

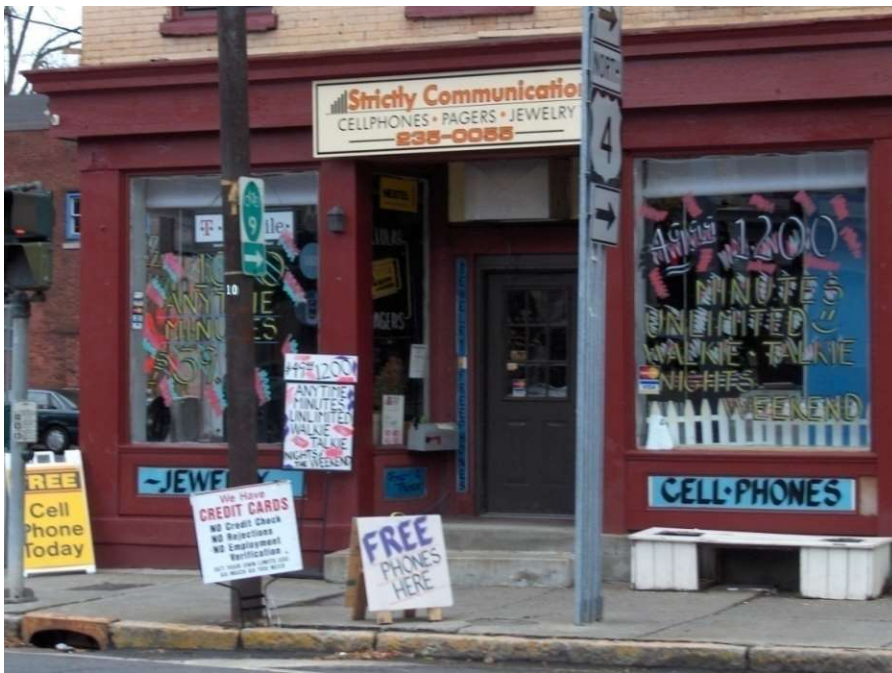


**Division of Local
Government Services**

Sign Regulation

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Overview



- First Amendment issues
- Regulation of signs
- Drafting sign regulations
- Nonconforming signs & billboards

Signs as Speech

Signs are speech protected by the First Amendment of the United States Constitution under its “Free Speech” clause:

“Congress shall make no law ... abridging the freedom of speech...”



Types of Speech

Commercial speech relates to the economic interests of a speaker and audience



Non-commercial speech is expression not defined as commercial (i.e., personal, political or religious)



Speech Protection

Commercial

- Protected by the First Amendment if not misleading, inaccurate or relating to unlawful activity
 - Time, place, manner
- Less protected
- Commercial Speech Test

Noncommercial

- Protected by the 1st Amendment
 - Time, place, manner
- Most protected
- Searching Court Review (i.e., Strict Scrutiny)

Noncommercial Signs

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Content-Neutral Regulations

Intermediate Scrutiny

Regulations are constitutional if they:

- Impose valid time, place, and manner restrictions without reference to content
- Are narrowly tailored to serve a significant governmental interest
- Provide ample alternative channels for communication of information

Content-Based Restrictions

Strict Scrutiny

Constitutional only if they:

- Serve a compelling governmental interest
- Are necessary to serve the asserted compelling governmental interest
- Are precisely tailored to serve the compelling governmental interest
- Is the least restrictive means readily available for that purpose

Content-Neutrality

- Regulate:
 - Time
 - Place
 - Manner
- Narrowly tailored to serve significant governmental interest
- Ample alternative channels
- Clark v. Community for Creative Nonviolence



Temporary Signs

Whitton v. City of Gladstone:

- The local law restricted “political signs within zones”
- It also imposed time limits when signs can be posted before & after election
- These provisions were deemed content-based and unconstitutional



Too Restrictive of Free Speech

- Temporary sign & other content neutral regulations must be narrowly tailored
- Allowing only two temporary signs on private residential property would not be narrowly tailored, because it would infringe on political speech & the rights of homeowners
 - Arlington County Republican Committee v. Arlington County, VA

Ample Alternative Channels

- Regulation of signs posted at private homes determined to be unconstitutional because there were no adequate alternative channel for speech:
 - Residential signage not allowed
 - City of Ladue v. Gilleo
 - Complete ban on posting any lawn signs
 - Cleveland Area Board of Realtors v. City of Euclid
 - Posting of “for sale” or “sold” signs prohibited
 - Linmark Associates v. Township of Willingboro

Narrowly Tailored Local Law



- Use Less Restrictive Approaches:
 - Regulate the design & condition of signs
 - Prevent posting of sign too close to street
 - Limit duration of signs

Content-Neutrality

- Local governments may forbid the posting of signs on public property, as long as it's in an evenhanded, content-neutral manner
- *People v. On Sight Mobile Opticians*: upheld a ban against posting signs on public property



Commercial Signs

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Commercial Speech Test



Central Hudson Test

1. Protected by the First Amendment?
2. Substantial governmental interest?
3. Directly advance the governmental interest?
4. Narrowly tailored to advance that interest?

Strict Regulation of Color and Design

- Required signs to be similar in color & design to other signs in the immediate area of a shopping center
- Content/viewpoint neutral
 - Party City City of Nanuet, Inc. v. Board of Appeals of the Town of Clarkstown



Off-Premises Advertising

The Court of Appeals has upheld local laws that prohibit all off-premises commercial billboards

- The Town of Southampton's prohibition on erecting all non-accessory billboards
- The local law did not regulate the content of the commercial speech
- It regulated the place & manner of billboards
 - Suffolk Outdoor Advertising v. Hulse

Non-Traditional Commercial Signs

- LED/Animated signs
- Flags, streamers & balloons
- Moving billboards
 - Signs on vehicles whose sole purpose is advertising
- Time, place & manner
 - Medium of expression
 - People v. Target Advertising



State Regulation of Signs

- Uniform Fire Prevention & Building Code
 - Electrical standards
 - Wind pressure
 - Anchoring
- DEC permit required for off-premises signs outside of incorporated villages in the Catskill Park & the Adirondack Park



Regulation by NYS DOT

- Restricts advertising devices within 660 feet of Interstate, National Highway System & primary highways
- Signs beyond 660 feet outside urban areas intended to be read from interstate or primary highways are prohibited
- Regional DOT offices have sign permit applications

- DOT sign program includes registration, limitation on size, placement & lighting
- More restrictive local regulations often apply

Commercial vs. Non-Commercial Signs

Municipalities may permit non-commercial signs in some districts while restricting commercial signs

- Municipalities cannot permit commercial signs while ignoring or restricting similar non-commercial signage in the same district

Implications of Reed v. Town of Gilbert

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Reed v. Town of Gilbert, Arizona

- Town of Gilbert Sign Regulations
- Several categories based on information signs convey, subject to different restrictions
- Display of outdoor signs prohibited without a permit
- 23 categories of signs were exempted from permit



3 Categories of Signs Exempt From Permit

Ideological:

- Message or idea for noncommercial purposes

Display Rules:

- All zoning districts
- Up to 20 square feet
- No time limit
- Without permit
- Most favored

Political:

- Temporary sign designed to influence election outcome

Display Rules:

- Depends on location of display
- Residential property - up to 16 square feet;
Nonresidential property, undeveloped municipal property and rights of ways – up to 32 square feet
- 60 days before a primary election and up to 15 days following a general election
- Less favored than Ideological signs

Directional:

- sign intended to direct pedestrians, motorists, and other passersby to a qualifying event

Display Rules:

- Displayed on private property as well as in a public right of way
- Limited to 4 such signs per property
- No larger than 6 square feet
- 12 hours before the “qualifying event” and no more than 1 hour afterward
- Least Favored

Distinctions

- Distinctions drawn within speech categories are content based and must survive strict scrutiny
- Compelling interest must be identified and restrictions must be Narrowly Tailored and not under-inclusive



Content-Based Discrimination

- Court determined the law was content based on its face because restrictions applied depend on sign's communicative content.
- It signals out specific subject matter even if it does not target viewpoints within that subject matter



Concurring Opinion: Munis May Adopt

- Rules regulating the size of signs:
 - These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below
- Rules regulating the locations in which signs may be placed:
 - These rules may distinguish between free-standing signs and those attached to buildings



Concurring Opinion: Munis May Adopt



- Rules between lighted and unlighted signs
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change



Concurring Opinion: Munis May Adopt



- Rules that distinguish between the placement of signs on private and public property
- Rules distinguishing between the placement of signs on commercial and residential property

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Concurring Opinion: Munis May Adopt

- Rules distinguishing between on-premises and off-premises signs
- Rules restricting the total number of signs allowed per mile of roadway
- Rules imposing time restrictions on signs advertising a one-time event
 - Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed

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City of Austin v. Reagan National Advertising

- Austin banned digital billboards along highways
- City's sign law distinguishes between on-premises and off-premises signs
 - On-premises signs are generally unregulated and may be updated/improved without any limitations, including improvements to digital signage
 - Off-premises signage is restricted from such improvements
- City also banned the installation of new billboards



City of Austin v. Reagan National Advertising

- In 2017, Reagan Advertising & Lamar operated static billboards along Austin's highways
- City council denied over 80 applications to convert existing static billboards into digital billboards
- Applicants sued because the city allowed some digital advertising on the Austin Convention Center and other on-premises businesses
- Fifth Circuit determined that while deciding if a sign was on or off-premises, one had to consider the message it was conveying making it a content-based restriction and unconstitutional

On Appeal to the Supreme Court

- The city petitioned SCOTUS to review the Fifth Circuit decision stating that the Circuit Court implied a content-based meaning in the city code that didn't exist
- In April 2022, SCOTUS reversed the Fifth Circuit's decision in a 6-3 decision
- Held that Austin's on/off premises regulations were content-neutral under Reed
 - While Reed required the city to distinguish among ideological signs, political signs & temporary directional signs, the Austin regs did not require such precise classification or treat them differently

Drafting Sign Regulations

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Drafting Sign Regulations

- Planning process
 - Do existing regulations regulate content?
- Study the issue
- Sign inventory
 - Establish a record of legally existing signs
 - Are existing sign regulations being enforced?
 - Which signs are consistent with community character?
 - Which ones are not working?
 - Take photos
 - Public input
- Related findings to the Comprehensive Plan

- Keep the needs of businesses in mind
 - Identification
 - Advertising
 - Readability
 - Cost



Regulatory Options

- Without zoning:
 - Site Plan Review
 - Sign permit
- Restrict by signage structure and size
- Restrict location by property type (i.e., public rights-of-ways)



Regulatory Options

- With zoning:
 - Prohibit certain signs by structure, location
 - Allow some as-of-right
 - Allow others by special use permit or site plan review

- A sign matrix for each district & use indicates:
 - Number, size & type of signs allowed
 - Approvals necessary



Typical Provisions

- Purpose Statement
- Definitions
- Schedule of Allowed Locations
- Construction & Design Standards
- Sign Permit Procedures
- Specific Provisions
- Review & Appeals
- Enforcement & Remedies
 - Enforcement Officer, appeals & penalties
- Severability

Specific provisions:

- Standards
- Sign Permit Procedures
- State Sign Permit
- Reference
- Existing/Nonconforming Signs
- Prohibited Signs
- Substitution Clauses
- Illumination
- Sign Maintenance



Purpose Statements

Examples of purposes:

- Promote & protect public health, safety & welfare
- Protect property values
- Create a more attractive business climate
- Reinforce & strengthen community identity
- Preserve scenic beauty

- Regulating for aesthetic purposes is permissible
- Aesthetics may be addressed in detail by local design guidelines
 - Suffolk Outdoor Advertising v. Hulse



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Definitions & Standards

Definitions:

- Sign
- Types of signs
 - Portable signs
 - Permanent or temporary
- Standards:
 - Construction
 - Mounting
 - Materials
- Design
 - Lighting/illumination
 - Materials
 - Size

Portable Sign:

A sign, whether on its own trailer, wheels, motor vehicle or otherwise, designed to be movable & not structurally attached to the ground, a building, a structure or another sign

- Village of Pittsford, New York
Chapter 168-3 Sign Definitions



Design Considerations

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Types of Signs

- Wall signs
- Projecting signs
- Freestanding signs
- Roof
- Canopy & awning
- Window & door
- Banners, streamers & flags
- Marquee
- Billboards
 - Off-premises
- Portable/mobile

Design Considerations

- Mounted
- Size, area & height
- Location
- Lighting/illumination
- Landscaping
- Materials
- Architectural design
- Color

Bureau of Land Management Recommended Size of Letters on Signs:

- Standing still
 - 1 inch
- 25 to 35 mph
 - 3 inches
- 55+ mph
 - 6 inches

Types of Signs



Freestanding –
sandwich board

Types of Signs



Canopy

Types of Signs



Awning

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Types of Signs



Band sign

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Types of Signs



Wall

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Types of Signs



Window

Types of Signs



Projecting

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Types of Signs



Monument

Types of Signs



Pylon or
pole-mounted

Types of Signs



Marquee

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Lighting/Illumination

Neon



Lighting/Illumination

Indirect/external



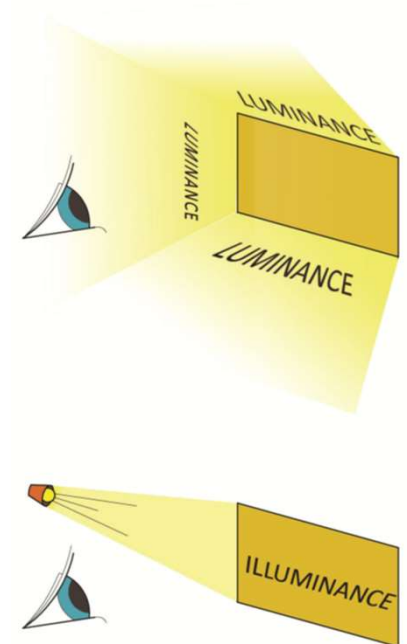
Lighting/Illumination

Direct/internal



Sign Brightness

- Luminance – Surface brightness, measured in nits
- Illuminance – Amount of light that falls on an object, measured in footcandles
- Illuminating Engineering Society of North America: Drivers should not be subjected to brightness more than 40 times surrounding (40:1)
- Outdoor Advertising Association of America recommendation: 300-350 nits for night
- Static billboards: ~100 nits



Nonconforming Signs and Enforcement

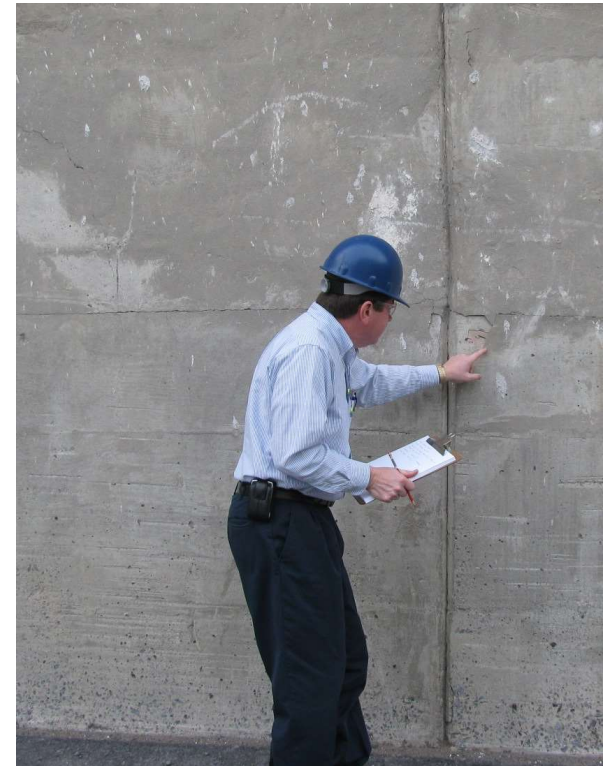
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Enforcement

- Who is authorized to enforce the sign law?
- How are violations handled?
- What are the criminal penalties?
- Is the municipality authorized to institute civil proceedings?
- What is the process for appeal?



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Enforcement

- Notice to owner(s) specifying the violation
- Require sign be brought into compliance or removed
- State period of time in which to conform or remove sign
- Authorize enforcement officer to revoke the sign permit & remove the sign for noncompliance
 - Within timeframes as specified in the sign regulations
- Authorized to assess all costs & expenses incurred for such service against the owner(s)



Sign Maintenance

- Local regulations should include provisions for the proper maintenance of all signs
- Example:
 - “...Sign must be kept clean, neatly painted and free from all hazards, such as, but not limited to, faulty wiring and loose fastenings, and the sign must be maintained at all times in such safe condition so as not to be detrimental to the public health or safety.”
 - Village of South Glens Falls Code: Chapter 115-9

Billboards & Off-Premises Signs

- Temporary moratorium while considering law
- Prohibit new billboards
- Restrict billboards
 - By district, special use permit or setbacks
 - Removal of non-conforming billboards

Billboard:

- A sign for a business, profession, activity, commodity, or service not on the premises where the sign is located
- Can be commercial or non-commercial

Pre-Existing Nonconforming Signs

Protected status

- Sign legally existed prior to the effective date of the current regulations
- Does not need to comply with specifications of current regulations
- Municipal regulations should include provisions for the termination of this protected status
- Upon termination, such signs must either be brought into compliance or removed

Nonconforming Signs

If specified in local regulations, nonconforming status may be terminated for the following reasons:

- Alterations
 - Change in size
 - Moved from original location on site
 - Improved, repaired or reconstructed beyond the sign's original condition
- Replaced by another nonconforming sign
- Change in use on the premises
 - Not a change in ownership
- Abandonment of use for a specified period



Elimination of Nonconforming Signs

- Amortization
 - Allows the sign owner to recuperate their investment
 - A specified period of time based on the fair market value
 - Depreciation
 - No compensation

Local Law Example:

In the event a sign lawfully erected prior to the effective date of the local law does not conform to the provisions and standards of the local law, then such signs should be modified to conform or be removed according to the following regulations...

Elimination of Nonconforming Signs

Zoned industrial or manufacturing

- Municipality must compensate owner pursuant to Eminent Domain Procedure Law

NOT zoned industrial or manufacturing

- Municipality may allow amortization period pursuant to General Municipal Law § 74-c

“Voluntary” Removal of Nonconforming Signs

- “Exchange only”
 - Prohibit new commercial signs when a non-conforming sign remains
- Provide bonuses in size, height, or number of allowable signs
 - Must remove by a specified date
- Offer incentives to remove and replace
 - Community grants or low-interest loans



Summary

- Significant governmental interest
- Time, manner, place
- Content neutrality
 - Compelling governmental interest
- Can't permit commercial signage and restrict similar non-commercial signage

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Case Citations

- Clark v. Community for Creative Nonviolence, 468 U.S. 288, 293, 82 L.Ed.2d 221, 227, 104 S.Ct. 3065 (1984)
- Hobbs v. County of Westchester, 397 F.3d 133 (2d Cir. 2005)
- Whitton v. City of Gladstone, Missouri, 54 F. 3d 1400 (8th. Cir. 1995)
- Arlington County Republican Committee v. Arlington County, VA, 983 F.2d 587 (4th Cir.1993)

Case Citations

- City of Ladue v. Gilleo, 512 U.S. 43, 129 L.Ed.2d 36, 114 S. Ct. 2038 (1994)
- Cleveland Area Bd. of Realtors v. City of Euclid, 88 F.3d 382 (6th Cir. 1996)
- Linmark Associates v. Township of Willingboro, 431 U.S. 85 (1977)
- Central Hudson Gas v. Public Service Commission, 447 U.S. 557, 65 L.Ed.2d 341, 100 S.Ct. 2343 (1980)

Case Citations

- Party City of Nanuet, Inc. v. Board of Appeals of the Town of Clarkstown, 212 A.D.2d 618, 622 N.Y.S.2d 331 (2d Dept. 1995)
- Suffolk Outdoor Advertising v. Hulse, 43 N.Y.2d 483 (1977)
- People v. Target Advertising, 184 Misc.2d 903 (NY City Crim. Ct. 2000)
- Reed v. Town of Gilbert, Arizona, 576 U.S. 155 (2015)
- City of Austin v. Reagan National Advertising of Austin, LLC, 596 U.S. ____ (2022)

Resources

- Municipal Control of Signs Publication:
<https://www.dos.ny.gov/municipal-control-signs>
- Other James A. Coon Local Government Technical Series Publications:
<https://dos.ny.gov/publications>

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