NEW YORK STATE OF OPPORTUNITY.

Division of Local Government Services

Municipal Control of Signs

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

A Division of the New York Department of State

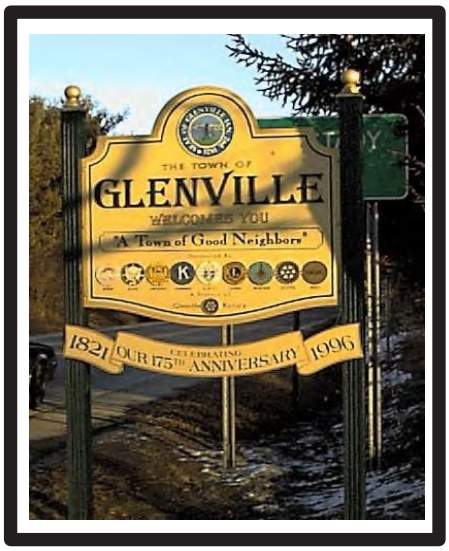
Andrew M. Cuomo, Governor

Rossana Rosado, Secretary of State

NEW YORK STATE DEPARTMENT OF STATE
99 WASHINGTON AVE
ALBANY, NEW YORK 12231-0001
http://www.dos.ny.gov

Publication Date: January 2006
Revision Date: August, 2015
Reprint Date: 2015

Contents



What messages are the signs in your community conveying?


KIDS
SLOW
AT
PLAY

Introduction

Whether the setting is a historic downtown, a commercial area or a highway corridor, signs and billboards can play a large role in determining the appearance and attractiveness of a community. In New York, concerns about enhancing the appearance and value of the visual environment have prompted many local governments to enact regulations for posting and maintaining signs and billboards in their communities.

Signs have both physical and constitutional dimensions. As structures, the physical characteristics of signs, including size, type, number, duration and location, may be regulated by the local government of the community in which they will be sited. At the same time, local governments must take care that such regulations do not directly regulate the content of signs or discriminate against a particular segment of the community. The messages on signs are protected from unwarranted local governmental regulation by the First Amendment of the U.S. Constitution,[1] with few exceptions[2] and by the New York Constitution.[3] The U.S. Supreme Court noted the dual nature of signs in a 1994 decision:

> While signs are a form of expression protected by the Free Speech Clause, they pose distinctive problems that are subject to municipalities' police powers. Unlike oral speech, signs take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. It is common ground that governments may regulate the physical characteristics of signs -- just as they can, within reasonable bounds and absent censorial purpose, regulate audible expression in its capacity as noise. However, because regulation of a medium inevitably affects communication itself, it is not surprising that we have had occasion to review the constitutionality of municipal ordinances prohibiting the display of certain outdoor signs.[4]

This publication first examines sign regulations from a legal perspective by covering significant court cases involving signs and constitutional rights. The discussion focuses on legitimate exercises of municipal sign control and serves as a resource for local governments considering the adoption or amendment of sign regulations. The second part of the publication reviews

the processes of municipal planning and adopting a local law to regulate signs. It explores the potential elements and structure of local sign regulations.

The First Amendment guarantees the right of free speech.

Part One: Legal Aspects of Sign Regulation

SIGN REGULATIONS AND FREE SPEECH

The First Amendment provides: "Congress shall make no law ... abridging the freedom of speech...." Under the Fourteenth Amendment, municipal regulations are within the scope of this limitation on governmental authority.[5] The First Amendment's guarantee of the right of free speech is a fundamental element of our system of government, but is not without limitations. Some kinds of speech, such as obscenity, defamation, and fighting words, are not protected by the First Amendment.

Local governments may impose reasonable "time, place and manner" restrictions on speech.

Local governments may impose reasonable "time, place and manner" restrictions on speech[6] in order to set forth the circumstances under which signs may be displayed. Restrictions that deal with the size, illumination, location and manner of posting signs without regard to the content of the speech are examples of local government enactments likely to be sustained as reasonable time, place and manner sign regulations, provided they advance a legitimate governmental interest. An example of a "time" regulation is a law allowing temporary signs to be posted for two months. An example of a "place" regulation is a requirement that signs not be placed within 15 feet of a road. An example of a "manner" regulation is a restriction on the size of signs. The U.S. Supreme Court has held that "time, place and manner" restrictions on First Amendment protected free speech will be sustained as constitutional if the regulations:

- Are justified without reference to the **content** of the signs subject to the law (i.e., content neutral);
- Are narrowly tailored to serve a **significant governmental interest**; and
- Leave open ample **alternative channels for communication** of the information.[7]

1. Content Restrictions

The first step in considering the constitutionality of legislation affecting protected speech is to determine whether it is content-neutral or content-based. A sign regulation may not define the content of a sign. Sign regulations that are aimed at the content of speech or expression in a public forum are subject to "strict scrutiny" by the Courts.[8] The strict scrutiny test imposes upon government the burden of proving that content-based restrictions on protected speech serve a "compelling state interest" and are narrowly drawn to achieve that end.[9] As you might expect, content-based sign regulations rarely pass the strict scrutiny test.

Content-based restrictions are ones where the sign law is triggered by the message conveyed, by the identity of the speaker or by the particular point of view.[10] The First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.[11] First Amendment protections encompass not only content-based *prohibitions* on speech, but also content-based *restrictions* on speech.

Sign regulations aimed at the content of speech or expression in a public forum are subject to "strict scrutiny" by the courts.

Municipalities often attempt to balance the community interest in restricting signs with free speech rights by selectively exempting from the sign regulation those messages the municipality values. This approach can lead to an unconstitutional content-based regulation.[12] An exemption from an otherwise permissible regulation of speech may represent a governmental attempt to give one side of a debatable public question an advantage in expressing its views to the people.[13]

Typical sign regulations which have been found to interfere with free speech are those which allow only commercial signs on business premises; those which distinguish between political and other temporary signs; and those which create exemptions or differing requirements (i.e. permits or fees) for certain content-based categories of signs.

In National Advertising Co. v. Town of Babylon,[14] the Second Circuit Court of Appeals declared unconstitutional the Town of Islip sign ordinance which only permitted signs on business premises to display information concerning the name of the business or the goods and services offered. The Court invalidated the Islip ordinance because it was content-based. In only allowing the business's name to be displayed on premises, the sign ordinance

impermissibly discriminated against noncommercial messages in favor of commercial speech.

2. Significant Governmental Interest

The second aspect of the test of the constitutionality of regulations ensures that the sign regulations will advance significant governmental interests. The rationale for the enactment of the regulations must be specifically stated, whether the sign regulations are part of a comprehensive zoning law or ordinance or separate sign law. In the National Advertising case, the Second Circuit invalidated the sign laws of the Towns of Babylon and Hempstead "because they contain no statement of a substantial governmental interest and the towns offered no extrinsic evidence of such an interest."[15] Traffic safety and esthetics are often listed among the significant governmental interests advanced by sign regulations.[16] As pointed out by the Court of Appeals in Matter of Cromwell v. Ferrier:[17]

A speaker must be able to express views somewhere in the community.

> "Advertising signs and billboards, if misplaced, often are egregious examples of ugliness, distraction and deterioration. They are just as much subject to reasonable controls, including prohibition, as enterprises which emit offensive noises, odors or debris. The eye is entitled to as much recognition as the other senses, but, of course, the offense to the eye must be substantial and be deemed to have material effect on the community or district pattern."

3. Alternative Channels of Communication

To be a valid time, place and manner enactment, the municipal sign regulation must also leave open *alternative channels of communication*, in terms of location for display of signs. While sign regulations may limit the manner in which a sign can be displayed, the speaker must be allowed to express views somewhere in the community. In Cleveland Area Board of Realtors v. City of Euclid,[18] the City enacted a law prohibiting all residential lawn signs except those displaying names and addresses of residents. Analyzing the city's law using the "time, place, and manner" test, the Court concluded that it did not leave open ample alternative channels for communication of other kinds of information. Lawn signs are an important channel of communication.

COMMERCIAL SPEECH

Commercial speech is speech which identifies a business or advertises a product.

It may seem obvious to modern day lawyers that commercial signs constitute a form of speech protected by the First Amendment, but that is a relatively recent development. Enacted over two hundred years ago, the Free Speech clause was rarely invoked, except in connection with Freedom of the Press, for well over one-hundred years. For example, in 1911 the U.S. Supreme Court upheld New York City's complete prohibition of advertising on the exteriors of Fifth Avenue buses, and the First Amendment was not even mentioned in the decision.[19] In 1942, the U.S. Supreme Court upheld New York City's complete prohibition on distribution of advertising handbills in the public streets.[20] The City did not prohibit the distribution of noncommercial handbills, so advertisers glued political protest handbills to the reverse of their advertising to avoid the ban on commercial advertising. The Court reiterated a sharp distinction between what it called "protest or opinion literature" and commercial advertising, because the latter was not essential to maintain freedom of the press.

The year 1976 marked the beginning of the distinction between commercial and noncommercial speech. Until Virginia Pharmacy Board v. Virginia Citizens Consumer Council,[21] commercial speech was not plainly within the scope of the First Amendment. In Virginia Pharmacy, the U.S. Supreme Court held that a state statute barring a licensed pharmacist from advertising the prices of prescription drugs violated the First Amendment. The Court indicated that to ensure the truthful flow of information, commercial speech was entitled to at least some degree of protection. The 1970's saw a flurry of cases that attacked state prohibitions on advertising, perhaps most famously Bates v. State Bar of Arizona[22] which held that the First Amendment was violated by a complete prohibition of attorney advertising. In Bates, the Court took the view that while commercial speech might be regulated and even prohibited in some instances, noncommercial speech could never be prohibited, ushering in the clear notion that commercial speech was less protected than noncommercial speech.

In a case arising out of New York, Central Hudson Gas & Electric Corp. v. Public Service Commission,[23] the U.S. Supreme Court developed a four-part test for determining whether a given restriction on *commercial speech* is constitutional:

- *Is the expression protected by the First Amendment?* For commercial speech to be protected by the First Amendment, it must concern lawful activity and not be misleading.[24]
- *Is the asserted governmental interest substantial?* To restrict commercial speech, the governmental interest need only be "substantial," whereas for noncommercial speech that interest must be "compelling."[25]
- *Does the regulation directly advance the governmental interest asserted?* The regulation of commercial speech will not be "sustained if it provides only ineffective or remote support for the government's purpose."[26]
- *Is the regulation no more extensive than is necessary to serve that interest?* The sign law must be narrowly tailored to achieve the government's interest. This means that if the Court finds the law is too broad or that there are other less restrictive alternatives then the law will not be upheld.[27]

Central Hudson Test

- **Is the expression protected?**
- **Is the governmental interest substantial**
- **Does the law directly advance the governmental interest?**
- **Is the law narrowly tailored?**

Accordingly, if a local government chooses to regulate commercial signs within the community, the sign law must be drafted so that it meets the requirements of the four-part Central Hudson test.

The U.S. Supreme Court in Central Hudson firmly held that commercialspeechwasentitledtolessprotectionthannoncommercial speech. Concomitantly, municipal regulatory authority over commercial signs is greater than it is for noncommercial signs.[28] While this does not mean that municipalities have unlimited power to restrict the content of commercial speech on signs, courts will apply the less demanding Central Hudson test to local laws and ordinances that affect commercial speech.[29]

Commercial Speech is entitled to less protection than noncommercial speech.

Commercial speech is subject to modes of regulation that might be impermissible in the realm of noncommercial expression.[30] For example, communities have, through their sign laws, prohibited the erection of billboards in areas where they would interfere with esthetics or traffic safety,[31] the operation of vehicles solely for the purpose of displaying commercial advertisements,[32] and the placement of building facade signs.[33] Because commercial speech is entitled to less protection than noncommercial speech, where commercial signs are permitted, the local government must make sure noncommercial messages are allowed on the sign.

1. Business Signs "On Premises"

Sign regulations often distinguish between off-premises and on-premises signs. On-premises signs are commonly thought of as wall or other signs attached to a building, or pole or monument signs located near the business which the sign advertises. They usually advertise goods and services sold on the premises. Off-premises signs are typically freestanding and advertise goods and services not sold on the premises. Off-premises signs are commonly referred to as billboards, especially when located near highways. Billboards are addressed on page 18 of this publication.

Municipalities can regulate signs attached to businesses provided the law does not regulate viewpoint. In 1990, the Second Circuit Court of Appeals declared unconstitutional the sign laws of five New York municipalities on the ground that they unduly restricted freedom of speech.[34] Islip had a typical sign ordinance which only permitted signs on business premises to display information concerning the name of the business or the goods and services offered. The Court invalidated the Islip ordinance because, in allowing only the name of the business, the ordinance did not allow on-premise signs to display noncommercial messages. As such, it impermissibly discriminated against noncommercial messages in favor of commercial speech. A local government cannot favor commercial speech over noncommercial speech.

Substitution Clause

Example: "Noncommercial signs are allowed in all districts and may be substituted for any sign expressly allowed under this ordinance."

To remedy this common problem, sign regulations should allow on-premises signs to display noncommercial messages. Many municipalities put *substitution clauses* in their sign regulations to ensure that noncommercial messages are allowed to be displayed wherever signs are permitted, thereby averting content-based legal challenges.

2. "For Sale" Signs

The US Supreme Court has created a special rule for on-site signs advertising real estate "for sale" and "for rent."[35] Normally, municipalities cannot regulate signs based on what they say or their content. Sign regulations permitting the placement of signs for the sale or rental of real property are specially exempt from this requirement. As a corollary, sign regulations cannot prohibit the posting of "for sale" or "for rent" signs. In Linmark Associates v. Township of Willingboro,[36] a regulation prohibiting the posting of "for sale" and "sold" signs was found to unlawfully infringe on

commercial free speech.

Sign regulations cannot prohibit the posting of "for sale" or "for rent" signs.

The U.S. Supreme Court stated that location plays an important role in the display of these real estate signs, which cannot effectively and cost efficiently be achieved by any other method of advertising. Importantly, local regulations governing the posting of "for sale" signs in residential areas are treated as "commercial speech" and are subject to the four-part Central Hudson test. For example, laws enacted by several communities near Chicago that limited the size, placement, and number of real estate "for sale" signs were challenged for unduly limiting commercial free speech. Applying the four part Central Hudson test, the Court upheld the municipal laws. The Court noted that "for sale" signs concern a lawful activity (sale of a home) and are not misleading. The purpose for the local restrictions was the legitimate promotion of esthetic appearance of residential neighborhoods, which the law directly advanced. The laws were found to be no more extensive than necessary to serve the government's legitimate interest in the appearance of its residential neighborhoods based on the lack of evidence indicating that they prevented interested persons from learning that a home is for sale. Thus, the laws were upheld under the Central Hudson test upon a finding that they did not unduly limit commercial free speech.[37]

Regulations that allow "for sale" signs and forbid "for rent" signs have been struck down by the Courts as unlawfully restricting the

First Amendment right to free speech. In Citizens United for Free Speech II v. Long Beach Township Board of Commissioners,[38] the Court held that a law that permitted a "for sale" sign to be posted on a residential lot at any time but limited "for rent" signs to certain months was a content-based regulation of commercial speech. The Court enjoined its enforcement because the municipality failed to demonstrate that the different treatment of "for rent" and "for sale" signs was related to a legitimate governmental purpose.

Finally, in Cleveland Area Board of Realtors v. City of Euclid,[39] the city enacted a law which prohibited display of "for sale" signs on the front lawns of residences, but allowed the alternative of displaying these signs in the home windows. The city based its restriction on esthetics. Although the Sixth Circuit saw the law as a content neutral regulation, it struck it down because it was neither narrowly tailored to achieve its claimed interest in esthetics nor left open ample alterative channels for communication of the information. The Court viewed window signs as an ineffective

alternative method of communication as compared to lawn signs. The Court found no reasonable alternatives to freestanding "for sale" signs.

3. Tobacco and Liquor Signs

Local governments occasionally enact content-based sign regulations in an effort to protect minors from smoking or alcohol consumption. Sign regulations which restrict the advertising of tobacco and liquor product have had a checkered history in the Courts.

Local regulation of cigarette and tobacco advertising must be consistent with the requirements of the Federal Cigarette Labeling and Advertising Act (FCLAA).[40] This federal act prescribes mandatory standards for labeling and advertising tobacco products. The FCLAA contains a preemption provision which bars states (and localities) from enacting laws affecting the federal regulation of tobacco advertising.[41]

Local regulation of cigarette and tobacco advertising must be consistent with the requirements of the Federal Cigarette Labeling and Advertising Act (FCLAA).

In Lorillard Tobacco Company v. Reilly,[42] the U.S. Supreme Court invalidated Massachusetts's tobacco advertising regulations. The outdoor advertising portion of the regulations prohibited tobacco or cigar advertising within 1,000 feet of a school or playground. The Court found this geographical limitation to be too broad and not finely tailored to address the concerns of juvenile smoking. More importantly, the Court held that the FCLAA preempted Massachusetts' regulations governing outdoor and point-of-sale cigarette advertising and violated the First Amendment.

The Court rejected the argument that local regulation of cigarette advertising is a form of zoning, a traditional area of state power, and, therefore, not preempted. The Massachusetts regulations directly targeted cigarette advertising. In enacting the FCLAA, Congress did not intend to allow local control of cigarette advertising through zoning. According to the Court, the comprehensive warnings, advertising restrictions, and preemption provision of the FCLAA would make little sense if a state or locality could simply target and ban all cigarette advertising. The Court went on to say that FCLAA's preemption provision does not restrict the ability of local governments to enact generally applicable zoning restrictions on the location and size of advertisements that apply to cigarettes *on equal terms with other products.*

Sign regulations governing the placement and manner of outdoor advertising generally are not preempted by FCLAA.

Local sign regulations, therefore, cannot directly regulate tobacco

advertising.[43] However, sign regulations governing the placement and manner of outdoor advertising generally are not preempted by FCLAA.

Alcoholic beverages are heavily regulated by the State of New York. State law preempts local legislation on the subjects of hours of operation, distribution, and consumption of alcohol.

Alcoholic beverages are heavily regulated by the State of New York.[44] While state law preempts local legislation on the subjects of hours of operation, distribution, and consumption of alcohol,[45] local governments in New York may enact land use regulations which exert incidental control over the location and placement of signs generally.[46]

In 44 Liquormart v. Rhode Island,[47] the U.S. Supreme Court invalidated a state law that banned the advertising of retail liquor prices except at the place of sale. It found that the state interest in temperance, although substantial, was not proven to be advanced by a complete prohibition on signs bearing the price of alcoholic beverages. The Court concluded "that alternative forms of regulation that would not involve any restriction on speech would be more likely to achieve the State's goal of promoting temperance."[48] As a result, the complete ban on liquor price advertising failed the Central Hudson test.[49]

Local governments may enact land use regulations which exert incidental control over the location and placement of alcoholic beverages signs.

Following Liquormart, the Fourth Circuit upheld a City of Baltimore ordinance prohibiting the placement of free-standing outdoor advertising of alcoholic beverages.[50] The ordinance was designed to promote the temperance of minors by banning advertisements for alcoholic beverages in areas where children are likely to walk to school or play. The Court found reasonable the city's contention that there is a direct correlation between alcoholic beverage advertising and underage drinking. Applying the Central Hudson test, the Court held that the regulation of commercial speech was not more extensive than necessary to serve the governmental interest. The Court acknowledged that the ordinance may also reduce the opportunities for adults to receive the information, but noted that there were numerous other means of advertising to reach adults that did not subject children to solicitations for the alcohol products.

4. Sexually Oriented Signs

Eye-catching displays of nude or erotic photographs and silhouettes are used by adult businesses to beckon passersby. Some adult businesses use large, illuminated, neon lit or sexually graphic signs to appeal to the public. These signs also have attracted the attention of municipal officials. Guided by New York statutes,

many communities now limit the exposure of the public to sexually oriented messages on billboards and signs which are visible from public places.[51]

New York Penal Law § 235.05 prohibits advertising signs which are obscene.[52] Neither the federal nor State Constitution protects obscene or pornographic expression. The U.S. Supreme Court has held that states can regulate obscenity without running afoul of the First Amendment.[53]

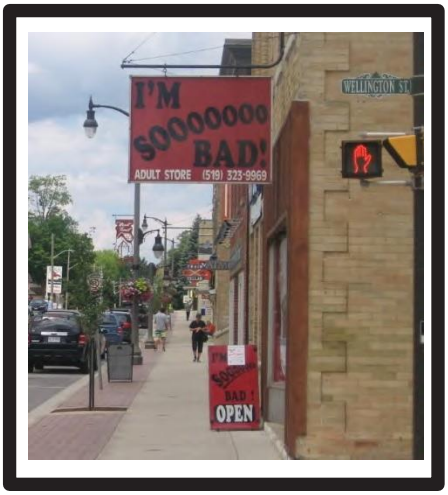
Also, it is a crime in New York to knowingly display "offensive sexual material," even though the signs are not obscene, if they are easily visible from public places. Penal Law §245.11 makes it a Class A misdemeanor to knowingly display offensive sexual material in or on:

> any window, showcase, newsstand, display rack, wall, door, billboard, display board, viewing screen, moving picture screen, marquee or similar place, in such manner that the display is easily visible from or in any: public street, sidewalk or thoroughfare; transportation facility; or any place accessible to members of the public without fee or other limit or condition of admission such as a minimum age requirement and including but not limited to schools, places of amusement, parks and playgrounds...

The "offensive sexual material" subject to this law includes "any pictorial, three-dimensional or other visual representation of a person or a portion of the human body that predominantly appeals to prurient interest in sex, and that:

> (a) depicts nudity, or actual or simulated sexual conduct or sado-masochistic abuse; or
> (b) depicts or appears to depict nudity, or actual or simulated sexual conduct or sado-masochistic abuse, with the area of the male or female subject's unclothed or apparently unclothed genitals, pubic area or buttocks, or of the female subject's unclothed or apparently unclothed breast, obscured by a covering or mark placed or printed on or in front of the material displayed, or obscured or altered in any other manner."[54]

The legislative purpose behind Penal Law § 245.11 in prohibiting public displays of offensive sexual materials is stated in the Preamble[55] which provides that such displays:



appeal predominantly to prurient interest in sex [and] are offensive to passersby when readily visible from public thoroughfares. Regardless whether such public displays are "obscene" within the meaning of the Penal Law and constitutional law, they are not constitutionally protected, because they are thrust indiscriminately upon unwilling audiences of adults and children, and constitute assaults upon individual privacy.

Few cases have opined upon this Penal Law section. In People v. Lou Bern Broadway, Inc.,[56] the Court of Appeals held that an advertisement outside of a movie theater which depicted an almost life-size photograph of a nude female with her buttocks exposed and a large billboard outside the theater containing numerous smaller photographs of nude females, did not fall within the prohibition of the statute. The Court declined to opine on the constitutionality of the statute.

Noncommercial speech is speech which presents some personal, political or religious point of view.

NONCOMMERCIAL SIGNS

Noncommercial speech expresses some personal, political or religious view. Government regulation of noncommercial speech is more limited than its power over commercial speech.[57]

A constitutional rule has evolved that where commercial messages are allowed, the owner or occupant must also be permitted to display his own ideas or those of others.[58] Whether in a residential area or a business district, municipalities cannot permit commercial speech to appear on signs but proscribe noncommercial speech. For example, a common, yet suspect, feature of many sign regulations is one that allows only signs that advertise the name of the business located on the premises where the sign is posted, but prohibits some or all noncommercial signs at that location.

Allow noncommercial messages wherever commercial messages are allowed.

Political speech is noncommercial speech which is entitled to the highest form of protection afforded by the Free Speech Clause of the First Amendment.[59] If government attempts to regulate political speech, it may do so "only to the degree necessary to meet the particular problem at hand, and must avoid infringing on speech that does not pose the danger that has prompted regulation."[60] While municipalities may have a valid interest in reducing visual clutter, they cannot foreclose avenues of expression for political messages. They may only regulate the time, place and manner of signs, without reference to content.

1. Signs in Residential Areas

Residential land uses and development present special challenges for sign regulation. Inappropriately placed signs in residential areas can have discordant visual impacts on neighborhoods. Yet, such signs are often affordable means of communication. The U.S. Supreme Court remarked:

> Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute. [Citations omitted] Even for the affluent, the added costs in money or time of taking out a newspaper advertisement, handing out leaflets on the street, or standing in front of one's house with a handheld sign may make the difference between participating and not participating in some public debate. Furthermore, a person who puts up a sign at her residence often intends to reach neighbors, an audience that could not be reached nearly as well by other means.[61]

Not every kind of sign must be permitted in residential areas.

Sign controls applicable to residential areas must therefore be carefully drawn to respect free speech while protecting the community's appearance.

The First Amendment prohibits regulations that amount to a total ban on posting signs on private property. Further, when a local government regulates signs in residential areas, the regulations must be content neutral and necessary to achieve or protect a public interest, such as limiting visual clutter or reducing traffic accidents. Regulations which are limited to factors such as size and construction of signs, and distance from the street are more likely to be upheld than regulations which in any way restrict signs based on their message. The U.S. Supreme Court has however warned that not every kind of sign must be permitted in residential areas. "Different considerations might well apply, for example, in the case of signs (whether political or otherwise) displayed by residents for a fee, or in the case of off-site commercial advertisements on residential property."[62] Regulations that prohibit paid advertisements in residential areas may be appropriate if found content neutral and necessary for public health, safety, and welfare.

The U.S. Supreme Court has held that homeowners have a

constitutionally protected interest in placing political signs on their own property when the municipality permits other kinds of lawn signs. In City of Ladue v. Gilleo,[63] the U.S. Supreme Court declared a city ordinance to be unconstitutional which prohibited homeowners from displaying any signs on their property except residence identification signs, "for sale" signs, and signs warning of safety hazards. The City did permit commercial establishments, churches, and nonprofit organizations to erect certain signs that were not allowed at residences. In finding the ordinance unconstitutional, the U.S. Supreme Court held that even though they may regulate the physical characteristics of signs, local governments may not allow some signs and ban others based upon their content. The City of Ladue's ordinance was simply too broad and effectively eliminated residential political signs — an important method of expressing political speech.

A relatively recent New York case, Savago v. Village of New Paltz,[64] is also instructive. Shortly after the terrorist attack on the World Trade Center, Savago hung a temporary 4 foot by 25 feet sign from a building he owns in the Village of New Paltz, depicting two American flags and proclaiming "keep looking over your shoulder terrorists–we're coming for you. God Bless America." Although Savago removed the sign in December 2001, he vowed to display it again if the nation experienced another terrorist attack. The Village subsequently amended its zoning regulation to require persons to obtain a sign permit from the building inspector prior to erecting or altering signs, with certain exemptions for real estate, construction, historic, traffic and municipal signs, and small non-commercial signs; the amendment also imposed size and placement restrictions based on content. In effect, the zoning amendment would have prevented Savago from re-posting his sign without a permit. He brought suit in federal district court complaining that the Village sign regulation distinguishes among classes of signs on the basis of content, grants the building inspector discretionary authority to deny or revoke sign permits at his whim, and elevates commercial speech over noncommercial speech, all in violation of the First Amendment. The Court agreed and struck down the Village's sign regulation as unconstitutional. The restriction on this kind of political message could not be justified on the basis of community esthetics and traffic safety.

In People v. Weinkselbaum,[65] the Town of Babylon's ordinance required a permit for all temporary signs, regardless of content, in any residential district, and such permit would expire in 30 days and not be subject to renewal. The defendant erected a sign on his

lawn critical of local law enforcement practices and was cited by the Town for failure to obtain the necessary permit, which involved payment of a nominal fee. Nothing on the face of the ordinance restricted such signs based on content or location or indicated a permit would not be granted based on content. The Court found the Town's justification was proper and not content based, served a legitimate governmental purpose and the availability of the temporary sign regulatory scheme did not foreclose an individual's right to "speak" from his property.

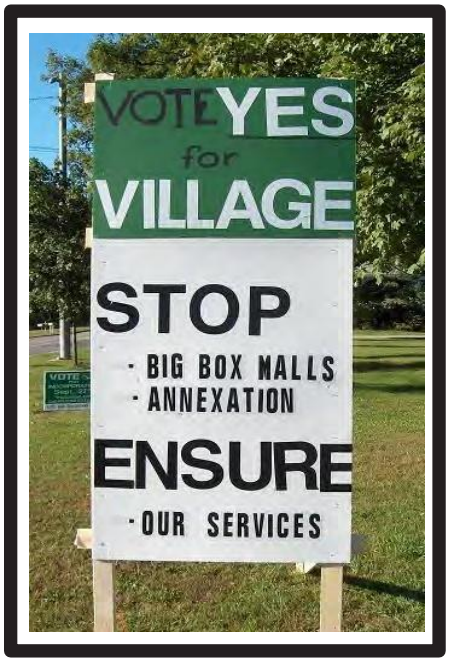
In sum, laws that unduly prohibit signs in residential areas, as well as those that regulate based on the nature of the message, may be struck down by the Courts as unlawfully restricting the First Amendment right to free speech.

- The First Amendment proscribes municipal favoritism of one form of speech over another, even if the regulation merely allows one entity to post larger signs than another, based on the sign's content.
- It is impermissible to freely permit temporary commercial signs - such as contractor signs on a construction site - but require political campaign signs to first obtain a permit in the same area. This type of regulation impermissibly favors commercial speech over noncommercial speech.

A municipality may not require a permit for a campaign sign if other temporary signs in the same area do not require a permit.

2. Municipal Regulation of Signs by Subject Matter

On June 18, 2015, the United States Supreme Court handed down an important decision dealing with sign regulation of certain "categories of signs" in Reed v. Town of Gilbert, Arizona U.S. (2015). The Town of Gilbert's sign code prohibited the display of outdoor signs anywhere within the Town without a permit, but exempted 23 categories of signs, including "temporary directional signs" directing the public to a meeting of a group. The Town's code imposes more stringent restrictions on these categories of signs than it does on signs conveying other messages. Temporary directional signs may be no larger than six square feet, are limited to four signs per property and may not be displayed more than 12 hours before the qualifying event" nor more than 1 hour afterward. The Good News Community Church, whose Sunday church services are held at various temporary locations, posted signs early each Saturday bearing the Church name and the time and location of the next service and did not remove the signs until around midday Sunday. The Church was cited by the Town for exceeding the time limits for displaying temporary directional



signs and for failing to include an event date on the signs.

The US Supreme Court determined that the sign code's provision dealing with temporary directional signs was content-based regulation of speech on its face and, could not constitutionally survive strict scrutiny. Content-based laws - those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. Speech regulation is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. The Town's sign code defined the categories of temporary directional signs on the basis of their topic and subjected each category to different restrictions. The Town's sign code therefore singled out specific subject matter for differential treatment, even if it did not target viewpoints within that subject matter. The municipality could not claim that placing strict limits on temporary directional signs was necessary to beautify the Town when other types of signs created the same problem.

The Court opined that its decision will not prevent governments from enacting effective sign laws. Local governments have ample content neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability. Municipalities may still be able to forbid postings on public property, so long as it does so in an evenhanded, content neutral manner.

3. Political Signs on Public Property

The U.S. Supreme Court has long recognized that the First Amendment shields speech uttered during a campaign for political office. One of the major purposes of the First Amendment was to protect the free discussion of political affairs.[66]

A municipality may require an individual to obtain a permit to post political campaign signs on public streets where there is no attempt to classify signs based on content. In Abel v. Orangetown,[67] a political candidate posted free-standing signs along the public streets on the unpaved portion of the public right-of-way. He did so in contravention of a Town of Orangetown law, which prohibited the posting of signs on public property without a town permit. A federal court upheld the constitutionality of this provision since it applied to all types of signs to be posted on public property and did not differentiate between classes of signs by allowing the

posting of some types while forbidding others. The result would likely have been different if the law only prohibited the posting of political signs.

A local regulation can prohibit all signs from being posted on public property if it is silent concerning the speaker's viewpoint.

In Sugarman v. Village of Chester,[68] an unsuccessful candidate for District Attorney filed suit against 21 New York municipalities, alleging that their sign regulations imposed unconstitutional restrictions on her ability to erect political campaign signs. She alleged that the municipal laws regulating the posting of political signs violated her freedom of speech under the First Amendment. The federal district court held that the sign regulations of eight of the municipalities were unconstitutional to the extent they gave local officials unbridled discretion to grant or deny permission to erect signs and in other respects, unconstitutionally regulated the content of speech. Several guidelines can be gleaned from the Sugarman decision:

- Municipalities may have a valid interest in regulating the size, placement, and number of signs but may not single out political signs for differential, less favorable treatment, than other signs. For example, a regulation which exempts certain classes of signs from size requirements but imposes them on political signs, improperly singles out political signs for special treatment in violation of the First Amendment.
- A sign regulation which grants public officials unbridled discretion to grant or deny sign permits may be unconstitutional because such discretion has the potential for becoming a means of suppressing speech or a particular point of view.
- Content-based *time limits* on signs are unconstitutional. For example, a sign law would be impermissibly content-based if it restricts political signs to less than 60 days but permits the posting of other temporary signs beyond the 60-day period.
- Municipalities may restrict all temporary signs by imposing permit and permit fee requirements but cannot then exempt some classes of signs on the basis of content. For example, a regulation would be content based if it exempts temporary real estate signs from the uniform permit and fee requirements for other signs.

Some local governments pass laws that require political signs to be removed within a short time after an election has taken place. The validity of such laws depends upon whether they

are content neutral and apply to all kinds of temporary signs. A local government can prohibit all signs (temporary or permanent) from being posted on public property so long as the regulation is silent concerning the speaker's viewpoint.[69] Such a regulation is considered a valid time, place and manner regulation, which does not violate the free speech clause of the First Amendment. A local regulation that specifically limits the time in which political signs may be posted may be invalidated if it does not apply alike to signs that display other messages.

BILLBOARDS

Sincebillboardsarelarge, freestandingstructures, theycreateunique problems for land-use planning and development precisely because they are designed to stand out and apart from their surroundings. The Courts have found a legitimate local governmental interest in controlling the size and location of billboards,[70] but not their communicative aspects. This has resulted in the need to reconcile the government's regulatory interest with the individual's right to free expression. The U.S. Supreme Court squarely addressed the issue of billboard regulation in Metromedia, Inc. v. City of San Diego,[71] a case which dealt with a City of San Diego ordinance that generally prohibited outdoor advertising display signs. The ordinance provided exceptions (a) for onsite signs that identified the owner or occupant of the premises, or advertised goods and services made or provided on the premises, and (b) for off-premises signs falling within 12 specified categories. In short, the ordinance allowed on-premise commercial signs, prohibited off-premise commercial billboards, and allowed off-premise noncommercial billboards that carried specific categories of messages. The U.S. Supreme Court, in a plurality opinion, both sustained and struck down portions of the San Diego sign ordinance.

The U.S. Supreme Court upheld those portions of the San Diego ordinance which prohibited offsite commercial billboards, even though it permitted on-premises signs. To the extent that the sign regulations prohibited off-premises commercial billboards, it was a valid *time, place and manner restriction*. The Court said:

> In the first place, whether on-site advertising is permitted or not, the prohibition of off-site advertising is directly related to the stated objectives of traffic safety and esthetics. This is not altered by the fact that the ordinance is under-inclusive because it permits onsite advertising. Second, the city may believe that off-site advertising, with its periodically changing

content, presents a more acute problem than does on-site advertising.

Third, San Diego has obviously chosen to value one kind of commercial speech — on-site advertising — more than another kind of commercial speech — off-site advertising. The ordinance reflects a decision by the city that the former interest, but not the latter, is stronger than the city's interests in traffic safety and esthetics. The city has decided that in a limited instance — on-site commercial advertising — its interests should yield. We do not reject that judgment.[72]

The U.S. Supreme Court, however, declared unconstitutional those portions of the San Diego sign ordinance which allowed commercial messages in places where noncommercial messages were not allowed and that created a preference for certain kinds of noncommercial speech over other kinds of noncommercial speech based on the content of the message.[73]

In New York, the Court of Appeals has upheld local laws that prohibit all off-premises commercial billboards. The Court in Suffolk Outdoor Advertising v. Hulse[74] ruled that a Town of Southampton law that prohibited the erection of all non-accessory billboards was a valid exercise of the police power and reasonably related to public safety and welfare. The law was upheld because it did not regulate the content of the commercial speech appearing on billboards, but rather the place and manner in which billboards may be maintained. The Court also held that the regulation of outdoor advertising for esthetic purposes alone constitutes a valid exercise of police power.

1. Removal of Nonconforming Signs and Billboards

When a local government enacts a sign regulation, it is likely that some existing signs will not conform to the new regulations. Local

Esthetic reasons are a valid purpose for regulating signs.

Esthetic reasons are a valid purpose for regulating signs.

sign regulations should address existing signs, particularly those that do not conform to newly enacted regulations. A lawfully existing sign that does not conform to new sign regulation may be treated as a prior nonconforming use, and allowed to remain provided it is not altered. Alternately, the municipality may attempt to have them removed.

New York courts have held that municipalities may require the removal of nonconforming billboards and signs, after the expiration of an amortization period long enough to allow the

sign owner to recoup his or her investment. Amortization is the process of permitting a nonconforming sign to remain standing for a designated period of time after a new sign regulation has been implemented. At the end of that time period, the sign must either conform to the regulations or be removed. (While amortization is not permitted for signs along primary, National Highway System and Interstate Highways controlled by the Department of Transportation, removal by just compensation is permitted.) Where the amortization period is reasonable, requiring sign removal does not constitute a regulatory taking under the Fifth Amendment and does not require payment of compensation.[75] The length of the amortization period is usually calculated based on a number of factors including the fair-market value of the sign and its remaining useful life. The period should not be so short as to result in a substantial loss of investment.

Special rules apply to billboard removal. A municipality which requires removal of nonconforming billboards may need to comply with General Municipal Law (GML) §74-c and/or Highway Law §88.

GML §74-c provides that any municipality that enacts a law requiring the removal of a legally erected and maintained billboard in areas zoned industrial or manufacturing must pay just compensation to the owner pursuant to Article 5 of the Eminent Domain Procedure Law. If the local regulation requires removal of a legally erected billboard in any other zone, such as a residential, commercial or agricultural district, the billboard must be allowed to remain for a period set forth in the statute, based upon its fair market value.[76] At a minimum, all billboards can *remain* at least three (3) years at the time of notification, unless the municipality decides to pay compensation for their earlier removal. The statute provides that the amortization periods begin to run "after giving notice of the removal requirement" to the owner. The statute applies in all municipalities in the State, except in New York City. In addition, the Department of Transportation, in administering both GML §74-c, Highway Law §88, and various federal laws and regulations has determined that signs for which they have legally issued a New York State Outdoor Advertising Permit that are located along primary highways, the National Highway System, or the Interstate System in any zone would be entitled to just compensation pursuant to Highway Law §88.[77]

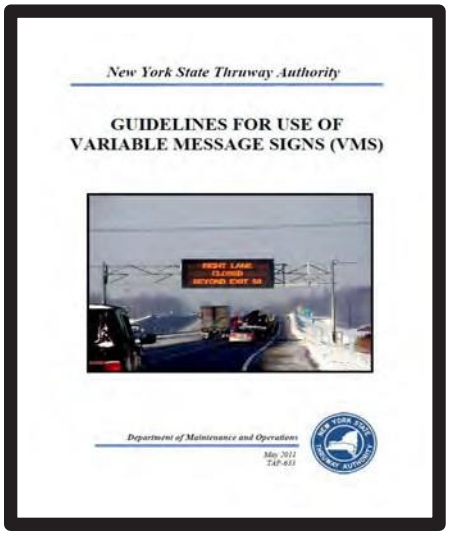
The local governing board of a city, town or village may, as a condition of granting an application to rezone property, require the removal of a nonconforming sign. In King Service Inc., v. Malta,[78] a business seeking to expand its gasoline station to include a convenience store was compelled to remove its nonconforming sign before the town board would change the zoning to allow the expansion. Rezonings are discretionary. The Court of Appeals held that a condition requiring removal of nonconforming signs as part of a rezoning was proper.

Where amortization is not required, or when sign owners wish to participate in an alternative program, municipalities could encourage the reduction in the number of nonconforming signs by adopting bonus provisions, whereby a property owner is awarded a bonus in size, height, or number of allowable signs if the nonconforming sign is removed by a specified date. Another cooperative approach is to use community grants or low-interest loans as an inducement to encourage the removal and replacement of signs in poor shape. Some municipalities adopt exchange-only provisions, which prohibit installation of any new signs on a lot while a nonconforming sign remains in use.

2. Billboards and Other Off-Premises Signs along Primary, National Highway System, and Interstate Highways

The Federal Highway Beautification Act of 1965[79] requires that the State control off-premises signs visible from areas adjacent to primary highways, highways on the National Highway System, and Interstate Highways. The New York State Department of Transportation (NYSDOT) may be consulted for more information on sign regulations that apply to sites adjacent to state and local routes covered under the state's program for control of outdoor advertising. Signs are permitted in the following commercial or industrial zones within 660 feet of the Interstate System: (1) all commercial and industrial zones within the boundaries of incorporated municipalities (cities and villages), as those boundaries existed on September 21, 1959; and all other commercial and industrial zones established as of September 21, 1959 outside of such municipalities; and (2) all zoned and unzoned commercial and industrial zones adjacent to portions of the Interstate System constructed upon right of way, any part of which was acquired on or before July 1, 1956. These signs are subject to additional restrictions on size, spacing and lighting.

The New York State Sign Program, which implements the Federal



Highway Beautification Act, is designed to control the erection and maintenance of signs along primary highways, Federal-Aid Highways on the National Highway System and along Interstate Highways.[80] Elements of the state sign regulations include sign type, location (including zoning), size, spacing, lighting and registration requirements.[81]

Signs in existence prior to the enactment of the Highway Beautification Act and classified as "nonconforming" under the NYSDOT's program must remain substantially the same and may not be changed (except for changes in sign advertising copy).

The NYSDOT and the NYS Thruway Authority administer the program and regulate signs within their respective jurisdictions. Section 361-a of the Public Authorities Law restricts advertising devices within 660 feet of the New York State Thruway right of way. Beyond 660 feet, off-premises signing is prohibited by the Department of Transportation in all but urban areas. [82]

New York State Sign Program
Definition of "Sign"

Sign means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of a highway, whether the same be permanent or portable.

For roads within the Catskill and Adirondack Parks, the Department of Environmental Conservation administers additional state requirements which limit the signs authorized in these Parks.[83] Additionally, designated State and National Scenic Byways have unique requirements that restrict the signs permitted along such Byways.[84] It should also be noted that the Department of Transportation does not permit or allow signs in the right of way of state highways.[85]

Highway Law §88 governs the subject of billboards within 660 feet of Interstate, National Highway System, and primary highways. New billboards and other off-premises signs in areas or zones other than industrial or commercial are not allowed in the 660-foot corridor. Additionally, Highway Law §88 provides that signs beyond 660 feet outside of urban areas and erected with the purpose of their message being read from Interstate or primary highways are prohibited A municipality may concurrently regulate signs regulated by the State only if the regulations are equal to or more restrictive than the State's regulations.

In addition, Highway Law §88 (7) provides that any legally permitted sign within the controlled area may not be removed or be required to be removed by a municipality or the state, without the payment of full compensation, pursuant to the Eminent Domain Procedure Law. Amortization is not permitted. The NYS Department of Transportation should be contacted to confirm

whether the signs in question are subject to this law.

If the signs are not subject to the Highway Law, then a municipal law or ordinance which requires the removal of existing billboards must provide a reasonable amortization period and a process for granting extensions, or provide compensation, conforming to General Municipal Law §74-c where applicable, and comply with restrictions contained in Highway Law §88(7).

REGULATION OF NON-TRADITIONAL SIGNS

Signage can sometimes involve the unexpected, such as signs on balloons, trees, people, and rocks. They can be composed of pictures, photographs or projected images. Expression on non-traditional signs, like other media, is protected by the First Amendment of the federal and New York Constitutions.

A municipality may concurrently regulate signs regulated by the State only if the regulations are equal to or more restrictive than the State's regulations.

Municipalities may regulate non-traditional signs so long as the regulation does not unlawfully control the message expressed by the sign. The community's definition of the term "sign" will set the scope of the regulation. It may broadly encompass non-traditional media of communication which are not typically considered "structures." For example, a court considered whether a village zoning law that regulated the permissible dimensions of signs applied to a 20-foot high boulder on which was inscribed a symbol and family name in 6- foot letters. Under the village zoning law, a sign was defined as a structure and the Court concluded that a boulder is not a structure, so therefore the symbol and name painted on a boulder was not a sign. Had the village defined "sign" to include such non-traditional "structures," they could have prohibited messages on boulders.[86]

1. Free-standing Signs on Sidewalks, Streets and Other Public Property

Government owned property often serves as a traditional public forum for a wide range of personal, political and commercial expression. Yet, even in the public setting, local government can control the time, place, and manner of expression. If a governmental restriction on speech applies to public property, the level of First Amendment protection depends on how the property is classified (i.e. as a traditional public forum, a designated public forum, or a non- public forum). A *traditional public forum* is a public place that has by long tradition or government fiat been dedicated to the free exchange of ideas. Traditional public forums include streets,

sidewalks, and parks.[87] In a traditional public forum, government may not restrict speech based on content, unless such regulation serves a compelling state interest and is narrowly tailored to achieve such interest.[88] The protections of the First Amendment automatically apply when a regulation involves a traditional public forum.[89]

A community's definition of the term "sign" may be expanded to include non-traditional types of media.

Government can also designate a *limited public forum*, "public property which the state has opened for use by the public as a place for expressive activity."[90] The Constitution forbids a government from enforcing certain exclusions in a forum generally open to the public even if it was not required to create the forum in the first place. Although a government is not required to retain the open character of the facility indefinitely, as long as it does so it is bound by the same standards as apply in a traditional public forum.

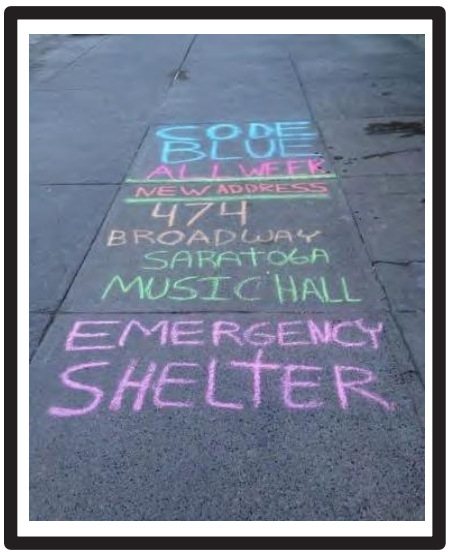
Sidewalk signs are entitled to First Amendment protections. Sidewalks are public property and are considered to be traditional public forums dedicated to the free exchange of ideas. Government can prohibit the posting of all signs on sidewalks and other public property, whether or not the property is a traditional public forum, so long as there are no exemptions which classify signs based on content. In Members of the City Council v.Taxpayers for Vincent,[91] the U.S. Supreme Court upheld a City of Los Angeles ordinance prohibiting the posting of all signs on public property. The City law was challenged by supporters of a political candidate. The City justified the law on esthetics, a governmental interest unrelated to speech. Viewing the ban as having a neutral effect on speech, the Court declared it a valid time, place and manner regulation.

Municipalities may control the use of portable signs. Portable signs include any signs or advertising devices not designed to be permanently attached to a building or permanently anchored to the ground. Portable signs include sandwich board signs, A-frame signs, sidewalk signs, signs on wheels, leaning signs and temporary signs such as real estate promotions and commercial promotions. A Windham, New York ordinance prohibiting the use of all portable signs was held to violate the First Amendment to the Constitution in Clear Channel Outdoor, Inc. v. Town Bd. of Town of Windham[92] because it contained exceptions for some types of signs based on their content. The ordinance provided three exemptions to the total ban on portable signs: temporary construction signs, "For Sale," and "For Rent" signs. The Court found the portable sign provision of Windham's sign ordinance was unconstitutional in permitting the display of commercial messages where it prohibited

noncommercial messages.[93]

In Tucker v. City of Fairfield, Ohio,[94] the 6th Circuit Court of Appeals upheld an injunction against application of a city's ordinance to the display of an inflatable rat balloon, a symbol of labor protest, on a public way in front of an automobile dealership. The city's ordinance prohibited the erection of any structures, including signs, on public rights of way. The rat balloon, which measured twelve feet high and eight feet in diameter when inflated, was secured to the ground for one to two hour periods with stakes. The Federal appeals court held that the use of a rat balloon to publicize a labor protest was constitutionally protected expression, the public way was a "traditional public forum" where expression is allowed, and the balloon was temporary and therefore not a structure subject to the city's ordinance. In the Court's view, no evidence showed that the temporary placement of the balloon in the public right-of-way had any adverse effects, such as obstruction of pedestrian or automobile traffic.

A municipality can prohibit the posting of all signs on sidewalks and other public property.



Municipalities may not enact sign regulations which prohibit gas station owners or operators from advertising their prices on portable signs. In People v. Mobil Oil Co.[95] and Smithtown v. Commack Gas & Washateria,[96] laws were enacted that prohibited gas station owners from advertising their prices on portable signs on their property. The gas station owners were only permitted to advertise prices on the pump. The respective courts found that these laws violated the First Amendment since they ban truthful, commercial speech on the basis of content. The Courts found that consumers would not be able to read the small signs from the road and that such information was useful to them. The Court rejected esthetics as a substantial interest because the law forbade nothing other than gas prices. Further, the Court found that alternatives to such advertising are not practical because they are more costly and less likely to reach persons seeking such sales information.

The New York Attorney General has stated that it is impermissible for a municipality to permit the placement of private advertising signs on public property to be used for the sole purpose of private business advertising, since no benefit accrues to the municipality or the public.[97] Municipalities are not permitted to engage in such pecuniary, private business endeavors. However, the Attorney General later found nothing legally objectionable about the sale of advertising space on a city bus system, since it is revenue raising activity related to operating the public transit system. In defraying the cost of bus operations and presumably subsidizing fares, the

sale of advertising space serves a public purpose.[98]

2. Signs on Vehicles

When a vehicle's sole purpose for being on the road is to display advertising, a municipality can claim an interest in regulating traffic as a legitimate reason for enacting a ban. In People v. Target Advertising,[99] the defendant was charged with violating NYC's banon operating vehicles solely for the purpose of displaying a commercial advertisement. In separate incidents, he was cited for displaying on his vehicles advertisements for a jewelry store, a cellular communications company and another unnamed company. The Court the convicted defendant and upheld the city's ban on vehicular advertising even though the law permitted exceptions in the cases of buses, taxis, sanitation trucks, and commercial vehicles engaged in their ordinary business. The Court determined that the rule satisfied the Central Hudson test for determining the validity of government restrictions on commercial speech. The Court found that with the exceptions, the rule was no more extensive than necessary to serve the government's interest in improving traffic safety and alleviating traffic congestion, by eliminating vehicles used only for advertising.

Another case dealing with the same rule involved the operation of a truck, in essence a "moving billboard," for the purpose of advertising a business other than its own. Noting that the regulation exempts advertising appearing on vehicles owned by the advertised business, the defendant argued that the rule differentiates based upon the content of the message, since it is only by reference to content that one can determine whether a particular message is prohibited on the side of a commercial vehicle. The Court disagreed stating "even though the regulation is based on a particular medium of expression and distinguishes between messages carried on that medium, it remains neutral as to the expression's content."[100]

3. Flags, Streamers and Balloons

Advertising signs can be animated, rotating, floating, fluttering, or non-stationary devices, designed to attract the attention of passing pedestrians and motorists. Banners, balloons, inflatable signs, kites, pennants or flags are typical examples. Such signs may potentially distract motorists, impair visual quality and in certain circumstances, constitute nuisances. Some municipalities have addressed the visual concerns associated with aerial signs by imposing reasonable time, place and manner restrictions on their

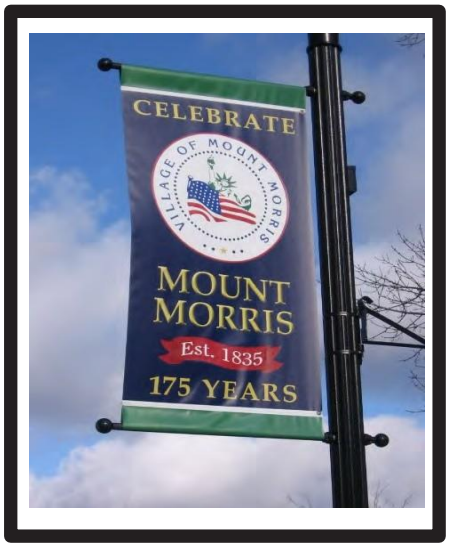
display; other municipalities have chosen to ban them outright.

Flags and pennants are commonly regulated under sign regulations because they are easy sign substitutes. If inappropriately located, they can mar landscapes, create visual clutter and distract motorists. They can be regulated by a municipality in the same manner as other signage. Such laws are likewise subject to constitutional limitations.

In the Clear Channel case,[101] the Town of Windham ordinance defined the term "sign" broadly, however it excluded from the definition a "flag, pennant or insignia of any nation or association of nations or of any state, city or other political unit, or of any political, charitable, educational, philanthropic, civic, professional, or like campaign, drive, movement or event". While the Town exempted most forms of speech expressed on a flag, pennant, or insignia, it impermissibly failed to make an exception for religious flags. The Judge wrote:

> "A Windham resident may display an American flag or one noting a Red Cross Blood Drive of any size without seeking permission from the Town because those flags would not be considered signs under the ordinance. However, in order to display a flag with a Christian symbol, the Islamic crescent moon and star, or the Star of David, the same resident would be required to obtain a permit and comply with the regulations because those flags would be considered signs."

The Court struck down the Town's ordinance provision as unconstitutional because it impermissibly favors some noncommercial messages over others.



In another case,[102] a person was charged with violating a regulation of the New York City Parks Department when he flew a kite in Central Park advocating the election of John Lindsay as city mayor. The regulation provided:

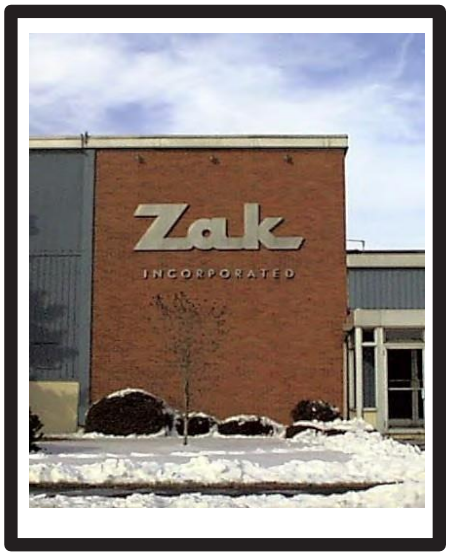
> "No person shall distribute, display, transport, carry or construct any flag, banner, sign, emblem, model, device, pictorial representation, or other matter, within any park or park-street, for **advertising or political purposes**. Nor for the same purposes shall any person display by means of aircraft, kite, balloon, aerial bomb or any other device, any flag, banner, sign or any other matter above the surface of any park or park-street...." (Emphasis added).

The Court held that the Parks Department regulation prohibiting the flying of kites in a public park (a traditional public forum) to express political preferences was an unconstitutional abridgement of First Amendment guarantees, absent a showing of any clear and substantial connection between the regulation and the lawful objective of providing for the safety, comfort, and convenience of people of the city in their use of its public parks.

Part Two: Developing Sign Regulations

Writing effective sign regulations requires good drafting as well as consideration of constitutional constraints. Experience has shown that simply enacting a sign regulation is not enough unless its provisions are reasonable, understandable and constitutional. The success of a sign control program will also depend on proper enforcement of the regulations. These guidelines should serve as a helpful resource to assist municipalities in drafting regulations.

PLANNING FOR SIGNS

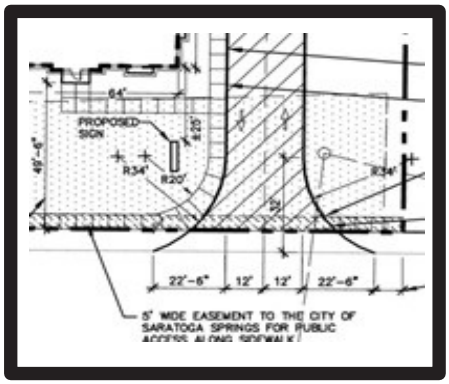


A municipal sign control program should be based on an examination of the roles that signs have played in the community and a determination of what they should be in the future. If signs are to be studied specifically, the findings and recommendations should be related to the general community plan or planning process.

Planning for signs should follow a few simple procedures. Such planning is usually undertaken by a community's planning board and may require professional planning assistance, depending on the complexity of a community's development and the extent of its existing sign problems.

Inventory. The planning process should begin with an inventory of existing signs. Particular note should be taken of signs that are free-standing, hung from buildings, and off-premises, including billboards. The location and size of signs should also be determined, if possible. Individual signs that may present problems should be identified. These include signs that may be hazards because of construction, condition, location, or size. In addition, any signs that create a visual blight due to appearance, lighting, or operation

should be noted. Visual blight is a subjective concern, but it is an area that can be regulated if warranted by community interests. The inventory should also identify where signs have become a problem in certain areas of the community, such as the gateway to the town center. Such areas may already be known, but the data will quantify the issue.



Sign Policy. With an inventory of existing signs, a community can begin to formulate sign policies. Policies are recommendations that take both the results of the inventory and the goals of the community into consideration, and they help form the basis for the regulations. Specific policies relating to the future placement and scale of signs should be adopted. Public input can be helpful in shaping sign policies. Once a sign policy is adopted, the community can then develop a program, or regulation, for implementing its sign policies.

Sign regulations are an exercise of the municipal police power and must be supported by a sound planning process. If the local government recognizes the presence of undesirable signs in the community, it should make an assessment and classification of the community's existing and potential locations of signs before drafting the sign regulations.

SIGN REGULATIONS: LOCAL LAWSAND ORDINANCES

A municipality may regulate signs, even without zoning

When a municipality undertakes the drafting of a sign regulation, it should consider whether to adopt it as part of a zoning law or as a separate law. Incorporating sign regulations into a zoning law may avoid possible conflicts between two separate laws. In the case of a municipality without zoning, care should be taken to regulate signs evenly throughout the community since there are no zoning districts.

Signs may also be regulated as part of the site plan review process. Site plan review is an authorization that may be granted to a municipal board (often the planning board) allowing that board to review the design and layout of a single parcel of land. In order for the board to review specific components of a site plan, such as parking, landscaping, and signs, those components must be listed in the site plan regulations. Site plan review may be adopted in municipalities that have or do not have zoning.

Whether signs are regulated with or without zoning or as part of a

site plan review process, the regulation should be in conformance with a comprehensive plan, follow proper adoption procedures, and should not suppress constitutionally-protected free speech.

If enacted outside of a zoning law or ordinance, a sign regulation should include an appeal procedure

If enacted outside of a zoning law or ordinance, a sign regulation should include an appeal procedure for an applicant who wishes to challenge a permit or enforcement determination or who requests a variance from the sign regulations. Normally, the zoning board of appeals would be an appropriate body to hear appeals; however, a municipality could establish a separate sign control appeals board pursuant to a local law. In reviewing variance requests, this appeals board should use the same principles applicable to use or area variances which zoning boards of appeals apply.

TYPICAL PROVISIONS OF A SIGN REGULATION

A municipality should decide the specific provisions to include in the sign regulations. Regardless of how it is enacted, a well-drafted sign regulation should contain the following elements:

1. Statement of Purpose
2. Definitions
3. Schedule of Allowed Locations
4. Procedures for Obtaining a Sign Permit
5. Construction and Design Standards
6. Specific Provisions
7. Enforcement and Remedies
8. Severability

1. Statement of Purpose

Sign regulations must identify the governmental interest being served by the enactment.[103] These purposes can include public health, traffic safety, esthetic or economic considerations.

As an example, the Town of Urbana sign local law contains the following "statement of purpose":

> The purpose of this Local Law is to promote and protect the public health, welfare and safety by regulating existing and proposed outdoor advertising signs, and outdoor signs of all types. It is intended to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, preserve the scenic and natural beauty and provide a more enjoyable and pleasing

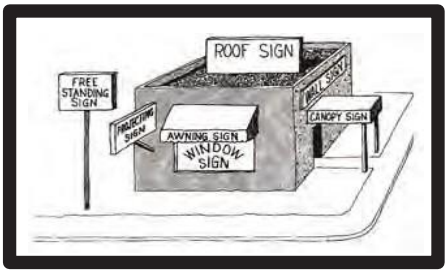
community. It is further intended hereby to reduce sign or advertising distractions and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights- of-way, provide more visual open space, and curb the deterioration of the community's appearance and attractiveness.

This Local Law is intended to promote attractive signs which clearly present the visual message in a manner that is compatible with their surroundings. The appearance, character and quality of a community are affected by the location, size, construction and graphic design of its signs. Therefore, such signs should convey their messages clearly and simply to enhance their surroundings.
(Town of Urbana, LL. 1 of 1994).

2. Definitions

Definitions are a key component of sign regulations since many municipalities regulate some signs differently. Municipalities wishing to regulate both traditional and non-traditional signs should provide accordingly. Well-defined terms can also help facilitate the duties of the municipal boards and enforcement personnel involved with administering the regulations. Some municipalities include illustrations to support the written definitions.

The Town of Huntington regulates signs through its zoning regulations (Chapter 198). In its zoning regulations, Huntington broadly defines "sign" as:



Any structure or part thereof, or any device or group of letters attached to, painted on or represented on a building, fence or other structure on or in a window or temporarily or permanently on a vehicle or trailer, upon which is displayed or included any letter, symbol, trademark, model, banner, flag, pennant, insignia, decoration, device or representation used as or which is in the nature of an announcement, direction, advertisement or other attention-directing device. A "sign" does not include the flag or pennant or insignia of any nation or association of nations or of any state, city or other political unit or of any charitable, educational, philanthropic, civic or religious organization.
(Huntington Code § 198-2)

The Town of Brookhaven also defines various kinds of signs in its regulations based on the nature of the structure. Brookhaven Code § 57A-2 contains the following selected definitions:

ANIMATED SIGN — Any sign that uses movement or change of lighting to depict action or create a special effect or scene.

BANNER — Any sign of lightweight fabric or similar material that is permanently mounted to a pole or a building by a permanent frame at one or more edges. National flags, state or municipal flags, or the official flag of any institution or business shall not be considered banners.

BILLBOARD — Any freestanding commercial sign located on a plot or parcel other than that where the advertised business is conducted; also known as off-site or nonaccessory billboard.

One of the newest kinds of signs in New York is the multiple message sign. It is a sign, display, or device which changes the message or copy on the sign electronically by movement or rotation of panels or slats.

CANOPY SIGN — Any sign that is a part of or attached to an awning, canopy, or other fabric, plastic, or structural protective cover over a door, entrance, window, or outdoor service area. A marquee is not a canopy.

CHANGEABLE COPY SIGN — A sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign. A sign on which the message changes more than eight times per day shall be considered an animated sign and not a changeable copy sign for purposes of this chapter. A sign on which the only copy that changes is an electronic or mechanical indication of time or temperature shall be considered a "time and temperature" portion of a sign and not a changeable copy sign for purposes of this chapter.

FREESTANDING SIGN — Any sign not affixed to a building.

ILLUMINATED SIGN — Any sign illuminated by electricity, gas or other artificial light, including reflective or phosphorescent light.

MARQUEE SIGN — A canopy extending more than two feet from a building, with lettering thereon.

MOBILE SIGN — Any sign not designed or intended to be anchored to the ground and designed and intended to be capable of being transported over public roads and streets, whether or not it is so transported.

PENNANT — Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in series, designed to move in the wind.

PERMANENT SIGN — Any sign intended and installed to be permanently in place at a given location by means of suitable fastening to a building or to a structure specifically erected to hold such sign(s) or to the ground.

ROOF SIGN — Any sign in which all or any part extends above the wall of any building or structure, where said wall does not extend above the roofline. In no event shall a sign permitted as defined by "wall sign" extend beyond the actual wall surface.

SIGN — Any material, structure or device or part thereof composed of lettered or pictorial matter or upon which lettered or pictorial matter is placed when used or located out of doors or outside or on the exterior of any building, including window display area, for display of an advertisement, announcement, notice, directional matter or name, and includes sign frames, billboards, signboards, painted wall signs, hanging signs, illuminated signs, pennants, fluttering devices, projecting signs or ground signs, and shall also include any announcement, declaration, demonstration, display, illustration or insignia used to advertise or promote the interests of any person or business when the same is placed in view of the general public.

WINDOW SIGN — A sign installed inside a window for purposes of viewing from the outside of the premises. This term does not include merchandise located in a window.

Sandwich Board Sign – An outdoor double-sided temporary sign type, generally in the shape of an isosceles triangle, with the angle at apex being less than sixty (60) degrees. The dimensional measurements of such signs shall not exceed a total width of twenty-four (24) inches, nor a total height of forty-two (42) inches, including supports thereof. The erection of such signs on the sidewalks requires a site specific permit issued by the building inspector and evidence of insurance naming the village an additional named insured. (V. Nyack)

3. Schedule of Allowed Locations

This section summarizes the basic requirements of the regulations. It specifies which types of signs are permitted as-of-right, permitted with certain requirements, prohibited, or exempted. It also enumerates the dimensions and number of signs allowed, as well

as their placement on a lot. When presented as a sign matrix, it can provide a quick reference to the overall regulations. An example of a matrix is provided in Appendix 3 of this publication.

A sample sign matrix is provided in Appendix 3.

4. Procedures for Obtaining Sign Permit

This section should clearly set forth any permit requirements, including application procedures, information to be submitted, duration of permit, and fees. (These requirements are in addition to any requirements regulated by a state agency.) The permit may be for a period of time after which it must be renewed, or a "one shot" permit good for the life of the sign. The fee should approximate the cost of covering the expense of administering the sign regulations.

The City of Mount Vernon Zoning Law Chapter 267 contains a comprehensive application procedure for sign permits, administered by the city's Commissioner of Buildings. Section 267-68 provides:

A. Permit required. It shall be unlawful for any person to erect, alter, paint with a new message, redesign, relocate and reconstruct an existing sign by making a structural change or a change in the message or cause to be erected, altered, painted, painted with a new message, redesigned, relocated and reconstructed within the corporate limits of the city any sign or signs, without first having obtained and paid for and having in force a permit therefor from the Commissioner (of Buildings).

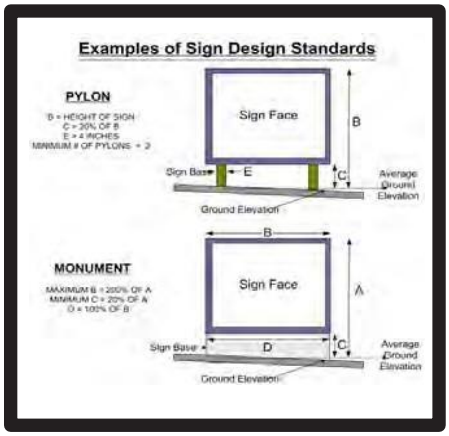
B. The following two operations shall not be considered creating a new sign and, therefore, shall not require a sign permit:

(1) Replacing copy: the changing of the advertising or message on an approved sign which is specifically designed for the use of a replaceable copy.
(2) Maintenance: painting, cleaning and other normal maintenance and repair of a sign or a sign structure, unless a structural change is made or there is a change in the message.

C. Application for a sign permit shall be made on a form provided by the Commissioner, which application shall include:

(1) The name, address and telephone number of the applicant.
(2) The name, address, telephone number and insurance coverage of the sign maker.
(3) The location of the building upon which the sign is to be erected.
(4) A color photo of the building upon which the sign is to be erected and immediately adjacent building(s).
(5) Size of the sign.
(6) A description of the construction details of the sign, showing the lettering and/or pictorial matter composing the sign and a description of the position of lighting or other extraneous devices.
(7) Sketches drawn to scale and supporting information indicating location of sign colors, size and types of lettering or other graphic representation, logos and materials to be used, electrical or other mechanical equipment, details of its attachment and hanging. Samples of materials should accompany the application, where required by the Commissioner, which such sign or signs is or are to be erected and maintained. In addition, such sign application shall be accompanied by a fee as established in the Building Code.
(8) Such other pertinent information as the Commissioner may require to ensure compliance with this section.

D. Following formal submission to the Commissioner, said Commissioner shall refer all applications for signs to the Department of Planning and Community Development within three business days for advice on matters of consistency with the design guidelines and requirements outlined herein. The Department of Planning and Community Development shall render an opinion to approve, disapprove or approve with conditions to the Commissioner within 10 days of receipt of the application.



E. The Commissioner shall issue a permit for a sign within seven calendar days of the receipt of a complete and satisfactory application from the Department of Planning and Community Development, except as noted in Subsection F herein.

F. In those cases where an applicant does not wish to implement the design conditions of approval outlined

DESIGN CONSIDERATIONS

Size/area, height & number
- relationship to scale of building (e.g. percentage of facade coverage)
- relationship to scale of site (e.g. highway vs. downtown sidewalk)
- number of signs per property

Location
- on-premises, attached to building, in road right-of-way, on a vehicle, setback distance from road/property line

Legibility
- avoidance of distractions to motorists
- vehicle speed vs. size of lettering
- foreground-background relationship

Color
- intensity; influence on legibility

Mounting
- flat, projecting, free-standing, window, sandwich, moving.

Lettering
- font; compatibility of lettering and background

Illumination
- intensity
- shielded vs. concealed
- internal vs. external
- reflective, neon, flashing or intermittent

Composition/ Materials
- relationship to context or community character; durability; quality

Architectural design
- shape; compatibility with surroundings

by the Commissioner, the matter shall be referred to the Commissioner of the Architectural Review Board for an advisory opinion. In such cases, the Architectural Review Board shall recommend approval or disapproval of such sign application within 30 days from the date of referral. The decision of the Commissioner, however, will be final.

G. Appeal from permit denial. Any applicant, feeling aggrieved by the decision of the Commissioner upon any application for a permit for any sign, may appeal to the Sign Review Appeals Board from such decision, and the Sign Review Appeals Board may affirm, reverse or modify such decision of the Commissioner.

H. Issuance of sign construction permit. Upon approval of the application by the Commissioner, or after any conditions for approval established by the Architectural Review Board are satisfied, the Commissioner shall issue a permit for construction of such sign.

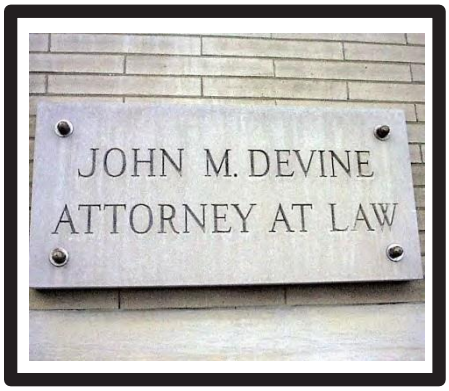
5. Construction and Design Standards

This section sets out standards for the construction of signs, identifying in detail the specifications to ensure that signs are constructed so as to protect the health, safety and welfare of the general public. Under the New York State Uniform Fire Prevention and Building Code, certain signs are considered structures and must comply with electrical standards and anchoring and wind load specifications. Local sign regulations often reference the state code to remind applicants of these requirements.

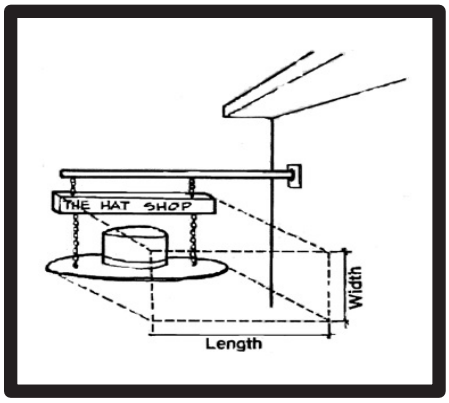
In addition to the safety concerns, the regulations can address the design elements of a sign. Design guidelines should focus on such elements as sign shape, placement, color, materials, and illumination. They can be expressed in writing or graphically. Design guidelines may be *recommendations* which encourage compatible appearance or they could be *standards* which require that certain criteria be met. In either case, the guidelines should articulate what the community deems appropriate in terms of appearance.

The Town of Lewisboro Sign Law (Chapter 185) both encourages compatible design and establishes standards for certain types of sign. Section 185-6 provides:

A. Design guidelines. The following design guidelines are provided to encourage and direct appropriate and compatible graphic design, material, colors, illumination and placement of proposed signs. In general, sign design shall be consistent with the purpose and intent of this chapter.



(1) Signs should be designed to be compatible with their surroundings and should be appropriate to the architectural character of the buildings on which they are located.
(2) Sign panels and graphics should relate with and not architectural features or details and should be in proportion to them.
(3) Signs should be appropriate to the types of activities they represent.
(4) Layout should be orderly and graphics concise.
(5) No more than two typefaces should be used on any one sign or group of signs indicating one message.
(6) The number of colors used should be the minimum consistent with the design.
(7) Illumination should be appropriate to the character of the sign and its surroundings and shall be in accordance with §185-7 of this chapter.
(8) Groups of related signs or multiple signs located on the same premises should express uniformity and create a sense of harmonious appearance.



Source: Guide to On-Premise Sign Ordinances for Rural and Small Communities, Scenic America.

B. Computation of sign area.

(1) The area of a sign shall be computed from the algebraic sum of the actual sign configuration, be it a square, rectangle, circle, oval or other polygon shape. The area shall be measured from the outer dimensions of the frame, trim or molding by which the sign is enclosed, where they exist, or from the outer edge of the signboard where they do not exist.
(2) When a sign consists of individual letters, symbols or characters, its area shall be computed as the area of the smallest rectangle which encloses all of the letters, symbols and characters.
(3) When a sign consists of two or more faces, only one face of the sign shall be used in computing the sign area if the faces are parallel to and within 12 inches of each other. Otherwise, all faces of the sign shall be used to compute the sign area.
(4) The volume of a representational sign shall be computed as the volume of the smallest rectangular box which

encompasses the mass of the three-dimensional sign or characterization.

C. Standards for wall signs.

(1) All wall signs shall be located on the building front or face wall, except as permitted by this chapter.
(2) No wall sign shall extend beyond the outer edge of any wall of the building to which it is attached.
(3) No wall sign shall extend above the eaves of the building to which it is attached.
(4) No wall sign shall extend above the floor or level of the floor of a second story of a building upon which such sign is attached.
(5) A wall sign shall be parallel to the wall to which it is attached and shall not project more than 12 inches therefrom.
(6) No wall sign shall contain letters, numbers or other cryptic symbols which exceed 12 inches in height or width.
(7) Illumination of wall signs shall be in accordance with § 185-7 of this chapter.

The City of Saratoga Springs Zoning Ordinance (Article X - Signs) addresses the number and size of wall signs in its business, institutional and industrial districts. The regulations take into account multiple businesses in one building and varying amounts of street frontage. They also can be applied in retail areas know as "big box farms."

(a) Only one (1) wall sign per establishment shall be permitted unless that establishment has street frontage on more than one side.

[1] If a business establishment is located in a structure that is located on a lot that has no street frontage, one (1) wall sign shall be permitted on any single facade for that business establishment in the structure, whether that facade faces the street or not. If a business establishment is located in a structure that is located on a lot that has street frontage, but the portion of the structure where the business establishment is located does not have frontage, the business establishment is entitled to one (1) wall sign on the business establishment's facade. If a business establishment is located in a structure that is located on a lot that has more than one street frontage, one (1) wall sign on each facade of the business establishment which has street frontage for the facade of the business

establishment is permitted. A publicly owned alley shall be considered a street.

[2] The total area for wall signage shall not exceed two (2) square feet for each linear foot of building frontage attributable to the particular business or businesses which the sign will identify, or fifteen (15) percent of the total area of the one building facade upon which the signage is placed or one hundred (100) square feet, whichever is less. A single wall sign may be used to identify more than one on premise establishment. A sign directory is a wall sign. For buildings with multiple tenants having store fronts only, the facade rented by the tenant shall be considered as wall area for a sign. An establishment may have both a wall sign and/or a freestanding sign. *[Editor's Note: A municipality must allow a noncommercial message in place of a commercial message. Therefore, since this section refers to a sign which will "identify" the business, it is important that the sign law also contain a substitution clause. See examples on page 44.]*

Returning to the Town of Lewisboro Sign Law, you'll also see standards for freestanding signs and projecting signs.

D. Standards for freestanding signs.

(1) No freestanding sign shall exceed 10 feet in height. The height of the sign shall be measured from the ground elevation to the top of the sign.

(2) No freestanding sign shall exceed 10 feet in any dimension.

(3) The bottom edge of a freestanding sign shall be at least seven feet above the ground elevation when located in an area where the public walks or where it would impair visibility.

(4) No part of any freestanding sign shall be located within 15 feet of any property line, except as otherwise specified by this chapter.

(5) Only one freestanding sign shall be permitted on a lot even if there is more than one building or use on that lot, except as otherwise specified by this chapter.

(6) Illumination of freestanding signs shall be in accordance with § 185-7 of this chapter.

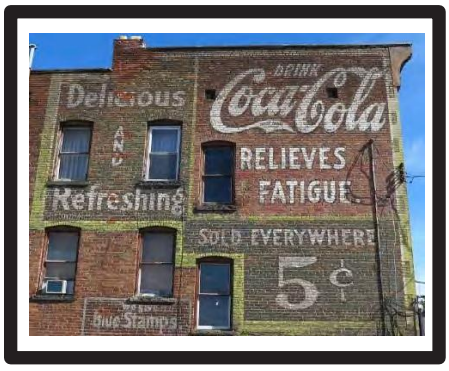
E. Standards for projecting signs and marquee or canopy signs.

(1) The bottom edge of a projecting and marquee or canopy sign shall be at least seven feet above the ground elevation when located in an area where the public walks or where it would impair visibility.
(2) No freestanding sign shall exceed 10 feet in any dimension.
(3) A marquee or canopy sign may extend the full length of the marquee or canopy but shall not extend beyond the ends of the marquee or canopy.
(4) Illumination of projecting and marquee or canopy signs shall be in accordance with § 185-7 of this chapter.

The size of signs might also vary based on the posted speed limit of the road on which the sign has frontage, or according to the district in which the sign is located. Saratoga Springs provides the following simple chart explaining the allowable size and height of freestanding signs.

District or Posted Speed Limit	Height	Size
T-5 and T-6 Zones in the Downtown area, T-5 Zone in the northern South Broadway area and the T-5 Zone in the inner Excelsior Avenue area	12 feet	12 square feet
All other districts 0 - 44 mph	12 feet	24 square feet
All other districts 45 mph or greater	20 feet	40 square feet

The Town of Mamakating zoning law (Article VI) has a simple calculation for the required set back of freestanding signs. It requires the sign to be located one-third the distance of the front setback from the front property line, and prohibits the signs from overhanging the property line, driveway or walkway of the lot on which it is located.



6. Specific Provisions

Existing Signs

When a sign regulation is adopted, it should address how existing signs will be regulated and in particular, those existing signs

that do not conform to the regulation. There are several options available to a community, and existing signs may fall under one or more categories that are specified in the regulations. For example, many sign regulations exempt certain existing signs from the new regulations. These signs are "grandfathered" or allowed to continue without the need for a permit or any improvements. In some cases, a regulation may specify that an existing sign will be allowed to continue only if specified improvements are made, so that the sign conforms with the new regulations. A time period for conformance may also be specified. In another approach, existing signs may be exempt from sign regulations; however, any replacement of existing signs would have to comply. This approach is illustrated in § 185-10 (F) of the Town of Lewisboro sign law:

> Nonconforming status. All signs not in compliance with any provision of this chapter, upon the effective date specified herein, shall be deemed nonconforming.
> (1) A nonconforming sign shall be removed or brought into conformity with the requirements of this chapter upon a change in use.
> (2) A nonconforming sign related to an existing use shall be removed or made conforming prior to the issuance of any subsequent sign permit for such use.
> (3) Applications for sign approval and sign permit for the replacement of an existing nonconforming sign to a legal conforming sign which is submitted before two years from the effective date of this chapter shall be exempt from all applicable fees required by this chapter but not from any subsequent fees.

A still more restrictive approach would be to require that all existing nonconforming signs be changed to comply with new regulations over a period of time, beginning with the enactment of the sign regulations. *(Please keep in mind the amortization discussion discussed in the billboard section of this publication on page 20.)* The Village of Babylon Sign Law § 290-6, adopted in 2003, contains a provision for termination of nonconforming signs:

> Notwithstanding any other provision of this chapter, any sign in existence at the date of adoption of this chapter which does not conform to the provisions of this chapter shall be discontinued and removed on or before January 1, 2005, and the failure to discontinue or remove such nonconforming sign on or before the aforesaid date shall constitute a violation of

the provisions of this chapter. All nonconforming signs in the Village of Babylon at the time of the adoption of this chapter may be maintained until January 1, 2005, but if any major change, modification, structural repair or replacement thereof is hereafter made, such sign shall thereafter conform to the provisions of this chapter, provided that a legal nonconforming sign may not be replaced by another nonconforming sign.

Prohibited Signs.

Communities sometimes prohibit certain types of signs. The following prohibitions come from the Town of Lewisboro Sign Law:

§ 185-4. Prohibited signs.

The following signs shall be prohibited in all residence and nonresidence zoning districts, as established pursuant to Chapter 220, Zoning, of the Town Code, except as otherwise permitted by this chapter:

A. Animated signs, including those with rotating or moving parts or messages.

B. Portable signs.

C. Attention-getting devices such as banners, pennants, valances, flags (except governmental flags), streamers, searchlights, string or festoon lights, flashing lights (except that signs which alternate temperature and time messages may be permitted in nonresidential districts), balloons or similar devices designed for purposes of attracting attention, promotion or advertising.

D. Roof signs.

E. Any sign which could be mistaken for or confused with a traffic control sign, signal or device.

F. Signs permanently painted, posted or otherwise attached to any rock, fence, vehicle (except typical commercial vehicle markings) or utility pole.

G. Billboards.

H. All signs not expressly permitted by this chapter.

Real Estate Signs

Municipalities may differ in their treatment of real estate signs, but they must, consistently with U.S. Supreme Court decisions, allow them to be placed on the property to be sold or leased. These signs, however, may be appropriately restricted by municipalities.

The Town of Union Vale zoning law permits "for sale" signs on a temporary basis in all zoning districts without a sign permit but with size restrictions. (§ 210-26 (C)). Its law allows:

> (3) Real estate "for sale" signs and signs of a similar nature on the premises for sale or lease and not exceeding six square feet in surface area in a residential district or 12 square feet in surface area in a nonresidential district. All such signs, not to exceed two per premises, shall be removed immediately upon completion of the sale or lease of the premises.

Many sellers and real estate agents use temporary "open house" directional signs to guide potential buyers to a house that is for sale. Their concern is that "on-site" sign may not get prospective buyers to the house. Some municipalities address these off-premises real estate signs. The Village of Irvington authorizes a variety of advertising signs for real estate in providing:

> (1) "Open house" signs on private property for sale or lease. In all residential districts "open house" signs advertising the sale or rental of the premises can only be displayed between the hours of 8:00 a.m. and 8:00 p.m. on any day. Said signs cannot be larger in size than over five square feet and must be located not nearer than five feet to any property line. Said signs must be removed at the end of each day they are displayed.
> (2) "Open house" signs on public property or private property other than property for sale. In all residential districts, for every open house, there will be permitted a maximum of two signs on public property or private property other than the property for sale or lease directing to or advertising the open house.
> (3) Permanent for sale signs. In all residential districts only one permanent sign advertising the sale or rental of the premises can be displayed. Such sign can be of an area of not over five square feet, provided that such sign is located on the front wall of a building or, if freestanding, then not nearer than 25 feet to any property line.
> (Village of Irvington Code § 224-35.B)

Substitution Clauses

A constitutionally appropriate sign law regulates signs without regard to content. To avoid potential problems with content-based

sign regulations, some communities insert substitution clauses into their regulations that allow a noncommercial message to be substituted in all locations where a commercial message sign is authorized.

Substitution clauses allow a noncommercial message to be substituted in all locations where a commercial message sign is authorized

The Town of Vestal sign law contains a substitution clause, which states:

> "Any sign authorized in this local law may contain a noncommercial message constituting a form of expression in lieu of other copy."
> (T. of Vestal, LL. 3, 1991)

Another example of a substitution clause from the City of Durham, North Carolina provides:

> "Noncommercial signs are allowed in all districts and may be substituted for any sign expressly allowed under this ordinance."
> (Durham, N.C. City Zoning Ordinance § 12.8.5 (1994).)

While not a true substitution clause, the City of New York permits noncommercial messages on signs by exempting them from its sign regulations.

> "[N]on-illuminated signs containing solely non-commercial copy with a total surface area not exceeding 12 square feet on any zoning lot, including memorial tablets or signs displayed for the direction or convenience of the public, shall not be subject to the provisions of this Resolution."

<u>Illumination</u>

The Village of Sea Cliff controls the brightness, direction, color and glare of sign lighting with restrictions and prohibitions in its sign regulations. Section 105-7 of its sign law address "illumination":

> A. The area, brilliance, character, color, degree, density, intensity, location and type of illumination shall be the minimum necessary for the intended purpose of such illumination, consistent with public safety and welfare.
> B. All sources of illumination shall be shielded or directed in such a manner that the direct rays therefrom are not cast upon any property other than the lot on which such illumination is situated.

C. Illumination shall be steady in nature, not flashing, moving or changing in brilliance, color or intensity.

D. The period of time of illumination shall be the minimum necessary for the intended purpose of such illumination, consistent with public safety and welfare. Illuminated signs must be turned off and extinguished at or before 12:00 midnight of each day, except that such signs as are maintained in connection with a business which is normally open past 12:00 midnight may continue to be illuminated or lighted until closing time, provided that the lighting intensity is reduced by 50% after 12:00 midnight and that such sign is extinguished at closing time. All illuminated signs extinguished as above provided shall remain extinguished until the next regular posted opening hour of the business in connection with which such sign is maintained.

E. Signs shall be illuminated indirectly or internally with white light. Exposed neon tubing and signs containing words or symbols shaped or formed directly from neon tubes or similar illuminating devices shall not be permitted. Neon and other gas-type illumination shall be permitted within an internally lighted sign, provided that such lighting is transmitted through the letters or symbols of the sign, and further provided that such letters or symbols are designed for and integrated into the face of the sign prior to erection and are not glued, pinned or otherwise affixed to the face of the sign. Internal lighting which shows through the translucent area of the face of a sign not containing words or symbols shall not be permitted.

F. No illumination shall be located so as to be confused with traffic control signals, either by color or proximity.

G. Illumination and illuminated signs shall not interfere with the normal enjoyment of residential uses in adjacent residential districts.

Sign Maintenance

The City of Geneva requires that signs be well maintained and that unsafe signs be repaired or removed. The City provides, in §350-9(L)(6) of its zoning regulations, as follows:

(k) Sign maintenance.

[1] The owner of a sign and the owner of the premises on which such sign is located shall be jointly and severally liable to maintain such sign, including its illumination sources, in a neat and orderly condition and good working order at all

times and to prevent the development of any rust, corrosion, rotting or other deterioration in the physical appearance or safety of such sign.

[2] Unsafe signs or unsightly, damaged, or deteriorated signs or signs in danger of falling shall be put in order or removed upon written notice. Immediate compliance is expected for the repair or removal of unsafe signs. If compliance is not achieved within the time period specified in such notice, the sign shall be repaired or removed by the City and the costs assessed to the property owner.

[3] Unsafe temporary signs or unsightly, damaged, or deteriorated signs or signs in danger of falling shall be put in order or removed upon written notice. Immediate compliance is expected for the repair or removal of unsafe temporary signs.

7. Enforcement and Remedies

This section should specify which municipal official is responsible for enforcing the sign regulations, describe how violations are to be processed, prescribe appropriate criminal penalties, and authorize the municipality to institute civil proceedings to prevent the unlawful erection, construction, reconstruction, alteration, or use of any sign not in compliance with the sign regulations. If an appeal procedure is established, the law should provide appropriate review standards and procedures.

The Town of Ithaca has a comprehensive enforcement scheme dealing with the enforcement official, appeals, and penalties for offenses in its code chapter on signs.

§ 221-12. Enforcement official.

A. The provisions of this chapter shall be administered and enforced by the Enforcement Official who shall have the power to make necessary inspections.

B. No sign permit shall be approved by the Enforcement Official except in compliance with the provisions of this chapter, or as directed by the Sign Review Board or the Zoning Board of Appeals.

C. The Enforcement Official shall refer to the Sign Review Board any sign application which he deems not to be in conformance with the purpose of this chapter as set forth in § 221-2.

§ 221-14. Appeals.

A. The Sign Review Board shall hear and decide on the following matters:

(1) Questions of alleged error in any order or determination of the Enforcement Official involving the interpretation of the provisions of this chapter.

(2) Requests for variation from the provisions of this chapter pursuant to § 221-11. *[Editor's note: § 221-11.C. (2) states that "The Sign Review Board shall have the discretionary power to vary any maximum numerical limitation in this chapter by 25%, providing such variation does not detract from the purposes of this chapter. Such variation shall require the vote of a majority plus one."]*

B. Decisions of either the Sign Review Board or the Enforcement Official may be appealed to the Zoning Boards of Appeals.

C. Upon an appeal, the Zoning Board of Appeals may grant a variance from the terms of this chapter. No Zoning Board of Appeals decision shall be made on a variance until an advisory opinion is received from the Sign Review Board. Failure of said Sign Review Board to report an opinion prior to the hearing on the appeal shall be construed as approval of the variance.

D. Any person aggrieved by a decision of the Zoning Board of Appeals may have the decision reviewed by the Supreme Court of the State of New York in the manner provided by law.

§ 221-15. Penalties for offenses.

A. In the event of a breach of any of the provisions of this chapter, the Enforcement Official shall notify the owner of the premises, in writing, to remove, repair, or bring the sign into conformance, within 30 days of the date of such notice.

B. Any person, firm, or corporation, whether as owner, lessee, agent, or employee, who violates any of the provisions of this chapter, or who fails to comply with any order or regulation made thereunder, or who erects, moves, or alters any sign in violation of any detailed statement or plans submitted by him and approved under the provisions of this chapter, shall be guilty of a violation as the same is defined in the Penal Law and shall be fined not more than $100 for each violation.

C. Each day that such violation is permitted to exist shall constitute a separate violation.

D. If any sign is erected, altered, or moved in violation of the provisions of this chapter, proper officials may, in addition

to other remedies, institute an appropriate action to prevent such unlawful operation.

E. Upon failure to comply with any notice within the prescribed time, the Enforcement Official shall remove or cause removal, repair, or conformance of a sign, and shall assess all costs and expenses incurred against the owner of the building or land on which the sign is located.

F. All costs and expenses incurred by the Town of Ithaca in causing the removal or repair of any sign, as specified in this section and § 221-10, shall be collected from the owner of the premises on which such sign is located. Payment shall be made in not less than five days after the receipt of a written demand. Upon failure to make such payment, such costs and expenses shall be assessed against said owner and shall be paid and collected as part of the Town and county tax next due and payable. In addition, the Town may commence any other action or proceeding to collect such costs and expenses.

8. Severability

A severability clause is a statement to the effect that if any portion of a law is invalidated, the remaining terms shall remain in force and effect. It enables a court to rule that the remainder of a regulation remains enforceable if it determines one of the portions of the regulation is unconstitutional. A severability clause may not however protect a sign regulation which a court has concluded is constitutionally defective and so pervasive as to infect the entire regulation.

The City of New Rochelle sign law (Chapter 270) contains a typical severability clause. At § 270-19, it states:

> If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remaining portions hereof, but shall be confined to the clause sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Appendix 1:
General Municipal Law §74-c

§74-c. Taking of billboards.

1. If any local law, ordinance or resolution adopted by a municipal corporation in the exercise of its police power shall require the removal of any legally erected and maintained billboard or like out-door advertising device, which is leased or rented for profit in areas zoned industrial or manufactur-ing, just compensation for said taking shall be determined in accordance with the provisions of article five of the eminent domain procedure law; provided, however, section five hundred two of such law shall not be applicable in any such proceeding.

2. Unless compensation therefor is provided pursuant to section eighty-eight of the highway law, if any local law, ordinance or resolution adopted by a municipal corporation in the exercise of its police power shall require the removal of any legally erected and maintained billboard or like outdoor advertising device, which is leased or rented for profit, and which is located in an area or zone, other than an industrial or manufacturing zone, the display shall be allowed to remain in existence for the period of time set forth below after giving notice of the removal requirement:

Fair market value on date of notice of removal requirement	minimum years allowed
under $1,999	3
$2,000 to $3,999	4
$4,000 to $5,999	6
$6,000 to $ 7,999	7
$8,000 to $9,999	9
$10,000 and over	10

If the removal is required sooner than the amortization periods specified herein, such removal by any local law, ordinance or resolution adopted by the municipal corporation shall be with just compensation being paid for such taking and removal determined in accordance with the provisions of article five of the eminent domain procedure law or in accordance with any table of values established by the state department of transportation; provided however section five hundred two of the eminent domain procedure law shall not be applicable to any such proceeding. Notwithstanding any other law, rule or regulation, all amortization periods under such laws, ordinances or resolutions shall commence not earlier than January first, nineteen hundred ninety.

3. The provisions of this section shall not apply to any city having a population of one million or more.

Appendix 2:
Highway Law §88

§88. Control of outdoor advertising.

1. Definitions. As used in this section:
(a) "Interstate highway system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated, by the commissioner of transportation, and approved by the secretary of commerce or the secretary of transportation of the United States pursuant to the provisions of title twenty-three of the United States code, as amended.
(b) "Primary highway system" means that portion of connected main highways, as officially designat-ed, or as may hereafter be so designated, by the commissioner of transportation, and approved by the secretary of commerce or the secretary of transportation of the United States pursuant to the provisions of title twenty-three of the United States code, as amended.
(c) "Safety rest area" means an area or site established and maintained within or adjacent to the high-way right of way by or under public supervision or control, for the convenience of the travelling public.
(d) "Information center" means an area or site established and maintained at a roadside rest area for the purpose of informing the public of places of interest within the state and providing such other information as the commissioner of transportation may consider desirable.

2. The commissioner of transportation is hereby authorized and directed to immediately implement the following program for the effective control of the erection and maintenance of outdoor advertis-ing signs, displays and devices within six hundred sixty feet of the nearest edge of the right of way and visible from the main traveled way of the interstate and primary highway systems and, not-withstanding the provisions of subdivisions seven, eleven, and twelve of this section, for the effec-tive control of the erection and maintenance along the interstate and primary highway systems of those additional outdoor advertising signs, displays and devices which are more than six hundred and sixty feet from the nearest edge of the right-of-way located outside of urban areas, as defined by federal statute, rule or regulation for the purposes of section one hundred thirty-one of title twenty-three of the United States code, visible from the main traveled way of the interstate and primary highway systems and erected with the purpose of their message being read from such main traveled way. Effective control means that such signs, displays and devices shall, pursuant to such program, be limited to
(a) directional and other official signs and notices which are required or authorized by law and which shall conform to the national standards promulgated by the secretary of transportation of the Unit-ed States pursuant to section one hundred thirty-one of title twenty-three of the United States code, as amended,
(b) signs, displays and devices advertising the sale or lease of property upon which they are located,

(c) signs, displays and devices advertising activities conducted on the property on which they are located,
(d) signs, displays and devices located in areas within six hundred sixty feet of the nearest edge of the right of way which are zoned industrial or commercial under authority of state law and which are permitted or authorized pursuant to this section or the agreement ratified and approved by this section,
(e) signs, displays and devices which are permitted or authorized pursuant to this section or the agreement

ratified and approved by this section and are located in unzoned commercial or indus-trial areas within six hundred sixty feet of the nearest edge of the right of way which areas shall be determined from actual land uses in conformance with the agreement ratified and ap-proved by this section,

(f) signs lawfully in existence on October twenty-second, nineteen hundred sixty-five, determined by the commissioner with the approval of the secretary of transportation of the United States, to be landmark signs, including signs on farm structures or natural surfaces of historic or artistic signifi-cance, the preservation of which would be consistent with the purposes of this section and with the purposes of the federal "Highway Beautification Act of 1965", and any acts amendatory thereto, and

(g) any other signs, displays and devices permitted or authorized pursuant to this section. Provided that, nothing in this section shall be construed to prohibit the erection or maintenance of outdoor ad-vertising signs, displays and devices which include the steady illumination of sign faces, panels or slats that rotate or change to different messages in a fixed position, commonly known and referred to as changeable or multiple message signs, provided the change of one sign face to another is not more fre-quent than once every six seconds and the actual change process is accomplished in three seconds or less, when such signs, displays and devices are permitted or authorized pursuant to this section and by the agreement ratified and approved by this section.

3. The agreement entered into between the commissioner of transportation and the secretary of transportation of the United States dated May thirteenth, nineteen hundred sixty-eight regarding the size, lighting and spacing of signs, displays and devices which may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the interstate and primary highway systems which are zoned industrial or commercial under authority of state law, or in such other unzoned industrial or commercial areas as may be permitted pursuant to the terms of such agreement is hereby ratified and approved. With respect to the certification permit-ted under subsection A of article four of the said agreement, the commissioner of transporta-tion shall make such a certification within thirty days after it is shown to his reasonable satisfac-tion that there are regulations which are enforced with respect to the size, lighting and spacing of out-door advertising signs, displays and devices within the meaning of the agreement. The action of the commissioner of transportation with respect to such a certification shall be reviewable under Article seventy-eight of the Civil Practice Law and rules by the Supreme Court which shall have jurisdiction of the proceedings and the power to grant such relief as it deems just and proper.

4. The commissioner of transportation may agree with the secretary of transportation of the United States to provide for the establishment of information centers at safety rest areas. The commissioner of transportation is hereby directed to negotiate with such secretary of transportation in order to permit signs, within the areas controlled by the provisions of this section, which relate to public and private natural wonders, scenic and historical attractions and other information concerning outdoor recreation, places for camping, lodging, eating and vehicle service and repair deemed to be of specific interest to the travelling public. Any of the above types of signs referred to in this subdivision which do not vio-late the provisions of the federal "Highway Beautification Act of 1965", and any acts amendatory thereto, and which conform to the national standards promulgated by the secretary of transporta-tion of the United States pursuant to section one hundred thirty-one of title twenty-three of the Unit-ed States code, as amended, are hereby authorized to be erected and maintained in the state of New York subject to registration with the commissioner of transportation pursuant to subdivision five of this section.

5. The commissioner of transportation is hereby authorized to control the erection and maintenance of outdoor advertising signs, displays and devices along the interstate and primary highway systems in conformance with the terms of this section and in conformity with the agreement ratified and approved by this section and the national standards promulgated by the secretary of transportation of the United States pursuant to

subdivision (c) of section one hundred thirty-one of title twenty-three of the United States code as amended. The commissioner of transportation may provide for a system of registration of outdoor advertising signs, displays and devices which comply with the terms of the agreement, ratified and approved by this section, with the secretary of transportation of the United States. No registration shall be required for signs, displays and devices advertising the sale or lease of property upon which they are located and signs, displays and devices advertising activi-ties conducted on the property on which they are located.

6. Notwithstanding the provisions of subdivision two hereof, any outdoor advertising sign, dis-play or device lawfully in existence along the interstate and primary highway systems on September first, nineteen hundred sixty-five, which is not permitted or authorized pursuant to the provisions contained herein may continue to be maintained until July first, nineteen hundred seventy and shall not be replaced or relocated along the interstate and primary highway systems except in those areas author-ized pursuant to this section or areas authorized under the terms of the agreement ratified and approved by this section. Notwithstanding the provisions of subdivision two hereof, any other outdoor adver-tising sign, display or device lawfully erected which is not permitted or authorized pursuant to this sec-tion of the agreement ratified and approved by this section may continue to be maintained until the end of the fifth year after it becomes nonconforming pursuant to this section or under the terms of the agreement ratified and approved by this section, unless an earlier removal is required in order for the state to comply with the federal "Highway Beautification Act of 1965", as amended and shall not be replaced or relocated along the interstate and primary highway systems except in those areas author-ized pursuant to this section or areas which are permitted under the terms of the agreement ratified and approved by this section.

7. The commissioner of transportation is hereby authorized to acquire the necessary rights in and to property and is directed to pay compensation therefor, in the same manner as other property is acquired for state highway purposes pursuant to this chapter and is further directed to provide equiva-lent directional information, as provided in subdivision eleven of this section, with respect to outdoor advertising signs, displays and devices which are not permitted or authorized pursuant to this section or with the terms of the agreement ratified and approved by this section and which were lawfully erected under state law. Such compensation is authorized to be paid only for the following:

(a) the taking from the owner of such sign, display or device of all right, title, leasehold and interest in such sign, display or device, and
(b) the taking from the owner of the real property on which such sign, display or device is located, of the right to erect and maintain such signs, displays and devices thereon. The term "property" as used in this section is defined to include lands, waters, rights in land or waters, structures, franchises, and interest in land, including lands under water and riparian rights and any and all other things and rights usually included within the said term and includes also any and all interests in such property less than full title, such as easements, permanent or temporary, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable. Notwith-standing the provisions of subdivision two hereof, no rights in and to property shall be acquired with respect to any outdoor advertising sign, display or device except to the extent that federal funds authorized to be appropriated pursuant to the federal "Highway Beautification Act of 1965", as amended, to reimburse the state for seventy-five per centum of the cost thereof, are in fact appropri-ated and allocated to the state for that purpose. Further, notwithstanding the provisions of this section or any other general, special or local law, no outdoor advertising sign for which compensa-tion must be paid pursuant to this subdivision, nor any outdoor advertising sign in a commercial or industrial zone or area which is controlled pursuant to this section, shall be removed, or required to be removed, by the state or any agency thereof or any municipal corporation or subdivision, with-out the payment of such compensation in accordance with the provisions of article five of the em-inent domain procedure law, provided, however,

that this prohibition shall not apply to any city having a population of one million or more.

8. Any outdoor advertising sign, display or device erected or maintained in violation of this section, or of the terms of the agreement ratified and approved by this section, is hereby declared to be, and is a public nuisance. The commissioner of transportation shall give thirty days' notice, by registered or certified mail, to the owner of the property on which such advertising sign, display or device is located and to the owner of such advertising sign, display or device, to remove the same if it is a prohibited sign, display or device or to cause it to conform to the requirements of this section or the terms of the agreement ratified and approved by this section or the national standards if it is an au-thorized or permitted sign, display or device. If the owner of the property or the owner of the ad-vertising sign, display or device fails to act within thirty days as required in the notice, the commissioner of transportation or his duly authorized agent shall cause the removal of such advertis-ing sign, display or device at the expense of the owner of the property or the owner of the adver-tising sign, display or device, except that the state shall pay the expense of removing any advertising sign, display or device which was lawfully erected on the date of enactment of this section which becomes non-conforming under the terms of this section or the agreement ratified and approved by this section.

9. Nothing in this section shall be construed to abrogate or affect the provisions of any other statute, lawful ordinance, regulation pursuant thereto or resolutions which are more restrictive than the provisions of this section or the agreement ratified and approved by this section.

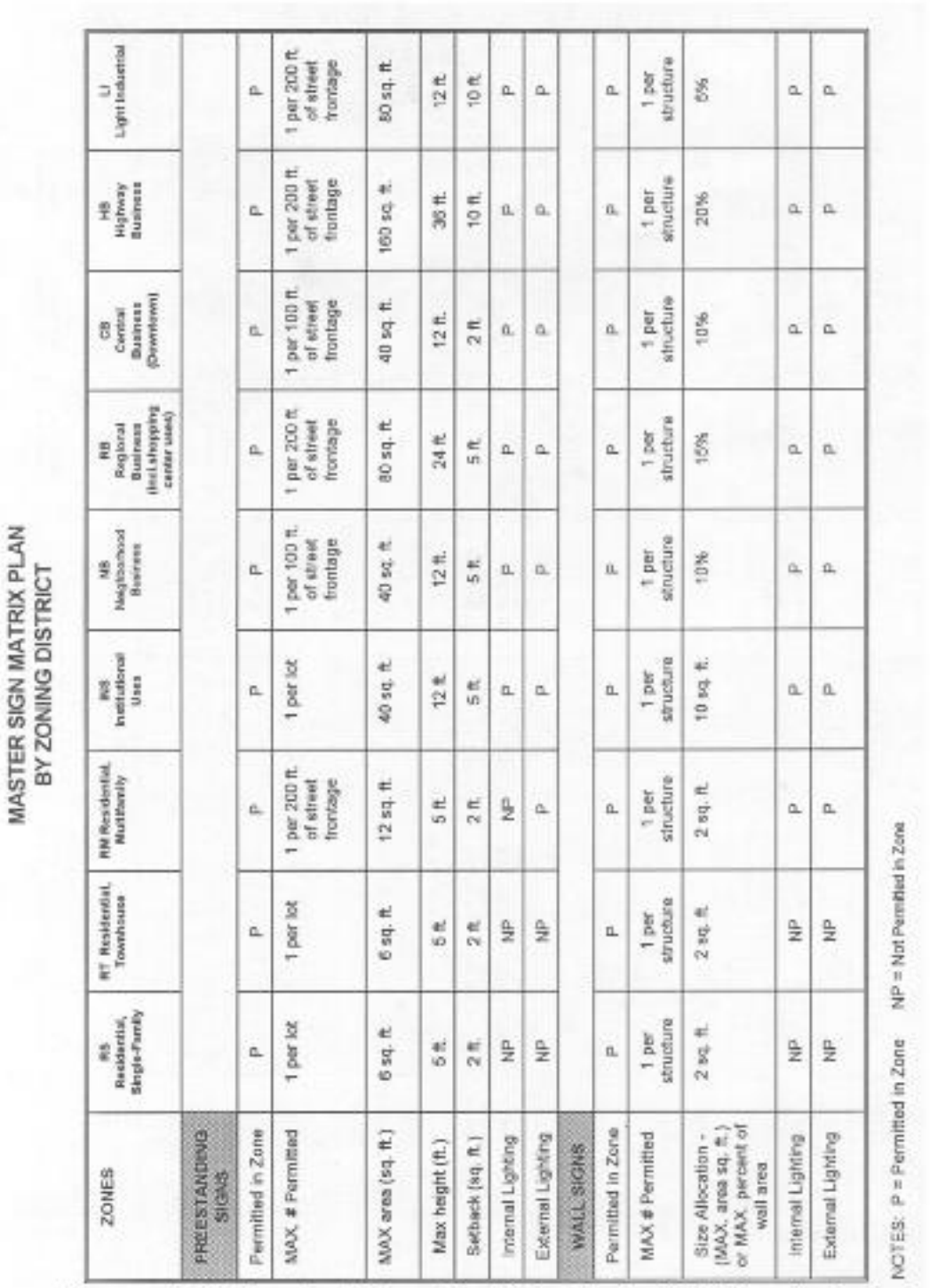
10. In order to provide information in the specific interest of the travelling public, the commissioner of transportation is hereby authorized to maintain maps and to permit informational directories and commercial advertising pamphlets to be made available at safety rest areas, and to construct and maintain or permit the construction and/or maintenance of information centers at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as he may consider desirable. In the event that such an information center is to be constructed and/or maintained by a person, firm, corporation, municipality or state depart-ment or agency, other than the department of transportation, the commissioner of transportation is authorized to enter into a lease for a term of years or memorandum of understanding, on terms which he deems appropriate, regarding the construction and/or maintenance of such information center. The commissioner of transportation shall use the federal cost-sharing provisions of section 131(i) of title 23, United States Code to the fullest extent practicable in implementing such travel in-formation programs.

11. The commissioner is directed to conduct an economic study to identify those areas within the state which would suffer substantial economic hardship upon the removal of advertising signs, dis-plays, or devices which provide directional information about goods and services in the interest of the travelling public, were legally erected under state law, and are subject to control under subdivision seven of this section. Pending completion of such economic study, the commissioner is directed to provide for the immediate removal of signs which were unlawfully erected under state law, and is further directed to develop an aesthetically pleasing official business directional sign program providing directional information to the travelling public in a manner substantially equivalent to that now provided by advertising signs, displays, or devices, pursuant to subdivision twelve of this section. Upon completion of such economic study and consequent identification of those areas within the state which would suffer substantial economic hardship upon the removal of advertising signs, dis-plays, or devices which provide directional information about goods and services in the interest of the travelling public, the commissioner shall request the secretary of transportation of the United States to permit the retention of such advertising signs, displays, or devices in those areas identified as suffering substantial economic hardship. Except as otherwise provided in this section, the commis-sioner is hereby directed to assure that any official business sign program be implemented with due consideration of

the findings of the economic study identifying areas potentially subject to substan-tial economic hardship.

12. The commissioner of transportation shall develop and implement, after required federal approval, an official business directional sign program to provide directional information regarding businesses which provide goods and services to the traveling public. Fees charged to participating businesses will be such as to make the program self-sustaining within two years of implementation. The program shall utilize official signs erected in the right-of-way of the primary highway system. Such official signs shall meet the standards prescribed by the commissioner of transportation and the secretary of transportation of the United States and shall contain thereon, as a minimum, the business name or trademark, a general service logogram and directional information. The official business directional sign program shall be integrated with, but not limited by, information centers provided for in subdivision ten of this sec-tion to maximize the information made available in the specific interest of the traveling public. Guidelines for business eligibility and placement of official signs shall be promulgated by the commissioner of transportation after public hearing and federal approval. Such guidelines shall in-clude provision for substantially equivalent directional information upon the removal of advertis-ing signs, displays or devices providing directional information. Such guidelines shall provide that priority for participation in the program be given to those businesses offering goods and services in the interest of the traveling public (a) which are primarily local or regional in nature and which would have the least ability to adopt alternative directional information media, or (b) which utilized direc-tional advertising signs, displays and devices legally erected under state law. The traffic generated by a specific business shall be a secondary consideration in determining priority of participation in the program. The specific implementation of such guidelines shall be made with the advice of travel information council pursuant to subdivision thirteen of this section. The commissioner shall seek to speed federal approval of the official business directional sign program.

Appendix 3:
Sample Sign Matrix



MASTER SIGN MATRIX PLAN
BY ZONING DISTRICT

ZONES	RS Residential, Single-Family	RT Residential, Townhouse	RM Residential, Multifamily	INS Institutional Uses	NB Neighborhood Business	RB Regional Business (incl shopping center uses)	CB Central Business (Downtown)	HB Highway Business	LI Light Industrial
FREESTANDING SIGNS									
Permitted in Zone	P	P	P	P	P	P	P	P	P
MAX. # Permitted	1 per lot	1 per lot	1 per 200 ft. of street frontage	1 per lot	1 per 100 ft. of street frontage	1 per 200 ft. of street frontage	1 per 100 ft. of street frontage	1 per 200 ft. of street frontage	1 per 200 ft. of street frontage
MAX area (sq. ft.)	6 sq. ft.	6 sq. ft.	12 sq. ft.	40 sq. ft.	40 sq. ft.	80 sq. ft.	40 sq. ft.	160 sq. ft.	80 sq. ft.
Max height (ft.)	5 ft.	5 ft.	5 ft.	12 ft.	12 ft.	24 ft.	12 ft.	36 ft.	12 ft.
Setback (sq. ft.)	2 ft.	2 ft.	2 ft.	5 ft.	5 ft.	5 ft.	2 ft.	10 ft.	10 ft.
Internal Lighting	NP	NP	NP	P	P	P	P	P	P
External Lighting	NP	NP	P	P	P	P	P	P	P
WALL SIGNS									
Permitted in Zone	P	P	P	P	P	P	P	P	P
MAX # Permitted	1 per structure	1 per structure	1 per structure	1 per structure	1 per structure	1 per structure	1 per structure	1 per structure	1 per structure
Size Allocation - (MAX. area sq. ft.) or MAX. percent of wall area	2 sq. ft.	2 sq. ft.	2 sq. ft.	10 sq. ft.	10%	15%	10%	20%	5%
Internal Lighting	NP	NP	P	P	P	P	P	P	P
External Lighting	NP	NP	P	P	P	P	P	P	P

NOTES: P = Permitted in Zone NP = Not Permitted in Zone

Source: Signage Made Simple: A Primer Containing Design Guidelines for Inclusion in Municipal Ordinances. Monmouth County Planning Board, Freehold, New Jersey. 1995.

ZONES	RS Residential,Single-Family	RT Residential, Townhouse	RM Residential, Multifamily	INS Institutional Uses	NB Neighborhood Business	RB Regional Business (incl.shopping center uses)	CB Central Business (Downtown)	HB Highway Business	LI Light Industrial
PROJECTING SIGNS									
Permitted in Zone	NP	NP	P	P	P	P	P	P	P
MAX # Permitted			1 per structure if no freestanding signs	1 per structure if no freestanding signs	1 per structure if no freestanding signs	1 per structure if no freestanding signs	1 per structure if no freestanding signs	1 per structure if no freestanding signs	1 per structure if no freestanding signs
MAX area (sq.ft.)			6 sq. ft.	10 sq. ft.	10 sq. ft.	30 sq. ft.	20 sq. ft.	20 sq. ft.	15 sq. ft.
Internal Lighting			NP	P	P	P	P	P	P
External Lighting			P	P	P	P	P	P	P
ROOF SIGNS									
Permitted in Zone	NP	NP	NP	P	P	P	P	P	P
MAX # Permitted				1 per structure if no wall sign is directed to the same street frontage.	1 per structure if no wall sign is directed to the same street frontage.	1 per structure if no wall sign is directed to the same street frontage.	1 per structure if no wall sign is directed to the same street frontage.	1 per structure if no wall sign is directed to the same street frontage.	1 per structure if no wall sign is directed to the same street frontage.
Size Allocation MAX percent of signable wall area				30%	20%	50%	40%	40%	30%
Internal Lighting				P	P	P	P	P	P
External Lighting				P	P	P	P	P	P
MARQUEE SIGNS									
Permitted in Zone	NP	NP	NP	P	NP	P	P	P	NP
MAX # Permitted				1 per structure if no wall sign is directed to the same street frontage.		1 per structure if no wall sign is directed to the same street frontage.	1 per structure if no wall sign is directed to the same street frontage.	1 per structure if no wall sign is directed to the same street frontage.	
Size Allocation MAX percent of signable wall area				30%		50%	40%	50%	

ZONES	RS Residential, Single-Family	RT Residential, Townhouse	RM Residential, Multifamily	INS Institutional Uses	NB Neighborhood Business	RB Regional Business (Incl.shopping center uses)	CB Central Business (Downtown)	HB Highway Business	LI Light Industrial
AWNING & CANOPY SIGNS									
Permitted in Zone	NP	NP	NP	P	P	P	P	P	P
MAX # Permitted				1 per structure	1 per structure	1 per structure	1 per structure	1 per structure	1 per structure
Size Allocation - MAX percent of vertical canopy surface area				20%	15%	25%	20%	25%	20%
Internal Lighting				P	P	P	P	P	P
WINDOW & DOOR SIGNS									
Permitted in Zone	NP	NP	NP	NP	P	P	P	P	NP
MAX # Permitted					1 per structure if no wall sign is directed to the same street frontage.	1 per structure if no wall sign is directed to the same street frontage.	1 per structure if no wall sign is directed to the same street frontage.	1 per structure if no wall sign is directed to the same street frontage.	
Size Allocation MAX percent of signable window area					15%	20%	20%	20%	
Internal Lighting					P	P	P	P	
SUSPENDED SIGNS									
Permitted in Zone	P	P	P	P	P	P	P	P	P
MAX # Permitted	1 per entrance	1 per entrance	1 per entrance	1 per entrance	1 per entrance	1 per entrance	1 per entrance	1 per entrance	1 per entrance
BANNERS									
Permitted in Zone	NP	NP	NP	NP	P	P	P	P	NP

Appendix 4:
Sample Sign Permit Applications

SIGN PERMIT APPLICATION

Town of Trenton, New York

App. #	
Date filed	
Fee Paid?	
Rec'd by	

[Before completing this form, applicant should carefully review the Town of Trenton Sign Law, on file at the Town Clerk's Office. Applications not completely filed out or in complete compliance with the law cannot be approved by the Enforcement Officer. Completed form, accompanied by a $15 application fee payable to Town of Trenton, should be returned to the Town Clerk, Trenton Municipal Building (Old Poland Road), PO Box 206, Barneveld, NY 13304]

Applicant _____ Telephone _____

Address _____

Property Owner _____ Telephone _____

Address _____

If permit applicant is other than owner of property on which the proposed sign is to be erected, written consent of the property owner or copy of contract agreement between owner and sign contractor shall accompany this application.

Type and location of Sign [Check where applicable]

New Sign	_____	Permanent Sign	_____	Wall Sign	_____
Existing Sign	_____	Temporary Sign	_____	Freestanding Sign	_____
Replacement Sign	_____	Portable Sign	_____	Billboard Sign	_____
Projecting Sign	_____	Roof Sign	_____	Other (explain)	_____

Location for proposed sign (address): _____

_____

Describe placement and location of sign on property, building or structure: _____

_____

Proposed sign will face which direction(s)? _____

IMPORTANT: Attach a plot plan or accurate site map showing all existing structures, freestanding signs, other landmarks, and the setbacks and distances between them. Photographs should be included for existing signs.

TOWNSHIP OF CRANBERRY
SIGN PERMIT APPLICATION

Site Address _____
Business Name (occupant) to appear on sign _____
Tax Parcel # _____

Owner Name _____
Owner Address _____
Owner Phone Number _____

Applicant's Name _____ Address _____
Phone No. _____ City, State, Zip _____
Contractor/Company Name* _____ Address _____
Phone No. _____ City, State, Zip _____ ***Provide current workers comp certificate***

Type of Sign:
- ☐ Building Mounted
- ☐ Freestanding
- ☐ Panel Replacement
- ☐ Non-Residential Monument Development Identification
- ☐ Residential Monument Development Identification
- ☐ All other _____

Complete the following: **Note: only one (1) sign per each permit application**

Square footage of sign _____ Feet
Lineal street frontage _____ Feet
Business lineal frontage _____ Feet
Building dimension height _____ Feet
Gross floor area of building _____ Feet
Building dimension width _____ Feet

Application checklist: (provide all of the following)

- ☐ Sign details including: Type of illumination(internal or external), material type, color, lettering/graphic style.
- ☐ Site plan drawn to scale with location of proposed and existing signs
- ☐ Elevation view of proposed sign(s)
- ☐ Building elevation (Building signs only)
- ☐ Scaled drawing of sign(s) detailing dimensions, area, and height of all proposed and existing sign(s)
- ☐ Landscaping plan (Freestanding signs only)

I hereby acknowledge that the information contained herein is true and correct, and I hereby agree to comply with all applicable provisions of the Code of Cranberry Township:

Print Name: _____ Signature: _____ Date: _____

(FOR TOWNSHIP USE ONLY - PLEASE DO NOT WRITE BELOW THIS LINE)

AP # (s) _____ Zoning District _____
Description of work: _____
Type of sign(s) _____ Fee: $ _____

CODE ADMINISTRATOR _____ APPROVAL DATE _____

Revised 11/9/04
Bldg app/sign

This application form can be printed from our website at http://www.twp.cranberry.pa.us/codes/signpermit.pdf

Endnotes

1. The First Amendment provides that "Congress shall make no law... abridging the freedom of speech."

2. One exception is when the speaker uses "fighting words", " those personally abusive epithets which when addressed the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." Cohen v. California, 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed. 2d 284 (1971). Another exception involves signs which display obscene images or messages.

3. New York Constitution Article 1, section 8.

4. City of Ladue v. Gilleo, 512 U.S. 43 (1994).

5. Lovell v. Griffin, 303 U.S. 444 (1938).

6. Ward v. Rock Against Racism, 491 U.S. 781, 791 (1981).

7. Clark v. Community for Creative Nonviolence, 468 U.S. 288, 293 (1984)

8. See United States v. Playboy Entertainment Group, Inc., 529 U.S. 803 (2000); Burson v. Freeman, 504 U.S. 191 (1992); Boos v. Barry 485 U.S. 312(1988).

9. Playboy Entertainment, 529 U.S. at 813.

10. See Forsyth County v. Nationalist Movement, 505 U.S. 123, 134 (1992) and Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 516 (1981).

11. Members of City Council, 466 U.S. at 804.

12. Clear Channel Outdoor Inc. v. Town Board of the Town of Windham, 352 F.Supp.2d 297 (N.D.N.Y. 2005). In Sugarman v. Village of Chester, 192 F.Supp.2d 282 (S.D.N.Y. 2002), the sign provisions in Hamptonburgh restricted the posting of temporary signs relating to certain events to a 60-day period. However, the ordinance permitted the posting of selected temporary signs for a longer period of time than others. The ordinance allowed up to two-years for displaying temporary construction signs. The content-based differential treatment that places additional durational restrictions on only some temporary signs rendered that ordinance unconstitutional.

13. The view is that through the combined operation of a general speech restriction and its exemptions, the government might seek to select the "permissible subjects for public debate" and thereby to "control ... the search for political truth." City of Ladue, 512 U.S. at 51 (citations omitted).

14. 703 F.Supp. 228 (EDNY) affd. 900 F.2d 551 (2nd Cir. 1990).

15. National Advertising Co.v. Babylon, 900 F.2d 551 (2nd Cir. 1990).

16. Suffolk Outdoor Advertising Co., Inc. v. Hulse, 43 N.Y.2d 483 (1977), reargument denied, 43 N.Y. 2d 951 (1978) appeal dismissed, 439 U.S. 808 (1978).

17. 19 N.Y.2d 263, 273 (1967).

18. Cleveland Area Board of Realtors v. City of Euclid, 88 F.3d 382 (6th Cir. 1996)

19. 5th Avenue Coach Co. v. City of New York, 221 U.S. 467 (1911).

20. Valentine v. Chrestensen, 316 U.S. 52 (1942).

21. 425 U.S. 748 (1976).

22. 433 U.S. 350 (1977).

23. Central Hudson Gas & Electric Co. v. Public Service Commission, 447 U.S. 557 (1980).

24. Id. at 564.

25. Playboy Entertainment, supra.

26. 447 U.S. at 564.

27. 447 U.S. at 565.

28. United States v. Edge Broadcasting Co., 509 U.S. 418, 430 (1993). In that case, the U.S. Supreme Court made clear that commercial speech is to be afforded less constitutional protection than noncommercial speech (referring to the "subordinate position of commercial speech in the scale of First Amendment values"). See also Dunn & Bradstreet Inc. v. Greenmoss Builders Inc., 472 U.S. 749 (1985) and Central Hudson Gas & Electric Co. supra. Note however that in City of Cincinnati v. Discovery Network, Inc., 507 U.S. 410 (1993), the US Supreme Court seemed to depart from this rule when it held that the City of Cincinnati could not prohibit the placement of commercial advertising in newsracks, solely on the ground that held commercial speech deserves less protection than noncommercial speech. The City's prohibition of commercial materials on newsracks was a content-based distinction that was impermissible under the First Amendment.

29. Dunn & Bradstreet Inc. v. Greenmoss Builders Inc., supra.

30. Board of Trustees of the State Univ. of New York v. Fox, 492 U.S. 469, 477 (1989) quoting Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 456 (1978).

31. Suffolk Outdoor Advertising Co., Inc. v. Hulse, 43 N.Y.2d 483, 489 (1977).

32. People v. Target Advertising Inc., 184 Misc.2d 903 (N.Y.City Crim.Ct. 2000).

33. Syracuse Sav. Bank v. Town of DeWitt, 56 N.Y.2d 671 (1982).

34. National Advertising Co. v. Town of Babylon, 703 F.Supp. 228 (E.D.N.Y.) affd. 900 F.2d 551 (2nd Cir. 1990).

35. Linmark Associates v. Township of Willingboro, 431 U.S. 85 (1977).

36. Linmark Associates, 431 U.S. at 96-97.

37. South-Suburban Housing Center v. Greater South Suburban Board of Realtors, 935 F.2d 868 (7th Cir. 1991), reh'g and reh'g denied en banc.

38. Citizens United for Free Speech II v. Long Beach Township Board of Commissioner, 802 F.Supp. 1223 (D.Ct. N.J., 1992). Applying the four part Central Hudson test, the opinion noted that the ordinance would be an impermissible regulation of commercial speech even if it were content neutral.

39. Cleveland Area Board of Realtors v. City of Euclid, 88 F.3d 382 (6th Cir. 1996).

40. 15 U.S.C.A. § 1331, et. seq.

41. 15 U.S.C. § 1334(b) provides: "No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter."

42. 533 U.S. 525 (2001).

43. Lorrilard, supra. In Vango Media, Inc. v. City of New York, 34 F.3d 68 (2d Cir. 1994), the Second Circuit considered whether a NYC ordinance requiring a minimum of one public health message for every four cigarette advertisements on taxi cabs was preempted by the FCLAA. The Court held that the regulation was preempted "with respect to advertising and promotion of cigarettes." In reaching this conclusion, the Court noted that the regulation would promote nonuniformity, a result which Congress expressly wanted to avoid.

44. See generally New York's Alcoholic Beverage Control law.

45. Matter of Lansdown Entertainment Corp. v. New York City Dept. of Consumer Affairs, 74 N.Y.2d 761 (1989); People v. De Jesus, 54 N.Y.2d 465 (1981); and Louhal v. Strada, 191 Misc.2d 746 (Sup. Ct. Nassau Co.) affirmed 307 A.D.2d 1029 (2nd Dept. 2003).

46. DJL Restaurant Corp. v. City of New York, 96 N.Y.2d 91 (2001).

47. 517 U.S. 484 (1996).

48. 517 U.S. at 507.

49. The Court stated that the Central Hudson test does not apply where "the government's asserted interest is to keep legal users of a product or service ignorant in order to manipulate their choices in the marketplace," 517 U.S. at 499.

50. Anheuser-Busch, Inc. v. Schmoke, 101 F.3d 325 (4th Cir. 1996)

51. Courts have been particularly solicitous of laws guarding the morals of children. As acknowledged by the U.S. Supreme Court in Ginsberg v. New York, 390 U.S. 629, 640 (1968), "parental control or guidance cannot always be provided and society's transcendent interest in protecting the welfare of children justify reasonable regulation" in order to protect children from material that is inappropriate for them.

52. The statutory definition of "obscenity," appears at Penal Law § 235.00(1):

> "... Any material or performance is 'obscene' if (a) the average person, applying contemporary community standards, would find that considered as a whole, its predominant appeal is to the prurient interest in sex, and (b) it depicts or describes in a patently offensive manner, actual or simulated: sexual intercourse, sodomy, sexual bestiality, masturbation, sadism, masochism, excretion or lewd exhibition of the genitals, and (c) considered as a whole, it lacks serious literary, artistic, political, and scientific value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audiences."
>
> Obscenity is difficult to identify because, in a given case, it is based on contemporary community standards. Before declaring expression obscene, New York law requires the judge or jury to determine how the "average New Yorker" would evaluate and react to it. The Court of Appeals has said that weighing into this process is New York's legal, cultural and historical position as a leader in the educational, scientific and artistic life, as well as a recognition that New York not only tolerates, but encourages, freedom of expression and experimentation. People v. P.J. Video, Inc., 68 N.Y.2d 296 (1986)

53. Miller v. California, 413 U.S. 15, 18-19 (1973)

54. Penal Law § 245.11 - Public display of offensive sexual material. See also Penal Law §245.10 for the definition of terms.

55. Ch. 962 L. 1971.

56. 68 Misc.2d 112 (NYC Crim. Ct. 1971) aff'd 73 Misc.2d 497 (App. Term. 1972) reversed 32 N.Y.2d 816 (1973). See also People v. Isaac, 69 Misc.2d 758 (NYC Crim.Ct. 1972) (small arm patch depicting allegedly offensive sexual material, located among other articles in a large store window, was almost invisible to unwilling audiences and its display was not a violation of the Penal Law) and People v. Oshry, 31 Misc.2d 888 (Town Just.Ct. 1986) (cards displayed in store depicting erotic poses were not sexually offensive material).

57. See generally Virginia State Bd. of Pharmacy, 425 U.S. at 770-772.

58. Metromedia, 453 U.S. at 513.

59. See Meyer v. Grant, 486 U.S. 414, 425 (1988) (First Amendment protection of core election speech is "at its zenith" and the burden to justify restrictions on such speech is "well-nigh insurmountable."); McIntyre v. Ohio Elections Comm'n, 514 U.S. 334 (1995)

60. See Federal Election Commission v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 265 (1986).

61. City of Ladue, 512 U.S. at 57-58.

62. City of Ladue, 512 U.S. at 59 (FN 17).

63. 512 U.S. 43 (1994).

64. 214 F.Supp. 2d 252 (N.D.N.Y. 2002)

65. 753 N.Y.S.2d 284 (2nd Dept., 2002).

66. Burson v. Freeman, 504 U.S.191 (1992).

67. Abel v. Orangetown, 724 F.; Supp. 232 (SDNY 1989).

68. 192 F. Supp. 2d 282 (SDNY 2002)

69. Members of the City Council, 466 U.S. at 804.

70. In an early case, Supreme Court Justice Oliver Wendell Holmes remarked: "Bill- boards properly may be put in a class by themselves and prohibited 'in residence districts of a city in the interest of the safety, morality, health and decency of the community.''' St. Louis Poster Adv. Co. v. St. Louis, 249 U.S. 269, 274 (1919)

71. 453 U.S. 490 (1981).

72. 453 U.S. at 513.

73. See also National Advertising Co. v. Town of Niagara, 942 F.2d 145 (2d Cir. 1991), where the Second Circuit adopted the plurality opinion in Metromedia and invalidated a town law because it favored commercial speech over noncommercial speech.

74. 43 N.Y.2d 483 (1977).

75. See, e.g., Modjeska Sign Studios, Inc. v. Berle, 43 N.Y.2d 468 (1977); Suffolk Outdoor Advertising Co. v. Hulse, supra.

76.

fair market value on date of notice of removal requirement	minimum years allowed
under $1,999	3
$2,000 to $3,999	4
$4,000 to $5,999	6
$6,000 to $7,999	7
$8,000 to $9,999	9
$10,000 and over	10

77. See also Federal Law 23 USC 131 and Federal Regulation 23 CFR 750.302.

78. 75 N.Y.2d 953 (1990).

79. 23 U.S.C. 131.

80. New York State Highway Law §§§ 52, 86 and 88 provide for the control of outdoor advertising and form the basis for the rules and regulations found at 17 NYCRR Part 150. Additional information about the New York State Sign Program may be found on the Department of Transportation webpage at https://www.nysdot.gov/programs/nys-signs.

81. Highway Law § 52.

82. Department of Transportation regulations found at7 NYCRR Part 150.4 .

83. Environmental Conservation Law § 9-0305.

84. Information about the New York State Scenic Byways program can be found on the Department of Transportation website at
https://www.nysdot.gov/display/programs/scenic-byways

85. Highway Law § 52.

86. Village of Old Field v. Hickey, 225 A.D.2d 666 (2d Dep't.1996).

87. In Hague v. CIO, 307 U.S. 496, 515 (1939), Justice Roberts delivered his famous dictum that even though title to the "streets and parks may rest in governments, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens."

88. Perry Education Association v. Perry Local Education Association, 460 U.S. 37, 45 (1983).

89. 192 F. Supp. 2d 282 (SDNY 2002).

90. Perry Education Association, 460 U.S. at 45.

91. 466 U.S. 789, 808 (1984).

92. No. 1:03-CV-463 (N.D.N.Y., 2005).

93. Judge Hurd wrote: "It is not clear, or likely demonstrable, that Windham's allowance of a portable sign that reads, 'Bob's Construction' or 'For Sale' is less harmful to the stated goals of the statute, than a portable sign that reads 'Vote for Bob' or 'Jesus Saves.' Furthermore, these exemptions from the ban "diminish the credibility of the government's rationale for restricting speech in the first place."352 F.Supp.2d at 307.

94. 398 F.3d 457 (6th Cir. 2005), cert. denied 126 S.Ct. 399 (Oct 03, 2005).

95. 48 N.Y.2d 192 (1979).

96. 108 Misc.2d 887 (Dist.Ct. Suffolk Co. 1981).

97. N.Y. Op. Atty. Gen. (Inf.) No. 92-56; see also 1973 Op Atty Gen (Inf) 51.

98. N.Y. Op. Atty. Gen. (Inf.) No. 95-38.

99. 184 Misc. 2d 903 (N.Y.C. Crim. Ct. 2000).

100. People v. Professional Truck Leasing Systems, 185 Misc. 2d 734 (N.Y.C. Crim. Ct. 2000) affirmed 190 Misc.2d 806 (App.Term 2002)

101. 352 F.Supp.2d 297 (N.D.N.Y.,2005).

102. People v. Yolen, 49 Misc.2d 470 (N.Y.C. Crim. Ct. 1966)

103. Failure to include a statement of substantial governmental purpose is grounds for invalidating the sign law. In National Advertising Co.v. Babylon, 900 F.2d 551, 555 (2nd Cir. 1990), the Second Circuit Court of Appeals held that the sign laws of the Towns of Babylon and Hempstead impermissibly restrained speech "because they contain no statement of a substantial governmental interest and the towns offered no extrinsic evidence of such an interest."