of any pavement curb.



*The height of a sign is measured from the grade of the street level where the sign is viewed; not from the top of the mound*

*Comment: The measurement of the sign height is to assure that each sign has reasonable and, generally, equal visibility. This means that if the grade of the site is substantially lower than the adjacent public street, the Zoning Enforcement Officer should have the authority to determine that additional sign height is warranted (above the lower grade) to assure that the sign has visibility equal to the other signs along the street. Alternatively, the sign should not be granted extra height by measuring the height from an "artificial" site feature that has raised the base of the sign substantially above the grade of the adjacent street.*



*When the sign is too low, it has limited effectiveness particularly when it is blocked from view. Furthermore, in most instances it is unrealistic to expect that the parking can be moved to make these lower signs more visible. Alternatively, if the parking is eliminated, the remaining parking spaces will often fall below the code required and what the business(es) need.*



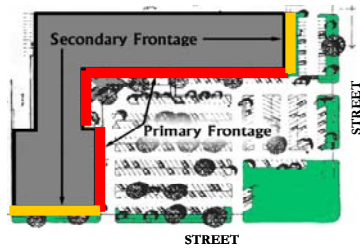
*Acceptable sign height*

2. Clearance for freestanding and projecting signs shall be measured as the smallest vertical distance between finished



grade and the lowest point of the sign, including any framework or other embellishments.

### 101.03. Determining Building Frontages and Frontage Lengths.



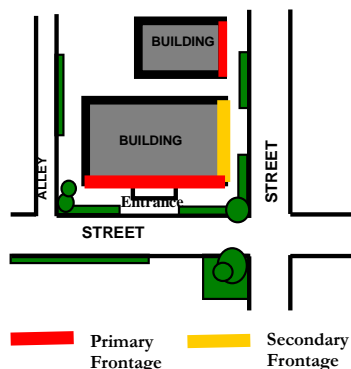
Primary Frontage Secondary Frontage

#### Multiple Tenant Building

*Comment: A minimum area allowance assures that even the smallest tenant is able to have a sign that is visible to the intended viewer.*

*Comment: Even when each tenant is entitled to a proportional share of sign area based on the building frontage, the overall sign allowance for the building remains in proportion to the size of the building wall.*

*Signs on multiple building elevations do not contribute to sign clutter since the overall sign allowances remain in proportion to the size of the building walls and the signs on no more than two elevations can be viewed at the same time.*



Primary Frontage Secondary Frontage

#### Single Tenant Building

1. **Building Unit** - The building unit is equivalent to the tenant space. The frontage of the tenant space on the first floor shall be the basis for determining the permissible sign area for wall signs.
2. **Primary and Secondary Frontage** - The frontage of any building unit shall include the elevation(s) facing a public street, facing a primary parking area for the building or tenants, or containing the public entrance(s) to the building or building units.
  - a. The primary frontage shall be considered the portion of any frontage containing the primary public entrance(s) to the building or building units.
  - b. The secondary frontage shall include those frontages containing secondary public entrances to the building or building units, and all building walls facing a public street or primary parking area that are not designated as the primary building frontage by subsection "a" above.

### 101.04. Length of Building Frontage.

1. The length of any primary or secondary building frontage as defined in Section 107, shall be the sum of all wall lengths parallel, or nearly parallel, to such frontage, excluding any such wall length determined by the Zoning Enforcement Officer or Planning Commission as clearly unrelated to the frontage criteria.
2. For buildings with two or more frontages, the length of the wall and allowable sign area shall be calculated separately for each such building frontage.
3. The building frontage for a building unit shall be measured from the centerline of the party walls defining the building unit.

## Section 102. Signs Permitted

The signs permitted in each character area are those indicated in Exhibit 1.

*Comment: Exhibit 1 indicates the signs that are typically permitted in each character area. In some cases the sign type is always permitted. In other instances the sign may be permitted depending on the design characteristics of the character area or a portion thereof. For example, in a traditional downtown or neighborhood development space may not be available for freestanding signs. Conversely, projecting signs, perpendicular to the building and visible from the sidewalk may be very appropriate.*

*Alternatively, in a suburban design configuration freestanding signs should be expected. Projecting signs may be appropriate depending on the design of the development and the businesses relationship to pedestrian walkways – whether the walkways are along the public streets or are private walks directly in front of the businesses.*

*In a suburban environment a freestanding sign should be permitted for each separate development, whether the development is comprised of a single business or multiple businesses on the same site.*

**Exhibit 1 – Signs Permitted in Each Character Area**

Character Area	Downtown	Small Commerical		General	Highway	Mixed Use	Office	Industrial
		Traditional	Suburban	Commercial	Commercial			
Wall Sign	●	●	●	●	●	●	●	●
Projecting Sign	●	●	○	○	○	●	○	○
Directory Sign	●	●	●	●	●	●	●	●
Signs for Upper Floor Tenants (1)	●	●				●	●	
Building Identification Signs	●	●	●	●	●	●	●	●
Freestanding Sign: - Multiple Businesses (2)			●	●	●	●	●	●
- Single Business			●	●	●	●	●	●
Freestanding Sign - for the identification of the project or development			●	●	●	●	●	●

● The sign would be generally permitted

○ These signs could be permitted depending on the design characteristics (building and parking arrangement, pedestrian circulation, etc.) and whether adequate space is available

(1) Buildings in the character areas (suburban, general commercial, and highway commercial) will typically be one story. Therefore, sign possibilities for multiple story buildings are not shown. However, if they are multiple floors, then the applicable standards for multiple floor buildings would apply.

(2) In multiple tenant centers, each business may not be entitled to its own freestanding sign

*Comment: When referring to Exhibits, a community must be selecting the appropriate size of the signs based on the characteristics of the area that assure that the sign is legible and comprehensible from the expected viewing distance..*

*Comment: Each tenant may have more than 1 wall sign when the total sign area is within the permissible limits.*



*The size of the sign (picture on top) is in proportion with the size of the wall area; in the lower illustration the sign is too small.*

## Section 103. Development Standards

### 103.01. Wall signs

1. The basic allowance for wall signs shall be limited to \_\_\_\_\_ square feet of sign area for each lineal foot of building or tenant frontage. ***See Exhibit 2.***
2. The minimum sign area for each tenant shall not be less than \_\_\_\_\_ square feet ***(say, 20 or 25 square feet)***
3. Each tenant may have multiple wall signs as long as the total wall sign area does not exceed the allowances established for wall signs ***using Exhibit 2.***



*These pictures illustrate that multiple signs for a single tenant can be appropriate and continue to be in proportion to (or in scale with) the size of the tenant space and the size of the wall. The flexibility of multiple signs also offers the community more opportunity for creative design.*





## Exhibit 2 – Wall Sign – Basic Allowances

Character Area	Square Feet of Sign Area Per Lineal Foot of Building or Tenant Frontage							
	1.50	1.75	2.00	2.25	2.50	2.75	3.00	3.25
Downtown								
Small Commercial - Traditional								
Small Commercial - Suburban								
General Commercial								
Highway Commercial								
Mixed Use*								
Office								
Industrial								

\* Since mixed use areas may vary widely with respect to scale, form and location (relative to existing street patterns) the potential sign allowances can also vary widely -- from replicating a downtown character to replicating a general commercial character

*Comment: Exhibit 2 represents the range of sign sizes that are appropriate to balance the objectives of the community, be comprehensible from the adjacent street, and to be in scale with the size of the building and its architecture. Most of these signs are flat against the wall of the building. Therefore, the visibility of the sign to the motorist on the adjacent street, is more related to the distance the building is setback from the street right-of-way than the distance the building is “down the street” in front of the motorist’s line of vision. Therefore the basic sign sizes selected should reflect the size and scale of the buildings and their required or prevailing setbacks from the public street.*

*The bonuses, derived from the basic standard, assure that when the building is placed farther from the viewer the sign becomes effectively “bigger” to off-set the increased distance.*

*The minimums will only be applicable in very tight pedestrian oriented environments (e.g. small historic downtowns with narrow streets and little through traffic) when the sign can not be viewed from long distances.*



*1 square foot per lineal foot*



*2 square feet per lineal foot*

*Photographs illustrating Some Area Allowances in Exhibit 2 (Multiple Tenant Buildings)*

*Comment: This is to assure that the sign of one tenant is not so close to the sign of an adjacent tenant that the two signs would "run into each other."*

4. The wall sign or signs, shall not be greater than eighty (80%) percent of the length of the tenant space or the length of the building frontage for single tenant buildings.
5. The area of any wall sign may be increased by twenty-five (25%) percent when the building is setback at least two hundred (200) feet from the public right-of-way and may be further increased an additional twenty five (25%) percent for each additional two-hundred (200) feet of setback, or fraction thereof, up to a maximum increase of one-hundred (100%) percent.



*Some of these signs are too small to be read from the public street.*

6. Additional wall sign area is permitted for a secondary frontage (see Definitions) which shall be equal to 100% of the primary sign area allowance based on allowances selected *using Exhibit 2.*



*These illustrations reflect an appropriate sign bonus being available for the secondary frontages.*

7. The following additional wall signs may be permitted:
- a. **Projecting signs** are permitted, in addition to the allowances for wall signs when designed and placed for the purpose of identifying the businesses for a pedestrian walking along the same side of the street as the business they seek or under a continuous rain canopy projecting from the building. Projecting signs shall have a maximum area of \_\_\_\_ square feet; the bottom of the sign shall be a minimum of eight (8) feet above

*Comment: This is an effective means of enabling pedestrians in front of the buildings to conveniently find business in the immediate vicinity. These should be permitted in the character areas as indicated on Exhibit 1. Projecting signs are applicable when there are multiple businesses in continuous buildings with an adjacent sidewalk on which pedestrians are walking parallel to the front of the building. These buildings may be adjacent to a public street or adjacent to a private walkway in front of buildings that are substantially setback from the public right-of way.*

the sidewalk; the sign shall not project more than \_\_\_\_ feet from the wall of the building on which the sign is placed; and adjacent projecting signs shall not be closer than \_\_\_\_ feet



*Illustration on the left shows under canopy sign and on the right a projecting sign*

*Comment: Depending on the size and scale of the buildings and the adjacent pedestrian area, suggested standards for projecting signs:*

- *Maximum area 8 to 16 square feet, or greater;*
- *Projecting from wall not more than 4 to 6 feet depending on the size of the sign;*
- *Minimum spacing between projecting signs – 15 to 20 feet.*

- b. **Building Directory** – In addition to the wall signs otherwise permitted by these regulations an additional sign may be permitted up to a maximum of \_\_\_\_ square feet for the purpose of identifying first floor tenants that do not have outside building frontage or upper floor tenants.



**8. Additional Wall Signs for Multiple Story Buildings –**

An additional building sign is permitted on each of the building's primary and secondary frontages according to the following:

- a. For a building with two (2) floors the additional permitted sign area is \_\_\_\_ square feet for each eligible wall.
- b. This additional permitted sign area may be increased by \_\_\_\_ square feet for each additional building floor.
- c. The sign must be placed at the height for which the bonus has been granted.

*Comment: Even though this permits additional building signs, the total sign area continues to be in proportion to the size of the building. The additional allowance could approximately permit a minimum bonus of 20 to 30 square feet plus 10 to 15 square feet for each additional floor. This would be sufficient for the additional sign on the upper floor of the building to be visible.*



*Sign illustrations on multiple story buildings*

### 103.02. Freestanding signs

1. The area of freestanding signs shall be a maximum of \_\_\_\_\_ square feet (*as determined from Exhibit 3*).

*Comment: The requisite area for a freestanding sign is based on several factors. Primarily among them are: the amount of time the motorist has to view the sign, the distance from which the sign will be viewed, the amount of information that can be comprehended during the "viewing time"; the required size of the letters; and the ratio of the message area (letters, logos and symbols) to the sign's background. When these factors are reasonably applied the sizes of the signs will generally correspond to those sizes in Appendix B which illustrates the sign area for three typical conditions. Additionally, the size and clarity are influenced by lighting, colors and the letter font. Generally the smaller signs will be associated with lower speed limits and the larger signs associated with higher speed limits including at freeway interchanges.*

**Exhibit 3 - Freestanding Signs – Basic Area Allowances**

	Proposed Sign Area (sq.ft.)									
Character Areas	40	60	80	100	120	140	160	180	200+	
Downtown										
Small Commercial - Traditional										
Small Commercial - Suburban										
General Commercial										
Highway Commercial										
Mixed Use*										
Office										
Industrial										

\* When the mixed use development replicates downtown form and scale there may not be suitable space available for freestanding signs.

2. There shall be both a minimum and a maximum height of freestanding signs for each property with the standards established for each character area. *(See Exhibit 4).*



*The sign is blocked by parked cars when it is too low*



*Example of lower sign – Landscaped Area along Local Street*

3. No portion of a freestanding sign shall be in, or project over, a public right-of-way and maximum setback shall be no greater than \_\_\_\_\_ feet.

*Comment: The minimum height should assure that the bottom of sign is visible above parked and moving vehicles and any other obstructions that might block the view of the signs. To accomplish this, the minimum height of the sign – to accommodate a minimum clearance of 7 feet from the ground and the message area – should be 12 feet to the top of the sign. This limited height, however, only permits a sign area five feet in height. A 14 feet high sign would afford greater design flexibility for the shape of the sign. Lower signs should only be considered on local retail or industrial streets when there is a generous landscaped area adjacent to the street in which to place the signs, the traffic volumes are light, and the speed is relatively slow.*

*Comment: The maximum setback should not place the sign outside of the driver's cone of vision which is no greater than ten (10) degrees from either side of the driver's line of sight.*



### Exhibit 4 - Freestanding Signs – Basic Height Allowances (a)

	Maximum Height (feet)									
Character Areas	12	20	30	40	50	60	70	80	100	
Downtown										
Small Commercial - Traditional										
Small Commercial - Suburban										
General Commercial										
Highway Commercial										
Mixed Use										
Office										
Industrial										

(a) Given the nature of the sites in residential areas, which typically have large front yards, low traffic volumes, and limited on street parking, a City may impose a lower height limit for the freestanding sign for institutional uses and subdivision entrances. Nevertheless the sizes of these signs should be determined using the same criteria that is applied to all freestanding signs and which is illustrated in Exhibit 3 and Table 1

*Comment: Additional freestanding signs insure that large single development sites are generally afforded the same number of signs as multiple smaller sites. If this “equity” is not provided the large sites are penalized and, therefore, the owner may seek a subdivision of the land in order to obtain its proportional share of signage.*

*An additional sign on the second street frontage (corner lot) grants appropriate sign visibility for its passing traffic on both streets.*

- Additional freestanding signs shall be permitted for every \_\_\_\_ feet of site frontage, in excess of \_\_\_\_ feet of lot frontage and for corner lots.
- The permitted sign area may be aggregated into fewer and larger signs, at the election of the property owner/business, provided that the size of any single sign does not exceed the area permitted pursuant to “1” or “2” above by more than \_\_\_\_%.

*Comment: Permitting the flexibility for larger signs is based on the premise that fewer and larger signs are in both public and private interests. The business gets larger signs and the public (as they would perceive it) less clutter. Such aggregation could permit the larger sign to be 50% to 100% larger than the basic sign area allowances; the total permissible sign area is not increased.*

*It is also important to note that in addition to the basic and objective regulatory requirements of a community's sign regulations, the community should also permit flexibility in the size and the placement of signs when in accordance with an overall Sign Plan that is approved by a designated Board or Commission. Such a Sign Plan would set forth the parameters for all signs proposed that deviate from the standards with respect to size, location, and/or construction standards. Once the Sign Plan has been approved subsequent installation of new or replacement signs may be approved administratively when the proposed individual signs are consistent with the previously approved Sign Plan. Also see Section 105.03.*

*Additionally, any applicant that chooses to propose a sign that is not in compliance with the code has the right to make such request to the community's Planning Commission. The Planning Commission is preferred (rather than an Appeals Board) since most often the deviation is more apt to be **based on the appropriateness of the sign size, location and design** rather than on typical hardship or practical difficulty parameters that are the purview of an Appeals Board.*

### 103.03. Electronic Message/Changeable Copy Signs



*Multiple tenant identification along the street often results in multiple elements and clutter which are contrary to the principles in this model code.*



*This electronic message is used by a single tenant but could meet the needs of multiple tenants as well.*

*Comment: A community, in formulating its sign regulations, should recognize the emerging technology and benefits of electronic messages. The technology has sufficiently advanced so that electronic message centers (EMCs) are more in demand because they offer more effective business identification and promotion relative to their cost. The EMCs also enable multiple tenants in a building or complex to achieve identification “at the street” – on a single freestanding sign. These typically are instances where the regulations and/or the property owner’s allocation (of the available area) does not permit any additional signs for the tenant or space on the permitted sign for the permanent identification of all tenants.*

*However, there are often two contrasting views of EMCs. One view is that frequently changing EMCs can be viewed as a dynamic asset to the economic vitality of each business and to the community. Alternatively, they can be viewed as increasing visual clutter, distracting motorist’s attention and contrary to the general development objectives of the community and the purposes of the community’s sign regulations.*

*Therefore, this model suggests alternative regulatory approaches from which the City may choose to achieve the benefits of EMCs while addressing various concerns. When appropriate, the regulations could also confine electronic messages to a portion of a Character Area.*

*Many of the concerns regarding EMCs are related to brightness. Since the technology is available, it is reasonable that EMCs be required to have dimming capabilities that adjust the brightness to the ambient light – regardless of the time of day.*

*Lastly, the regulations should make regulatory distinctions between electronic changeable copy and the older mechanical or manual changeable signs.*

1. Changeable copy by non-electronic means may be utilized on any permitted sign.
2. Only one (1) EMC sign is permitted on a zoning lot for each street on which the development fronts and the sign is visible unless additional EMCs are approved by the \_\_\_\_\_.

*Comment: The community needs to determine if this is the Chief Enforcement Officer, the Planning Commission or other body.*

3. In the \_\_\_\_ Character Areas electronic message centers (EMCs) are permitted provided that the copy does not change more than once every \_\_\_\_ seconds and the electronic message center does not exceed \_\_\_\_ *(say, 30 to 50%) percent of the total sign area permitted on the site. See Exhibit 5).*



*Illustrations of changeable copy signs --- both manual and electronic.*

4. In the \_\_\_\_ Character Areas EMCs are permitted with unlimited motion provided the electronic message center does not exceed \_\_\_\_ *(say 30%, of the total sign area permitted on the site).*
5. In the \_\_\_\_ Character Areas the EMCs are not limited.
6. All EMCs are required to have automatic dimming capability that adjusts the brightness to the ambient light at all times of the day and night.

7. No single electronic message is permitted to be repeated by flashing more than once every sixteen (16) seconds.

## EXHIBIT 5- Electronic Message Center Regulations

Character Area	Permitted	Motion Limitation	Size Limitation		Location and Other Considerations		
	Yes (Y) or No (N)		EMCs as a Maximum % of the Total Sign Area Permitted on the Site	EMCs as a Maximum % of a Single Sign	Could Apply to Part of Character Area	Away from Residential	Confine to Main Street
Downtown	Y	8 seconds to Unlimited	30% to 100%	100%	Yes	Yes	Yes
Small Commercial - Traditional	N						
Small Commercial - Suburban	Y	8 seconds	30% to 50%	67%	No		
General Commercial	Y	8 seconds to Unlimited	30 % to 50%	80%	Yes	Yes	Yes
Highway Commercial (1)	Y	8 seconds	30 % to 50%	80% to 100%	No		
Mixed Use	Y	8 seconds to 1 second	15% to 30%	50% to 80%	No		
Offices	Y	8 seconds to 1 second	15% to 30%	50% to 67%	No (2)		
Industrial	Y	8 seconds to Unlimited	30% to 50%	50% to 80%	No (2)		
Special Use Districts/Uses (3)	Y	None	None				

- (1) Assumes that Highway Commercial is a relatively small geographic area focused at a highway interchange.  
 (2) Harder to make distinctions among various locations in the office and industrial zone.  
 (3) These Special Use District/Uses are not necessarily part of the Character Areas, above.



*An example of an entertainment district in which multiple EMCs are a community benefit.*



### 103.04. Instructional signs

Instructional or “way-finding” signs shall be permitted in addition to all other signs when they are of such size and location that satisfy the intended instructional purpose and based on their size, location, and intended purpose will not constitute additional advertising. Instructional signs shall be permitted without limitation as to number or size and may include the name of the business and logos.

*Comment: Instructional Signs, when approximately sized and located, facilitate traffic safety.*



*Illustration of some types of Instructional Signs*

### 103.05. Window Signs

Permanent window signs shall not exceed twenty-five (25%) percent of the area of a window and the total area of all window signs, including both permanent and temporary, shall not exceed fifty (50%) percent of the window area.

### 103.06. Temporary Signs

1. Special Events – It is reasonable for a community to regulate signs for special events – whether these events are related to commercial enterprises (grand opening, clearance sales, sidewalk sales, etc.) or institutional (places of worship, schools, non-profits) festivals, etc. These regulations can include: the number of days the signs can be displayed; the number and type of advertising devices (signs, banners, balloons, etc.) that can be displayed; and their location on the property.
2. Real Estate/Political – Each property must be granted temporary signs for these purposes any time of the year.

*Comment: Window signs – both temporary and permanent – add to the vitality of a commercial area. Since window signs generally have different purposes and different impacts than either wall or freestanding signs, window signs should be regulated through a separate standard. To assure, however, that the windows retain their intended purpose – visibility into and from the building – a maximum window sign coverage, including both temporary and permanent, is reasonable.*

The community, however, may regulate the maximum size of any one sign and the total permitted sign area on the property at any one time.

## **Section 104. Non-Conforming Signs**

### **104.01. General Provisions**

*Comment: Achieving the long term removal of non-conforming signs is in the mutual best interests of both the business community and the City. Without such elimination some businesses, with non-conforming signs, continue to have a decided advantage over those newer businesses that have installed signs in compliance with the newer regulations. Furthermore, there will be tendencies to retain such larger – and perhaps “tired” signs beyond their useful life in order to continue a long standing advantage. Conversely, eliminating non-conforming signs assure, over time, a level playing field for all businesses – at least with respect to signs.*

1. Nonconforming signs shall be maintained in good condition pursuant to Section 106.
2. A nonconforming sign shall not be altered, modified or reconstructed except:
  - a. When such alteration, modification or reconstruction would bring such sign into conformity with these regulations;
  - b. When the existing use has new ownership which results in a change in the name or logo of the use or business on the property, and such change complies with subsection “d” below;
  - c. When the space is reoccupied by a similar use and the new occupant requires no external building or site renovation, and such change complies with subsection “d” below;
  - d. Any alteration, modification or reconstruction permitted in this section shall be limited to the replacement of a sign panel, replacing individual letters and logos within the same area or repainting a sign face, and does not permit changes to the structure, framing, erection or relocation of the sign unless such changes conform to subsection “a” above.

*Comment: Planning Commissions are better able to address the design and compliance issues that result from sign appeals. In addition, Planning Commissions generally are not bound by the “hardship” or “practical difficulty” standard that typically is used by boards of appeal. And, most of the requested relief from the sign regulations are more apt to be approved because the proposal is “appropriate, doesn’t compromise a public interest” rather than because there is a demonstrated hardship.*

### **104.02. Limitations for Non-Conforming Signs**

1. A nonconforming sign shall be removed upon verification that any of the following conditions have been met:
  - a. The use to which such non-conforming sign refers has been abandoned for more than 180 consecutive days; or
  - b. The regulation or amendment to these regulations which made the sign non-conforming has been in effect for ten (10) years or more.
2. Extension of time to comply - The dates established in this Section for a sign to be brought about into compliance with the requirements of these regulations may be extended



at the request of the sign owner or leasee. In evaluating the extension of time for a nonconforming sign, the City shall consider the following factors to determine whether the owner of the sign has had reasonable amount of time to recoup the initial investment:

- a. The value of the sign at the time of construction and the length of time the sign has been in place;
- b. The life expectancy of the original investment in the sign and its salvage value, if any;
- c. The amount of depreciation and/or amortization of the sign already claimed for tax or accounting purposes;
- d. The length of the current tenant lease or expected occupancy compared to the date the sign is to be brought into compliance;
- e. The extent to which the sign is not in compliance with the requirements of these regulations; and
- f. The degree to which the City determines that the sign is consistent with the purposes of these regulations.
- g. Whether the sign has “historical” or “landmark” significance and should, therefore, be exempt from amortization (See also Appendix A.)

### **Section 105. Sign Review Procedures**

*Comment: Prior to submitting a formal application, applicants are encouraged to meet with the community’s administration and/or Planning Commission, to fully understand the City’s requirements, objectives, interpretations, and review procedures.*

1. Time limits – All sign applications shall be reviewed for compliance with these regulations within ten (10) business days from the time a completed application has been accepted by the Zoning Enforcement Officer.
2. All appeals and variances regarding the sign ordinance would be heard by a community’s Planning Commission rather than by a Board of Zoning Appeals if not otherwise prohibited by law.
3. A Comprehensive Sign Plan (CSP) may be submitted that permits consideration of unique conditions, flexibility and creativity. Such CSP is subject to approval by the Planning Commission. The application of such plan can not be viewed as imposing more restrictive requirements than permitted by the basic standards, but rather, may permit

*Comment: The regulations should include specific and objective standards with respect to construction and placement standards with sufficient detail that compliance with the regulations can be determined by an administrative official.*

*With the exception of a proposed Comprehensive Sign Plan (CSP), subjective determinations by a Board or Commission should be avoided since criteria is too often overbroad and, therefore, applied inconsistently and arbitrarily. The CSP offers the businesses and the community the opportunity and flexibility to advance more creative sign solutions that would be equally beneficial to the businesses and the community.*

*Comment: Among several other unique considerations, a CSP determination could be applicable for a large business development that has an unusually limited frontage, with an access drive, on the main streets compared to the size of the parcel.*

additional signs and/or sign area based on the applicant's demonstration of unique characteristics of the design, building, and/or site and appropriate landscaping associated with the freestanding signs. Once a CSP has been approved subsequent applications for specific signs shall be approved administratively when the proposed sign is in compliance with the approved CSP.

4. If proposed signs do not comply with the provisions of Section 106.01, the applicant may submit an application to the Planning Commission to determine the adjustments, if any that are appropriate to satisfy the requirements of Section 106.01.

## **Section 106. Supplemental Considerations**

### **106.01. Construction Standards**

The construction, erection, safety and maintenance of all signs shall comply with the \_\_\_\_\_ (***This blank should refer to the applicable building code***) and all of the following:

1. Signs shall be structurally sound and located so as to pose no reasonable threat to pedestrian or vehicular traffic.
2. All permanent freestanding signs shall have self-supporting structures erected on, or permanently attached to, concrete foundations.
3. If possible, signs should not be in locations that obscure architectural features such as pilasters, arches, windows, cornices, etc.
4. The signs should not be in locations that interfere with safe vehicular and pedestrian circulation or public safety signals and signs
5. No signs shall be erected, constructed or maintained so as to obstruct any fire escape, required exit, window, or door opening used as a means of egress.
6. Signs shall be structurally designed in compliance with ANSI and ASCI standards. All elective signs shall be constructed according to the technical standards of a certified testing laboratory.

*Comment: A proposed sign that is in violation of the provision in Section 106.01 (3) shall be denied by the administrative/zoning official. However, such denial may be referred to the Planning Commission for the Commission to determine the appropriate adjustments to the sign's location, size or the design and construction approaches to assure that the provisions of this section are satisfied.*

7. Signs may be illuminated – by external or internal means -- provided that:
  - a. The brightness and intensity shall not be greater than necessary to meet reasonable needs of the business or use served;
  - b. Light sources shall be shielded from all adjacent buildings and streets; and
  - c. The lighting shall not create excessive glare to pedestrians and/or motorists, and will not obstruct traffic control or any other public informational signs.

#### **106.02. Maintenance**

All signs shall be maintained in accordance with the following:

1. The property owner shall maintain the sign; in a condition appropriate to the intended use; to all City standards; and has a continuing obligation to comply with all building code requirements.
2. If the sign is deemed by the Zoning Enforcement Officer to be in an unsafe condition, the owner of the business shall be immediately notified in writing, and shall, within 48 hours of receipt of such notification, respond to the city with a plan to correct the unsafe condition, remove the unsafe sign, or cause it to be removed. If after \_\_\_\_ days, the unsafe condition has not been corrected through repair or removal, the Zoning Enforcement Officer may cause the repair or removal of such sign, at the expense of the property owner or lessee. If the total costs are not paid in full within \_\_\_\_days of the repairs or removal, the amount owed shall be certified as an assessment against the property of the sign owner, and lien upon that property, together with an additional \_\_\_\_ percent penalty for collection as prescribed for unpaid real estate taxes.
3. In cases of emergency, the Zoning Enforcement Officer may cause the immediate removal of a dangerous or defective sign without notice.
4. Whenever any sign, either conforming or nonconforming to these regulations, is required to be removed for the purpose of repair, relettering or repainting, the same may be done without a permit or without any payment of fees provided that all of the following conditions are met:

- a. There is no alteration or remodeling to the structure or the mounting of the sign itself;
- b. There is no enlargement or increase in any of the dimensions of the sign or its structure;
- c. The sign is accessory to a legally permitted, conditional or nonconforming use.

### **106.03. Signs Exempt from the Regulations**

The following signs shall be exempt from regulation under this Zoning Ordinance.

1. Any public purpose/safety sign and any other notice or warning required by a valid and applicable federal, state or local law, regulation or resolution.
2. Works of art that do not include a commercial message.
3. Religious and other holiday lights and decorations containing no commercial message, and displayed only during the appropriate time of the year.
4. Flags of the United States, the state, foreign nations having diplomatic relations with the United States, and any other flag adopted or sanctioned by an elected legislative body of competent jurisdiction. These flags must be flown in accordance with protocol established by the Congress of the United States for the Stars and Stripes. Any flag not meeting these conditions shall be considered a sign and shall be subject to regulations as such.
5. Building markers.

### **106.04. Prohibited Signs**

The following signs are prohibited in the City:

1. Abandoned signs, as defined in Section 107.
2. Animated, flashing, rotating signs and festoons as defined in Section 107, inflatable signs, tethered balloons, banners, pennants, searchlights, streamers, exposed light bulbs, strings of lights not permanently mounted to a rigid background, and any clearly similar features, except those specifically exempt from regulation in Section 106.03, special event signs or banners permitted in 103.06, or electronic message centers as permitted in Section 103.03.

3. Signs on vehicles when the vehicle is placed in a location not normally expected for such vehicles, and the location apparently has the primary purpose of attracting attention or providing advertising in addition to that permitted for legal wall and/or freestanding signs on the site.
4. Signs containing any words or symbols that would cause confusion because of their resemblance to highway traffic control or direction signals.
5. Merchandise, equipment, products, vehicles or other items which are not available for purchase, but are intended to attract attention, or for identification or advertising purposes.
6. Signs located on trees, utility poles, public benches or any other form of public property or within any public right-of-way unless explicitly permitted by the regulations.
7. Other signs or attention getting devices that raise concerns substantially similar to those listed above.

### **Section 107. Definitions**

The following words and phrases used in this Sign Code shall have the following meanings:

**Abandoned Sign.** A sign which for a period of at least \_\_\_\_\_ consecutive days or longer no longer advertises or identifies a legal business establishment, product or activity.

**Alteration.** Any change in copy, color, size or shape, which changes appearance of a sign, or a change in position, location, construction or supporting structure of a sign, except that a copy change on a sign is not an alteration.

**Animated Sign.** A sign which has any visible moving part, flashing or osculating lights, visible mechanical movement of any description, or other apparent visible movement achieved by any means that move, change, flash, osculate or visibly alters in appearance in a manner that is not permitted by these regulations.

**Area of Sign.** Refer to measurement standards in Section 101.

**Attraction or Reader Board.** Any sign having changeable copy for the purpose of advertising events, sales, services or products provided on the site.

**Awning.** A shelter extending from the exterior wall of a building and composed of nonrigid materials except for the supporting framework.

**Awning Sign.** Any sign painted on or attached to or supported by an awning.

**Balloon Sign.** A lighter-than-air gas-filled balloon, tethered in a fixed location, that has a sign with a message on its surface or attached in any manner to the balloon.

**Banner Sign.** A temporary, lightweight sign that contains a message which is attached or imprinted on a flexible surface that deforms under light pressure and that is typically constructed of non-durable materials, including, but not limited to, cardboard, cloth and/or plastic.

**Billboard or Poster Panel.** An off-premises sign.

**Building Identification Sign.** Any sign containing the name or address of a building and may include hours of operation and emergency information, such sign being located on the same site as the structure.

**Canopy.** A freestanding permanent roof-like shelter not attached to or requiring support from an adjacent structure.

**Canopy Sign.** Any permanent sign attached to or constructed underneath a canopy. These signs are below a projecting structure which extends over the pedestrian walkway which effectively prevents the wall signs from being visible to the pedestrian walking under the canopy. **See Also Projecting Sign.**

**Changeable Copy Sign.** A sign or portion thereof on which the copy or symbols change either automatically through electrical or electronic means (for example, time and temperature units), or manually through placement of letters or symbols on a panel mounted in or on a track system.

**Construction Sign.** A nonpermanent sign identifying the persons, firms or business directly connected with a construction project.

**Directional Sign:** A permanent instructional sign located on private property at or near the public right-of-way, directing or guiding vehicular traffic onto the property and/or toward parking or other identified locations on the property.

**Freestanding Sign.** Any sign which is permanently affixed in or upon the ground, supported by one or more structural members, with air space between the ground and the sign face.

**Footcandle.** A measure of illumination on a surface that is one foot from a uniform source of light of one candle and equal to one lumen per square foot.

**Governmental Sign.** A sign erected and maintained pursuant to and in discharge of any governmental functions, or required by law, ordinance or other governmental regulation.

**Grade.** The level of the site at the property line located at the closest distance to the sign.

**Height of Sign.** Refer to measurement standards in Section 101.

**Holiday Decorations.** Signs or displays including lighting which are a nonpermanent installation celebrating national, state, and local holidays or holiday seasons.

**Illegal Sign.** Any sign placed without proper approval or permits as required by this Code at the time of sign placement. Illegal sign shall also mean any sign placed contrary to the terms or time limits of any permit and any nonconforming sign which has not been brought into compliance with any applicable provisions of this Code.

**Illuminated Sign.** Any sign for which an artificial source of light is used in order to make readable the sign's message, including internally and externally lighted signs and reflectorized, glowing or radiating signs.

**Instructional Signs.** A sign clearly intended for instructional purposes, as determined by the Zoning Enforcement Officer, shall not be included in the permitted sum of the sign area of identification wall signs, provided such sign is not larger than necessary to serve the intended instructional purpose, and such sign is not in a location, nor includes design characteristics, that constitute or serve the purposes of an identification sign.

**Length of Frontage.**

1. The measurement purposes, the length of any primary or secondary frontage as defined in Section 101, shall be the sum of all wall lengths parallel, or nearly parallel, to such frontage, excluding any such wall length determined by the Zoning Enforcement Officer or Planning Commission as clearly unrelated to the frontage criteria.



2. For buildings with two or more frontages, the length and allowable sign area shall be calculated separately for each such frontage.
3. The building frontage for a building unit shall be measured from the centerline of the party walls defining the building unit.

**Logo, Logogram, or Logotype.** An emblem, letter, character, pictograph, trademark, or symbol used to represent any firm, organization, entity, or product.

**Marquee.** A permanent rooflike shelter extending from part or all of a building face and constructed of some durable material which may or may not project over a public right-of-way.

**Marquee Sign.** Any sign painted on or attached to or supported by a marquee. (Note: Not sure the term is used)

**Mural.** A picture on an exterior surface of a structure. A mural is a sign only if it is related by language, logo, or pictorial depiction to the advertisement of any product or service or the identification of any business.

**Neon Sign.** A sign with tubing that is internally illuminated by neon or other electrically charged gas. (Note: Not sure term is needed)

**Nonconforming Sign.** A sign which was validly installed under laws or ordinances in effect at the time of its installation, but which is in conflict with the current provisions of this Code.

**Off-Premises Sign.** Any sign normally used for promoting an interest other than that of a business, individual, products, or service available on the premises where the sign is located.

**On-Premises Sign.** Any sign used for promoting a business, individual, product or service available on the premises where the sign is located.

**Political and Noncommercial Signs.** Any sign designed for the purpose of supporting or opposing a candidate, proposition or other measure at an election or for any other noncommercial expression not related to the advertisement of any product or service or the identification of any business.

**Portable Sign.** Any movable sign not permanently attached to the ground or a building and easily removable using ordinary hand tools.

**Primary and Secondary Frontage.** The frontage of any building or site shall include the elevation(s) facing a public street, facing a primary parking area for the building or tenants, or containing the public entrance(s) to the building or building units.

1. For multi-tenant buildings, the portion of such building that is owned, or leased by a single tenant, shall be considered a building unit.
2. The primary frontage shall be considered the portion of any frontage containing the primary public entrance(s) to the building or building units.
3. The secondary frontage shall include frontages containing secondary public entrances to the building or building units, and all walls facing a public street or primary parking area not designated as the primary frontage by subsection 153.03(c)(1)(A) above.

**Private Street.** Primary access ways that are intended to provide vehicular access to multiple commercial businesses and/or ownerships and are not dedicated as a public thoroughfare.

**Projecting Sign.** A sign which projects from and is supported by a wall or parapet of a building with the display surface of the sign in a plane perpendicular to or approximately perpendicular to the wall. See also Canopy sign.

**Real Estate Sign.** Any nonpermanent sign pertaining to the sale, exchange, lease, rental, or availability of land, buildings, condominium and similar units, or apartments. Such signs may include building name and address, price and amenities, identity of seller or broker, and similar information.

**Revolving or Rotating Sign.** An animated sign.

**Roof Sign.** Any sign erected upon a roof, parapet, or roof-mounted equipment structure and extending above a roof, parapet, or roof-mounted equipment structure of a building or structure.

**Sign.** Any name, figure, character, outline, display, announcement, or device, or structure supporting the same, or any other device of similar nature designed to attract attention outdoors, and shall include all parts, portions, units, and materials composing the same, together with the frame, background, and

supports or anchoring thereof. A sign shall not include any architectural or landscape features that may also attract attention.

**Sign Face.** An exterior display surface of a sign including non-structural trim exclusive of the supporting structure.

**Comprehensive Sign Plan (CSP).** A coordinated program of all signs, including exempt and temporary signs for a business, or businesses if applicable, located on a development site. The sign program shall include, but not be limited to, indications of the locations, dimensions, colors, letter styles and sign types of all signs to be installed on a site.

**Site.** All the contiguous ground area legally assembled into one development location which is a zoning lot. A zoning lot is defined as a permanent parcel (lot of record), multiple lots of record, or a portion of a lot of record.

**Special Event Sign.** Any temporary or non-permanent sign advertising or pertaining to any civic, patriotic or special event of general public interest.

**Super Graphic.** A painted design which covers all or a major portion of a wall, building or structure. A super graphic is a sign only if it is related by language, logo, or pictorial depiction to the advertisement of any product or service or the identification of any business.

**Temporary Sign.** Any sign which is installed for a period not to exceed thirty days.

**Vehicle Sign.** Any sign permanently or temporarily attached to or placed on a vehicle or trailer.

**Wall Sign.** Any sign attached to or painted on the wall of a building or structure in a plane parallel or approximately parallel to the plane of said wall.

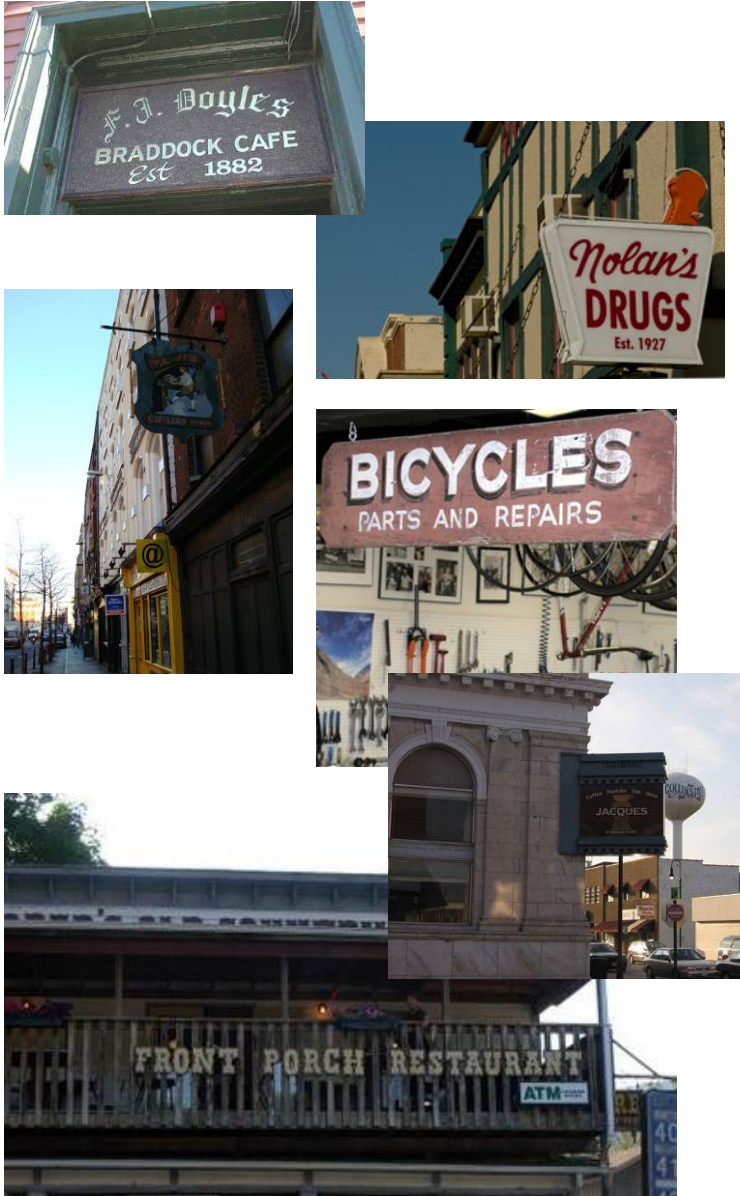
**Window, Area of.** The area of a single window includes all of the window panes in an area that is separated by mullions, muntins, or other dividers which are less than \_\_\_\_ inches wide.

**Window Sign.** Any sign viewable through and/or affixed in any manner to a window or exterior glass door such that it is intended to be viewable from the exterior (beyond the sidewalk immediately adjacent to the window), including signs located inside a building but visible primarily from the outside of the building.

*Comment: Three (3) to four (4) inches is typically used as the standard.*

## APPENDIX

### A. Examples of “Landmark Status” Signs



Often a community will have older signs that are viewed as “having historical significance” (examples above) even if they may not comply with either existing or proposed regulations. A community should establish a process to judge when these signs are “valued by the community” to the extent that they could be exempt from the regulations.

**B. Methodology for Estimating the Appropriate Area of Freestanding Signs**

(Three Options Based on Highway Speeds)

	<b>LOWER 25 MPH</b>	<b>MIDDLE 40 MPH</b>	<b>HIGHER 55MPH</b>
<b>DISTANCE SIGN IS VIEWED</b>	200'	320'	440'
<b>REQUIRED LETTER HEIGHT</b>	7"	10"	15"
<b>APPROPRIATE VIEWING TIME</b>	4-6 Seconds	4-6 Seconds	4-6 Seconds
<b>ELEMENTS COMPREHENDED</b> • Letter	40-60	40-60	40-60
• Words/Symbols 5 to 7 letters per word; 1 word = 1 symbol	6-12	6-12	6-12
<b>TOTAL AREA OF LETTERS/SYMBOLS</b> (Width of letter, including spacing equal's the letter height)	14-20 Feet	28-42 Feet	63-94 Feet
<b>TOTAL SIGN AREA</b> (with message – 40% of total area)	35-50 Square Feet	70-105 Square Feet	160-235 Square Feet

Source: Street Graphics & the Law

### **C. Sources**

Mandelker, Daniel, with Andrew Betrucci, and William Ewald. August 2004. *Street Graphics and the Law*. Planning Advisory Service Report No. 527. Chicago: American Planning Association

Morris, Marya, Mark Hinshaw, Douglas Mace, and Alan Weinstein. 2002. *Context-Sensitive Signage Design*. Planning Advisory Service Report. Chicago, Ill.: The American Planning Association.