



**Division of Local
Government Services**

Sign Regulation

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Topics to be covered



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First Amendment issues

Regulation of signs

Drafting sign regulations

Nonconforming signs & billboards

Signs as Speech

Signs are speech protected by the First Amendment to the U.S. Constitution under its “Free Speech Clause”:

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



Types of Speech

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



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



Speech Protection

Commercial

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

Noncommercial

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

Noncommercial Signs

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Content-Neutral Regulations

Intermediate Scrutiny

Regulations are constitutional if they

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

Content-Based Restrictions

Strict Scrutiny

Constitutional only if they:

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

Content Neutrality

Regulate:

- Time
- Place
- Manner

Narrowly tailored to serve significant government interest

Ample alternative channels

- Clark v. Community for Creative Nonviolence



Temporary signs

Whitton v. City of Gladstone:

The local law restricted “political signs within zones”

It also imposed time limits when signs can be posted before & after election

These provisions were deemed content-based and unconstitutional



Too restrictive of free speech

Temporary sign & other content neutral regulations must be narrowly tailored

Allowing only two temporary signs on private residential property would not be narrowly tailored, because it would infringe on political speech & the rights of homeowners.

– Arlington County Republican Committee v. Arlington County, VA

Ample alternative channels

Regulation of signs posted at private homes determined to be unconstitutional because there were no adequate alternative channel for speech:

- Residential signage not allowed
 - City of Ladue v. Gilleo
- Complete ban on posting any lawn signs
 - Cleveland Area Board of Realtors v. City of Euclid
- Posting of “for sale” or “sold” signs prohibited
 - Linmark Associates v. Township of Willingboro

Narrowly tailored local law

Use Less Restrictive Approaches:

- Regulate the design & condition of signs
- Prevent posting of sign too close to street
- Limit duration of signs



Content neutrality

Local governments may forbid the posting of signs on public property, as long as it's in an evenhanded, content-neutral manner

People v. On Sight Mobile Opticians: upheld a ban against posting signs on public property.

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Commercial Signs

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Commercial Speech Test



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Central Hudson Test

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

Strict regulation of color and design

Required signs to be similar in color & design to other signs in the immediate area of a shopping center.

- Content/viewpoint neutral
 - Party City of Nanuet, Inc. v. Board of Appeals of the Town of Clarkstown



Off-premises advertising

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

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

Non-traditional Commercial Signs

- LED/Animated signs
- Flags, streamers & balloons
- Moving billboards
 - Signs on vehicles whose sole purpose is advertising

Time, place & manner

- Medium of expression
- People v. Target Advertising



State regulation of signs

Uniform Fire Prevention & Building Code

- Electrical standards
- Wind pressure
- Anchoring

DEC permit required for off-premises signs outside of incorporated villages in the Catskill Park & the Adirondack Park



Regulation by NYS DOT

Restricts advertising devices within 660 feet of Interstate, National Highway System & primary highways.

Signs beyond 660 feet outside urban areas intended to be read from interstate or primary highways are prohibited

Regional DOT offices have sign permit applications

DOT sign program includes registration, limitation on size, placement & lighting.

More restrictive local regulations often apply

Commercial vs. Non-Commercial Signs

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

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

Implications of Reed v. Town of Gilbert

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Reed v. Town of Gilbert, AZ

Town of Gilbert Sign Regulations:

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

3 Categories of Signs Exempt from Permit

Ideological

- Message or idea for noncommercial purposes

Display Rules

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

- Most favored

Political

- Temporary sign designed to influence election outcome

Display Rules

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

Directional

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

Display Rules

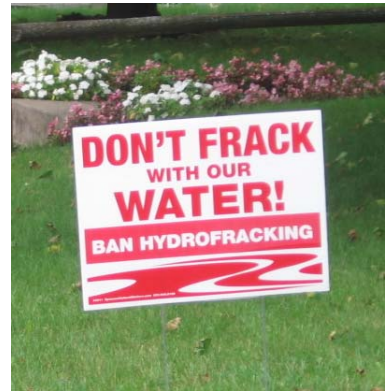
- Displayed on private property as well as in a public right of way
- Limited to 4 such signs per property
- No larger than 6 square feet
- 12 hours before the “qualifying event” and no more than 1 hour afterward
- Least Favored

Distinctions

Distinctions drawn within speech categories are content based and must survive strict scrutiny

Compelling interest must be identified and restrictions must be Narrowly Tailored and not under-inclusive

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Justice Thomas:

“If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government. More to the point, the Church's signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas.”

Content based discrimination

Court determined the law was content based on its face because restrictions applied depend on sign's communicative content.

It signals out specific subject matter even if it does not target viewpoints within that subject matter



Concurring Opinion: Munis may adopt

Rules regulating the size of signs.

- These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.

Rules regulating the locations in which signs may be placed.

- These rules may distinguish between free-standing signs and those attached to buildings.



Concurring Opinion: Munis may adopt

Rules distinguishing between lighted and unlighted signs.

Rules distinguishing between signs with fixed messages and electronic signs with messages that change.



Concurring Opinion: Munis may adopt

Rules that distinguish between the placement of signs on private and public property.

Rules distinguishing between the placement of signs on commercial and residential property.



Concurring Opinion: Munis may adopt

Rules distinguishing between on-premises and off-premises signs.

Rules restricting the total number of signs allowed per mile of roadway.

Rules imposing time restrictions on signs advertising a one-time event.

- Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed



Drafting Sign Regulations

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Drafting sign regulations

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

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



Regulatory options

Without zoning through

Site Plan Review

Sign Permit

Restrict by signage structure and size

Restrict location by property type (i.e., public rights-of-ways)



Regulatory options

With zoning

Prohibit certain signs by structure, location

Allow some as-of-right

Allow others special use permit or site plan review

A sign matrix for each district & use indicates

Number, size & type of signs allowed

Approvals necessary



Typical provisions

Purpose Statement

Definitions

Schedule of Allowed Locations

Construction & Design Standards

Sign Permit Procedures

Specific provisions

Review & Appeals

Enforcement & Remedies

Enforcement Officer, appeals & penalties

Severability

Specific provisions

Standards

Sign Permit Procedures

State Sign Permit
Reference

Existing/Nonconforming
Signs

Prohibited Signs

Substitution Clauses

Illumination

Sign Maintenance

Purpose Statements

Examples of purposes:

Promote & protect public health, welfare & safety

Protect property values

Create a more attractive business climate

Reinforce & strengthen community identity

Preserve scenic beauty

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Regulating for aesthetic purposes is permissible.

Aesthetics may be addressed in detail by local design guidelines

Suffolk Outdoor Advertising v. Hulse



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Definitions & Standards

Definitions

Sign

Types of signs

Portable signs

Permanent or temporary

Standards

Construction

Mounting

Materials

Design

Lighting/illumination

Materials

Size

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- **PORTABLE SIGN**

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

Village of Pittsford, New York Zoning
Chapter 168. SIGNS



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Design Considerations

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Types of signs

Wall signs

Projecting signs

Freestanding signs

Roof

Canopy & awning

Window & door

Banners, streamers & flags

Marquee

Billboards

Off-Premises

Portable /mobile

Design considerations

Mounted

Size, area & height

Location

Lighting/illumination

Landscaping

Materials

Architectural design

Color

Bureau of Land Management Recommended Size of Letters on Signs

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

Types of signs



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Freestanding –
sandwich board

Types of signs



Canopy

Types of signs



Awning

Types of signs



Band sign

Types of signs



Wall

Types of signs



Window

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Types of signs



Projecting

Types of signs



Monument

Types of signs



Pylon or pole-mounted

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Types of signs



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Marquee

Lighting/illumination



Neon

Lighting/illumination



Indirect / external

Lighting/illumination



Direct/internal

Nonconforming Signs and Enforcement

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Enforcement

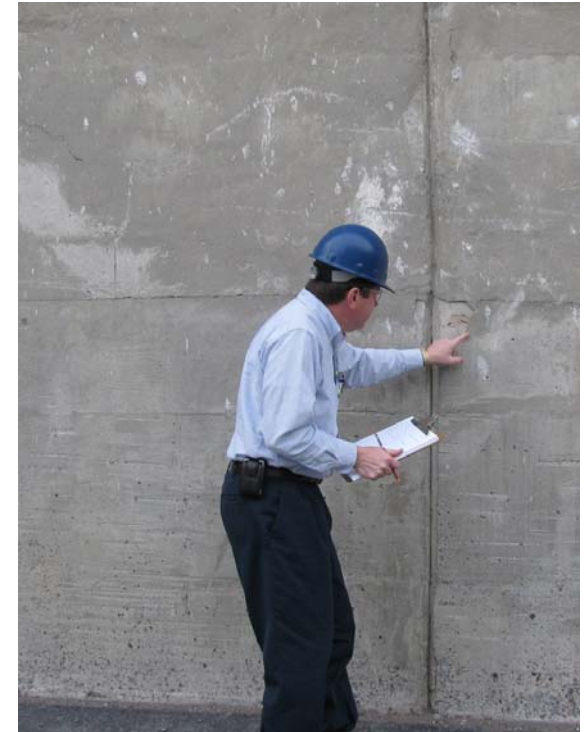
Who is authorized to enforce the sign law?

How violations are handled?

What are the criminal penalties?

Is the municipality authorized to institute civil proceedings?

What is the process for appeal?



Enforcement

Notice to owner(s) specifying the violation

Require sign be brought into compliance or removed

State period of time in which to conform or remove sign

Authorize enforcement officer to revoke the sign permit & remove the sign for noncompliance

Within timeframes as specified in the sign regulations

Authorized to assess all costs & expenses incurred for such service against the owner(s)

Sign maintenance

Local regulations should include provisions for the proper maintenance of all signs

Example:

“...Sign must be kept clean, neatly painted & free from all hazards, such as, but not limited to, faulty wiring & loose fastenings, & the sign must be maintained at all times in such safe condition so as not to be detrimental to the public health or safety.”

– Village of South Glens Falls Code: Chapter 115-9

Billboards & off-premises signs

Temporary moratorium while considering law

Prohibit new billboards

Restrict billboards

By district, special use permit or setbacks

Removal of non-conforming billboards

Billboard

A sign for a business, profession, activity commodity, or service not on the premises where the sign is located

Can be commercial or non-commercial

Pre-existing nonconforming signs

Protected status

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

Nonconforming signs

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

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

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Elimination of nonconforming signs

Amortization

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

Local Law Example:

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

Elimination of nonconforming signs

Zoned industrial or manufacturing

Municipality must compensate owner pursuant to Eminent Domain Procedure Law

NOT zoned industrial or manufacturing:

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

“Voluntary” removal of non-conforming signs

“Exchange only”

- Prohibit new commercial signs where a non-conforming sign remains

Provide bonuses in size, height, or number of allowable signs

- Must remove by a specified date

Offer incentives to remove & replace

- Community grants or low interest loans



Summary

Significant governmental interest

Time, place, manner

Content neutrality

Compelling governmental interest

Can't permit commercial signage and restrict similar non-commercial signage



Case Citations

Clark v. Community for Creative Nonviolence, 468 U.S. 288, 293, 82 L.Ed.2d 221, 227, 104 S.Ct. 3065 (1984)

Hobbs v. County of Westchester, 397 F.3d 133 (2d Cir. 2005)

Whitton v. City of Gladstone, Missouri, 54 F. 3d 1400 (8th. Cir. 1995)

Arlington County Republican Committee v. Arlington County, VA, 983 F.2d 587 (4th Cir.1993)

Case Citations

City of Ladue v. Gilleo, 512 U.S. 43, 129 L.Ed.2d 36, 114 S.Ct. 2038 (1994)

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

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

Central Hudson Gas v. Public Service Commission, 447 U.S. 557, 65 L.Ed.2d 341, 100 S.Ct. 2343 (1980)

Case Citations

Party City of Nanuet, Inc. v. Board of Appeals of the Town of Clarkstown, 212 A.D.2d 618, 622 N.Y.S.2d 331 (2d Dept. 1995)

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

People v. Target Advertising, 184 Misc.2d 903 (NY City Crim.Ct. 2000)

Reed v. Town of Gilbert, Arizona, 135 S.Ct. 2218 (2015)

Resources

New York State Department of State

James A. Coon Local Government Technical Series
Publication

Municipal Control of Signs

New York Department of State

(518) 473-3355 Division of Local Government

(518) 474-6740 Counsel's Office

Email: localgov@dos.ny.gov

Website: www.dos.ny.gov

www.dos.ny.gov/lg/index.html