Community Planning and Development
Development Services

201 W. Colfax Ave., Dept. 205
Denver, CO 80202
p: 720.865.2915
f: 720.865.3052
www.denvergov.org/CPD

DENVER
THE MILE HIGH CITY

TO: Members of the City Council LUTI Committee
FROM: Tina Axelrad, CPD Zoning Administrator
DATE: April 29, 2021
RE: Denver Zoning Code – 2021 Bundle of Text Amendments

Staff Report and Recommendation

Based on the review criteria for text amendments stated in the Denver Zoning Code (DZC), Section 12.4.11 (Text Amendment), Community Planning and Development (CPD) recommends the LUTI Committee forward the 2021 Text Amendment Bundle to the full City Council for consideration and final action.

A marked-up version of the complete Denver Zoning Code with the proposed text amendment is available on the CPD Denver Zoning Code Text Amendment web page (please see link below). A summary of the proposed amendment is also included as an attachment to this staff report. The proposed text amendment to the Denver Zoning Code is initiated and sponsored by the Executive Director of Community Planning & Development.

Summary and Purpose

Just like infrastructure needs maintenance to stay in top condition, the Denver Zoning Code also needs regular maintenance to continue to respond to the needs of the city, while remaining modern and flexible. Periodically, CPD proposes amendments to keep the code modern, clear and user-friendly.

The 2021 Bundle of Text Amendments includes more than 170 proposed code changes that correct and clarify existing zoning rules or make small adjustments for consistency with adopted policy. The proposed changes include making off-street parking requirements more flexible for affordable housing, removing some regulatory barriers to creating accessory dwelling units, and updates to where detached accessory structures can stand on a lot, rules of measurement, and more. Please see the attached summary for additional detail of the proposed changes and see a marked-up version of the complete Denver Zoning Code (note that adoption of this proposed amendment would result in republication of the complete code) showing the proposed zoning text amendment changes posted on the CPD text amendments web site at www.denvergov.org/textamendments (click on Code Maintenance Bundles).

Public Process

Below is a summary of the public process for the proposed 2021 Text Amendment Bundle:

DATE	PUBLIC PROCESS STEP
October 7, 2020	Presentation of pending 2021 text amendment bundle as Information Item – Denver Planning Board
February 26, 2021	CPD updates website with a summary of proposed text amendment and posts Public Review Draft, providing direction on where to submit comments/questions during the public review period (ending March 26, 2021).
February 27, 2021	CPD attends Inter-Neighborhood Cooperation (INC) Zoning and Planning Committee for briefing.
March 3, 2021	Presentation of 2021 text amendment bundle as Information Item – Denver Planning Board
March 18, 19, 24, 25, 2021	CPD hosts 4 different "office hours" sessions to allow public to comment, ask staff questions
April 7, 2021	CPD sends written notice of the Planning Board public hearing to all members of City Council and registered neighborhood organizations.
April 14, 2021	Summary of text amendment and marked-up "Planning Board" draft of text amendment posted to CPD website including revisions from public comments; available for additional public review.
April 21, 2021	Planning Board Public Hearing on Planning Board Draft of the 2021 Bundle of Text Amendments – **PB Recommends Approval**.
May 13, 2021	Release of final Adoption Draft of 2021 Bundle of Text Amendments.
June 14, 2021	City Council Public Hearing
June 17, 2021	Effective Date of 2021 text amendment bundle

As of the date of this staff report, CPD has received 28 public comment emails, summarized below:

- Comments from City Council member Amanda Sandoval, requesting clarification/revision of (a) changes to Article 1 table of maximum number of structures/uses per zone lot (accepted by staff - revisions made), (b) setback encroachment for barrier-free access added to existing structures (will be retained for recently-adopted CO-6 Bungalow Conservation Overlay, but not extended citywide), (c) suggestions to further revise the unenclosed porch setback encroachment and add a new text amendment to revise limits on indoor entertainment facilities (theaters) located in neighborhood commercial zones (no revisions made as staff considers this to be outside the scope of work for this 2021 Bundle, but placed/retained on list of future text amendments to consider).
- Comments from several Denver residents to reduce the minimum zone lot size for the Tandem House building form to match the zone lot size allowed for the Urban House building form (no revisions made as staff considers this to be outside the scope of work for a code maintenance bundle amendment, but placed on list of future text amendments to consider).
- Comments from several Denver residents to reduce the minimum zone lot size for the Duplex building form to match the zone lot size allowed for the Urban House building form (no revisions made as staff consider this to be outside the scope of work for a code maintenance bundle amendment, but placed on a list of future text amendments to consider).
- Comments from West Denver Renaissance Collaborative (WDRC) and other ADU/housing advocates to reduce the minimum lot size for the Detached Accessory Dwelling Unit building

form and to remove the use limitation in SU zones that requires the owner of a property with an ADU to live on the property and prohibits a short-term rental license issued to the primary resident of an ADU (a STR license may be issued only to a person making the main/primary house their primary residence) - no revisions made as staff considers this to be outside the scope of work for a code maintenance bundle amendment, but additional changes will be considered as part of a future text amendment focused on residential infill development.

- Comments from one Denver resident to reconsider the definition of "low slope roof" and include a 3:12 pitched roof as a "pitched roof" vs. "low slop roof" (no revisions made as staff considers this to be outside the scope of work for this 2021 Bundle, but placed on list of future text amendments to reconsider the pitched/low slope roof definitions, which were amended after stakeholder input in the 2018 text amendment bundle).
- Comment from one Denver resident to reconsider the rule of measurement for maximum side wall height (no revisions made as staff this to be outside the scope of work for this 2021 Bundle, but placed on list of future text amendments to consider, including evaluation of whether a bulk plane standard would be more predictable and effective).
- Several requests to revise the draft setback encroachment changes for certain shading devices, citing concerns that Bundle draft was too restrictive. These requests were accepted by staff and text changes were made to make the shading device encroachment more flexible for various types of horizontal and vertical shading devices.
- One request to include gutters and downspouts in revisions to the setback encroachment allowed for roof overhangs (accepted by staff and text revised).
- Two requests for clarification of Bundle text amendments to setback and height encroachments allowed for chimneys, fireplaces, and fireplace vents (staff responded to requests with clarification – no text revisions necessary).
- Several letters and written comments from housing advocates, architects, and individuals in support of the text amendment changes and clarifications to remove some regulatory barriers to development of ADUs in Denver.
- Request from WDRC, Mile High Connects, National ADU Association, ADU4U, Habitat for Humanity of Metro Denver, Enterprise, and other individuals to consider additional changes and clarifications to the zoning code's ADU standards – clarification provided by staff where requested; additional changes will be considered as part of a future text amendment focused on residential infill development.
- Significant comments from International Sign Association requesting multiple, specific sign code changes that were not identified as part of the Bundle scope of changes. Requested changes were added to CPD's master list of possible text amendments to consider in a future bundle of text changes, or when the city undertakes a more comprehensive update of the sign code.
- Letter signed by 69 non-profits and businesses supporting the text amendments updating and fixing inconsistencies in parking requirements for affordable housing development. Several additional letters from Colorado Dept. of Local Affairs Division of Housing, individual businesses, and housing advocates in support of same changes to parking requirements for affordable housing.
- Comments regarding changes in the Bundle made to codify current practice for when a development project is subject to concept plan (pre-application) review and possible full site development plan (SDP) review and approval. (No substantive changes were made to these provisions; codified current practice of requiring a pre-application concept review of zone lot amendments creating more than 2 new zone lots and new 3-unit + residential projects.)

- Several requests for clarification of various, specific bundle text amendments (staff responded to all requests with clarification – no text revisions necessary).
- Several comments from Denver residents pointing out minor errors in the redline draft (accepted and fixed by staff in Planning Board draft).

Review Criteria and CPD Staff Evaluation

The criteria for review of a proposed text amendment are found in Section 12.4.11.4 of the DZC. CPD analyzed the proposed text amendment for compliance with the review criteria stated below and finds that the proposed text amendment satisfies each of the review criteria:

1. The Text Amendment is Consistent with the City's Adopted Plans

The following adopted plans apply to consideration of this text amendment:

- Denver Comprehensive Plan 2040
- Blueprint Denver (2019)

Denver Comprehensive Plan 2040

The proposed text amendment is consistent with the following Comprehensive Plan 2040 policies:

- Implementation Strategy 1: "*Coordinate implementation actions across departments for effective and collective impact. Improve the integration of regulations—such as design standards for streets and the public realm—across multiple disciplines and departments."* (p. 22).
- Equitable, Affordable and Inclusive Goal 3, Strategy B to "*Use land use regulations to incentivize the private development of affordable, missing middle, and mixed income housing"* (p. 28).
- Strong and Authentic Neighborhoods, Goal 2, to *"Enhance Denver's neighborhoods through high-quality urban design."* (p. 34)
- Economically Diverse and Vibrant, Goal 3, to: *"Sustain and grow Denver's local neighborhood businesses."* (p. 46)

The 2021 Bundle of Text Amendments presents a comprehensive, coordinated set of text amendments that responds to recommendations from plan review and planning staff across multiple city agencies, and from a wide range of design professionals and zoning permit applicants. The text amendment strives to make the DZC rules and regulations clearer and more consistently applied so that staff can review and process zoning permit applications as efficiently and accurately as possible. Clear and consistent zoning rules contribute to a more friendly environment for small businesses and Denver homeowners wanting to reinvest in their properties. Other 2021 Text Amendment Bundle changes advance clear housing policy goals in the Denver Comprehensive Plan 2040 by removing regulatory barriers to providing feasible affordable housing projects (revisions to required parking) and greater choice of housing options for Denver residents (revisions to accessory dwelling unit standards).

Blueprint Denver (2019)

The proposed text amendment is consistent with numerous policies in Blueprint Denver (2019) in three overarching categories.

Process

The following Blueprint Denver policy provides guidance for the text amendment process:

- Land Use and Built Form: General, Policy 11: *"Implement plan recommendations through city-led legislative rezonings and text amendments."* Strategy C: *"Use a robust and inclusive community input process to inform city-led rezonings and zoning code text amendments."* (p. 79)

The 2021 Bundle of Text Amendments is part of CPD's regulatory work program to ensure the city's zoning code is regularly maintained and updated or revised as needed. This comprehensive code maintenance effort means CPD proposes a wide-ranging "bundle" of text amendments for adoption about every 2-3 years. This ensures the Denver Zoning Code is a "living document" that keeps up with growth, change, and evolving business trends and development practices in the Denver community. While often highly technical in content and detail, CPD still ensures that all text amendment bundles go through a public review process, with multiple opportunities for public and other stakeholder (both internal and external) input and comment.

Content

The following Blueprint Denver policies provide guidance specific to the content of the 2021 Text Amendment Bundle:

- Land Use and Built Form: General, Policy 3: Ensure the Denver Zoning Code continues to respond to the needs of the city, while remaining modern and flexible. (p. 72)
- Land Use and Built Form: Housing, Policy 1: Revise city regulations to respond to the demands of Denver's unique and modern housing needs. (p. 82)
- Land Use and Built Form: Housing, Policy 5: Remove barriers to constructing accessory dwelling units and create context-sensitive form standards. (p. 84)
- Land Use and Built Form: Housing, Policy 6: Increase the development of affordable housing and mixed-income housing, particularly in areas near transit, services and amenities. Related Strategy 6-B: Implement additional parking reductions for projects that provide income-restricted affordable units. (p. 85)

The 2021 Bundle of Text Amendments includes over 160 changes and corrections that address challenges identified by city staff and our development customers in administering and applying the zoning code to projects at all scales and in all parts of the city. These types of comprehensive changes, clarifications, and corrections are necessary to ensure the Denver Zoning Code remains relevant, responsive, and effective in implementing the city's adopted plans. To a lesser degree, the 2021 Bundle of Text Amendments also includes changes to specific standards identified as out of synch or out of date with clear policy directive from the city's adopted plans, such as removing barriers to affordable housing (revise required parking standards) or encouraging the development of accessory dwelling units to diversity housing options (revise siting standards for detached units and size limits on ADUs located inside the primary structure). Finally, the 2021 Bundle of Text Amendments is also responsive to new and emerging businesses, industries and technologies, and to evolving trends in residential and commercial development and design (e.g., revisions to add more contemporary and common sign types).

Blueprint Equity Concepts

Blueprint Denver recommends that text amendments to the zoning code should be guided by the three equity concepts and maps in Chapter 2. The following analyzes the proposed text amendments considering those equity concepts:

- Improving Access to Opportunity: This concept is based on the vision for every Denver resident—regardless of income, race, ethnicity, age or ability—to live in a complete neighborhood of their choice with basic services and amenities.
- Reducing Vulnerability to Displacement: This concept seeks to stabilize residents and businesses who are vulnerable to involuntary displacement due to increasing property values and rents.
- Expanding Housing and Jobs Diversity: This concept seeks to provide a better and more inclusive range of housing and employment options in all neighborhoods.

This 2021 Bundle of Text Amendments, with its primary focus on providing greater clarity and fixing errors in the city's existing zoning rules, does not substantially improve or deny access to opportunity to services or amenities, nor does it substantially reduce or worsen vulnerability to displacement. While more neutral in its impacts on the first two Blueprint Denver equity concepts, the few substantive changes in the 2021 Bundle that remove barriers to affordable housing and ADUs may expand housing diversity and encourage more complete neighborhoods where families and households of all types and incomes can choose to live.

2. Text Amendment Furthers the Public Health, Safety and General Welfare

This text amendment furthers the general public health, safety, and welfare of Denver residents, land owners, and businesses by providing clarity and predictability in the zoning regulations, by removing regulatory barriers to planned and desired private enterprise and redevelopment, and by continuing to implement the city's adopted comprehensive, land use, and transportation plans through regulatory changes.

3. Text Amendment Results in Regulations that are Uniform with Each Zone District

The 2021 Bundle of Text Amendments results in zoning regulations that are uniform in their application to buildings and land uses within each zone district. Moreover, the 2021 Bundle of Text Amendments includes improvements to ensure consistency in zoning regulations, and removes conflicting provisions with other City, state, and federal regulations, all of which will improve the City's ability to administer and enforce the Code uniformly.

Recommendation

Community Planning and Development recommends that the LUTI committee forward the 2021 Bundle of Text Amendments to the full City Council for consideration and final action.

Attachments

1. Summary of 2021 Bundle of Text Amendments
2. Public Comments Received To-Date

Attachment 1: Summary of 2021 Bundle of Text Amendments

2021 DZC Text Amendment "Bundle" – Detailed Summary of Changes

Updated 4/14/21

Changes in the 2021 "Bundle" of text amendments to the Denver Zoning Code encompass corrections, clarifications, and minor substantive changes consistent with adopted land use and zoning policy (i.e., major policy changes are not included in the Bundle amendments).

This document provides a summary of specific changes to each article of the Denver Zoning Code.

Article 1 Highlights/Summary of Changes:

- **GENERAL PROVISIONS**
  - Revisions to "conflicting provisions" standards to address internal inconsistencies in DZC (most restrictive standard applies; more specific applies over the more general), and to state the governing rule when DZC conflicts with an applicable city/state/federal regulation that is more restrictive, the more restrictive regulation will apply.
- **ZONE LOTS – DETERMINATION / VERIFICATION OF ZONE LOT STATUS & BOUNDARIES**
  - Clarification that the Zoning Administrator has authority to finally determine zone lots containing existing structures and/or uses
  - Codifies the criteria (based on current business practice) by which the Zoning Administrator determines zone lot status and boundaries for existing structures/uses established after FC59 was adopted in February 1955.
  - Allows Zoning Administrator to rely on Denver County Assessor parcel reconfiguration history and data to determine that a reconfiguration of affected zone lots was intended along with the parcel reconfiguration, even in the absence of a recorded zone lot amendment.
- **ZONE LOTS – FLAG LOTS**
  - Clarification and corrections to all Flag Lot standards. Clarify that provisions apply not only to creation of new flag lots, but also to development on pre-existing flag lots in Denver.
  - Clarify rules of measurement for flag lot width and depth, and total flag lot area.
- **NUMBER OF USES & STRUCTURES ALLOWED PER ZONE LOT**
  - Correction of table entries to clarify that outside of most SU/TU/RH/MU and RO zones, there is no limit on the number of primary structures and uses on a single zone lot.
  - Delete the term of art "Carriage House" from DZC, and replacement with more generic reference and specific use/building form standards for an existing exception to the number of primary structures/uses allowed in SU/TU zone lot, where a pre-1955 building that is taller than 1-story exists on the same zone lot as another house. Such taller, pre-existing building, as allowed since the zoning code was adopted in 1955, may be used as a second, completely independent dwelling unit, in addition to any other primary single-unit dwelling use and structure on the same zone lot.
- **BUILDING FORMS – GENERAL RULES AND PROVISIONS**
  - Bundle adds this new Division 1.4 to house all the general rules and provisions related to building forms.

- New sections state the rules governing the initial assignment of a building form to a new structure or to an existing structure that does not already have a building form assigned to it governing development.
- New section that describes application of building form standards to two or more structures that are connected to each other only by a "Building Connector". The latter new term of art is defined in Article 13 and regulated here to clarify how the connected structures can remain detached from each other for purposes of applying building form zoning standards. This new "Building Connector" term and rules replace previous code allowances for the limited use of "breezeways" and "tunnels" to attach two or more structures without the Code deeming them one single structure.

Article 2 Highlights/Summary of Changes

- No changes were made to Article 2 as part of this text amendment bundle.

Article 3: Suburban (S-) Neighborhood Context Zone Districts

- See amendments described under section "Articles 3-9: Zone District Design Standards – All Contexts/All Zone Districts" of this summary, below.
- Add missing home occupation "Online Retail Sales" to the Use and Parking Table in Division 3.4.

Article 4: Urban Edge (E-) Neighborhood Context Zone Districts

- See amendments described under section "Articles 3-9: Zone District Design Standards – All Contexts/All Zone Districts" of this summary, below.
- Street Level Active Uses in the E-MX and E-MS Zone Districts: correct applicability to apply the standards to the Town House building form as well as the Shopfront form (missed during Slot Home ordinance changes).

Article 5: Urban (U-) Neighborhood Context Zone Districts

- See amendments described under section "Articles 3-9: Zone District Design Standards – All Contexts/All Zone Districts" of this summary, below.
- Street Level Active Uses in the U-MX and U-MS Zone Districts: correct applicability to apply the standards to the Town House building form as well as the Shopfront form (missed during Slot Home ordinance changes).

Article 6: General Urban (G-) Neighborhood Context Zone Districts

- See amendments described under section "Articles 3-9: Zone District Design Standards – All Contexts/All Zone Districts" of this summary, below.
- Street Level Active Uses in the G-MX and G-MS Zone Districts: correct applicability to apply the standards to the Town House building form as well as the Shopfront form (missed during Slot Home ordinance changes).
- Make consistent changes to setback exceptions in G- zones to align with general changes that deleted reference to 'block sensitive' term.
- Correct error in setback exception for drive or driveways to apply the "any distance" allowance to a drive/driveway in the side interior (not side street) setback.

Article 7: Urban Center (C-) Neighborhood Context Zone Districts

- See amendments described under section "Articles 3-9: Zone District Design Standards – All Contexts/All Zone Districts" of this summary, below.
- Street Level Active Uses in the C-MX and C-MS Zone Districts: correct applicability to apply the standards to the Town House building form as well as the Shopfront form (missed during Slot Home ordinance changes).

Article 8: Downtown (D-) Neighborhood Context Zone Districts

- See amendments described under section "Articles 3-9: Zone District Design Standards – All Contexts/All Zone Districts" of this summary, below.
- Lower Downtown - D-LD Zone District:
    - Clarify applicable rules and standards by referring to DRMC Chapter 30 for new development standards, state that building form standards in DZC do not apply, but that general development standards in Article 10 do apply in the D-LD zone district.

Article 9: Special Contexts and Districts

- See amendments described under section "Articles 3-9: Zone District Design Standards – All Contexts/All Zone Districts" of this summary, below.
- **INDUSTRIAL (I-) CONTEXT ZONE DISTRICTS**
    - Add new Section 9.1.3.4 providing Detached Accessory Building Form standards. Standards are the same as in other contexts.
    - Add new building form for all I zones: "Detached Accessory Structure" building form. Same standards as in other contexts for this building form.
- **CAMPUS (CMP-) CONTEXT ZONE DISTRICTS**
    - Clarify that the "General" building form in the CMP-EI, CMP-EI2, and CMP-ENT zones allow both permitted primary and accessory uses.
- **OVERLAY ZONE DISTRICT**
    - Adult Use Overlay District (UO-1): correct the distance/spacing requirement table to include "sexually oriented commercial enterprises" to the list of adult business uses subject to distance/spacing standards.
- **MASTER PLANNED (M-) CONTEXT ZONE DISTRICTS**
    - Clarify building form standard governing how far an attached garage can project forward of the primary structure to align with revised new term "unenclosed porch".
    - Correct 'Detached Accessory Dwelling Unit' building form standards to add missing "location of structure" standard (requiring it to be sited in rear 35% of the zone lot depth).

Articles 3-9: Zone District Design Standards – All Contexts/All Zone Districts

- **PRIMARY BUILDING FORM STANDARDS**
    - Clarification and correction of summary building form tables by zone district; add cross-reference to Art 1 zone lot standards.
    - Suburban House, Urban House, Duplex, Tandem House, Row House, Garden Court, Town House, and Apartment Building Forms:
        - Clarify application of height and bulk plane standards to front/rear of zone lot

        - Revise terminology and approach to stating primary street setback standards (e.g., remove reference to the term "block-sensitive" in setback standards; instead, refer to ROM in Sec. 13.1.5.9).
        - Revise to simplify and clarify the maximum "Parking and Drive Lot Coverage in Primary Street Setback" standard; for all zone lots, allow max. of a 16-feet wide strip, or 33% of zone lot area, whichever is greater.
        - Clarify "Attached Garage" exception to primary building setbacks to make clear the exception will <u>not</u> apply if the primary structure has taken a permitted height increase for the attached garage portion of the building.
        - For Tandem House form, revise the name of the standard regulating the minimum distance/separation between primary tandem structures to "Horizontal Distance between Closest Above-Grade Portions of each Primary Structure."
        - In Town House building form tables, add new cross-refence to build-to exceptions.
        - In the Town House and Apartment building forms, add "live-work dwelling" use to the permitted primary uses.
    - <u>All Other Primary Building Forms</u>:
        - Update graphics and correct mis-aligned graphic labels with the correct building form standard.
- **DETACHED ACCESSORY BUILDING FORM STANDARDS**
    - Clarify allowance for change of assigned building form.
    - Clarify that fences and walls used for required screening purposes are regulated by the standards in Division 10.5 instead of the building form standards for detached accessory structures.
    - Clarify the permitted accessory uses for each detached accessory building form.
        - For example, clarify that only those uses accessory to a primary Single-Unit Dwelling use are allowed in the Detached Accessory Dwelling Unit building form (not limited to only an ADU use).
    - <u>Detached Accessory Dwelling Unit (DADU) building form standards</u>:
        - Match minimum side interior setback for the DADU form on zone lots 25 or 30 feet or less in width (varies by context) with the minimum side interior setback for primary building forms on the same lot size – On the narrowest lots, this will reduce the minimum setback from 5' to the same 3' minimum allowed for the primary structure. The diagram on page 5 illustrates how this change could allow a DADU to have the same side setback as the larger primary structure on the same lot.
        - Remove requirement for taller DADU forms to be pushed to the southern-most setback line. The diagram on page 6 illustrates how this change would allow a DADU to be placed towards the center of the lot, or to avoid removing trees or other desirable features.
        - Remove the maximum "Habitable Space" standard, which is unnecessary because the remaining Building Footprint standard, Overall Structure Length standard, and the Article 11 limitations on the gross floor area of an ADU use in

Single Unit zones would not permit larger detached accessory dwelling units than are currently allowed.

- Move exception from maximum building coverage from building form table to design exceptions section later in Article (e.g., in Article 4, that would be Section 4.3.7.5).

- Detached Garage and all other Detached Accessory Building form standards:
  - Move exception from maximum building coverage from building form table to design exceptions section later in Article (e.g., in Article 4, that would be Section 4.3.7.5).
  - Revise the "Setback from Primary Street Facing Façade of Primary Structure" standard to make clearer the standard's design intent, which is to ensure the primary structure is sited "predominantly" in the built landscape compared with secondary and incidental accessory buildings. Standard renamed to "Location of Structure" and standard revised from 10 feet, to "Located a minimum of 10' behind 75% of the total width of the Primary Street-facing Façade(s) of one Primary Structure." See also new Section 13.1.5.12 stating alternative standard for siting detached accessory structures when there is more than one primary structure on the zone lot, and when there is no primary structure (or primary structure with a primary-street facing façade) on the zone lot.

Illustration of Proposed Revisions to Detached Accessory Dwelling Unit (DADU) Form Standards

Blueprint Denver (adopted in 2019) directs city staff to work toward removing existing barriers to building and permitting ADUs in Denver. The proposed revisions to the DADU form standards described above begin to address some of these challenges. The diagrams below illustrate DADU forms possible under existing Denver Zoning Code provisions and how outcomes could vary if the DADU form standards are updated as proposed in the 2021 Text Amendment Bundle. The proposed Bundle amendments would not allow for DADU building forms that are larger or taller than currently allowed.

Matching Minimum Side Setbacks with the Primary Structure on a Narrow Lot

As illustrated below on a typical 25 foot wide lot in an SU-A1 zone district (a zone district allowing narrow lots with a primary structure and an ADU), existing code provisions require a DADU to have a greater side setback than the primary structure ('Existing' on left). The Bundle proposes to allow the primary and accessory structure to have the same side setback ('Proposed' in the center). Note that a detached garage is currently allowed with no side setback ('Garage Footprint' on right).

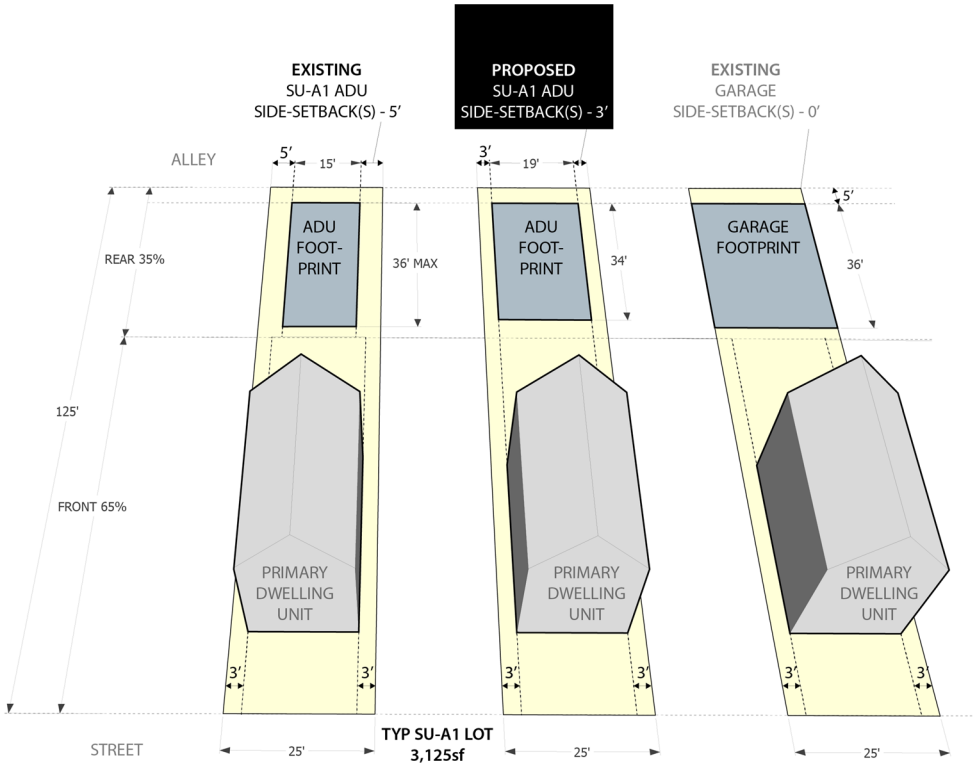
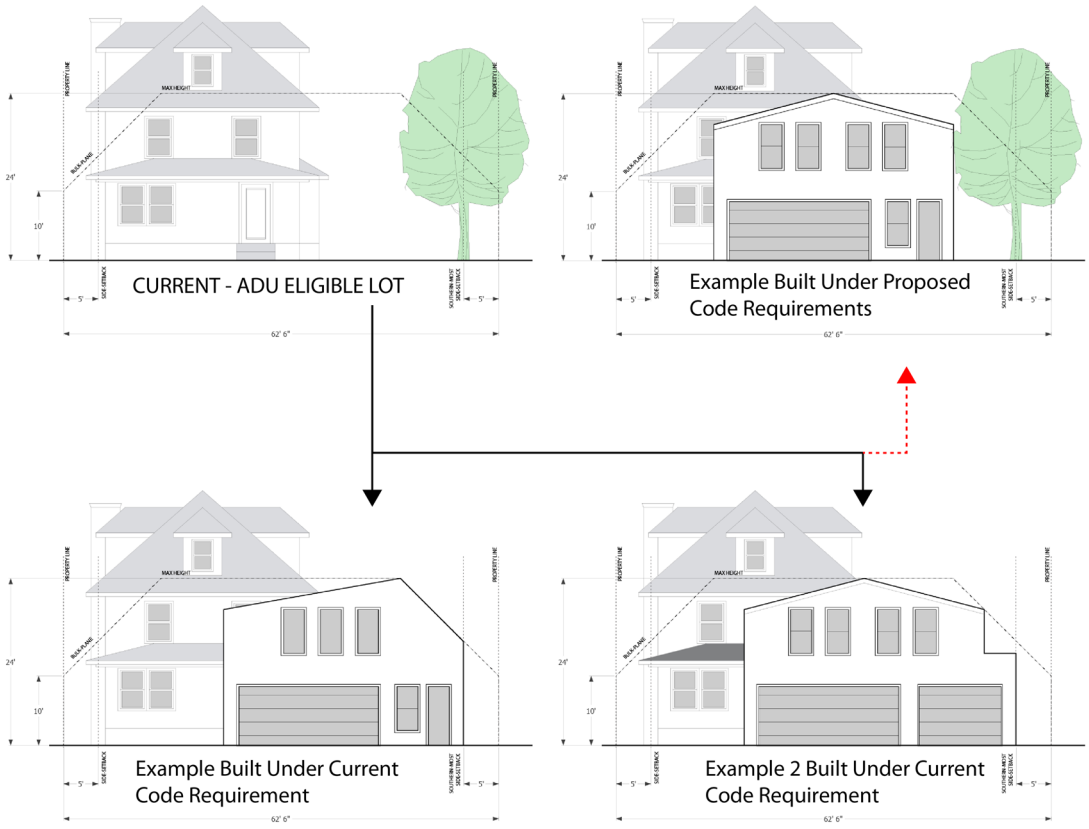


Illustration of Proposed Revisions to Detached Accessory Dwelling Unit (DADU) Form Standards (continued)

Remove Requirement for taller DADU building forms to be pushed to the southernmost setback line

As illustrated below, existing code provisions require a DADU over 17 feet in height to be located at the southernmost side interior setback line. The Bundle proposes to remove this requirement because it is difficult to administer, may promote odd roof shapes (example at lower left) and may require removal of trees or other desirable existing features (examples at lower left and lower right). Removing the southernmost setback requirement would allow for a DADU located on the center of a lot or away from existing desirable site features (example at upper right).



- **SUPPLEMENTAL DESIGN STANDARDS**
    - Surface Parking Between the Building and the Primary/Side Street: Clarify that surface parking is not allowed between the applicable street and the portion of building façade at issue.
    - Rooftop and/or Second Story Decks: To be consistent with prohibition on rooftop and/or Second Story Decks in the SU, TU, RH zones, delete allowance for stairs and landings that connect to a rooftop/2nd-story deck to exceed the maximum height/bulk plane within the rear 35% of the zone lot.
- **DESIGN STANDARD EXCEPTIONS**
    - Height Exceptions:
        - Add a new standard that states the previously unwritten general rule that no portion of a structure shall project beyond the maximum height in feet or stories, or the specified bulk plane for a structure.
        - Clarify the rule of measurement for height exceptions; add new graphic.
        - Clarify the height exception for "eaves" by restating as an exception for "roof overhangs no more than 3 feet measuring perpendicularly from the Exterior Wall." Gutters and downspouts attached or part of a Roof Overhang are allowed as part of the 3-feet encroachment.
    - Setback Exceptions:
        - Improve navigability by reorganize sections with new subsection headings
        - Clarify text stating the general standard that setbacks must remain open and unobstructed, unless an exception applies.
        - Clarify how multiple setback exceptions are applied to the same structure.
        - Add or correct graphics in setback exception table.
        - Modify encroachment for chimneys and fireplace insert vents to limit applicability to only existing chimneys and not newly constructed chimneys and vents (not exceeding 6 feet in width).
        - Clarify that gutter and roof overhang exception also applies to downspouts.
        - Revise porch exception to be clear that only "Unenclosed Porches" (new term added and defined in Art. 13) can take the setback exception.
        - Clarify exception for architectural elements that are intended to control light entering through windows and doors (previously referred to as "shading devices); allow horizontal shading devices (awnings, horizontal sunshades, and other shading devices projecting in a horizontal plane) and other shading devices such as vertical sunshades, vertical screens and combination horizontal/vertical sunshades ("eggcrate" sunshades); vertical screens and combination horizontal/vertical sunshades ("eggcrate" sunshades) must be at least 50% open.
        - Revise exception for barrier-free access structures – remove reference to federal ADA or Denver accessibility standards; delete requirement that such structures be "compatible with the character of the building" (very difficult or impossible to comply with latter standard in real life).

        - Revise to clarify intent of setback exception for retaining structures for window wells and other below-grade areas:
            - If structure not used to meet DBC requirements for required egress: Cannot extend more than 6 inches above grade, shall not exceed 6 feet in width. Still allowed to encroach 4 feet into all required setbacks.
            - If structure used to meet DBC requirements for required egress: can encroach any distance into all setbacks if (1) does not extend more than 6-inches above grade; (2) does not exceed 6-feet in width; (3) does not exceed 4-feet in width; and (4) does not exceed the minimum number of exits or emergency escape and rescue openings required by the Denver Building and Fire Code.
        - Add new setback exception (may encroach any distance into all setbacks) for wall-mounted fixtures, wiring, conduit, piping and vents integral to conventional mechanical, electrical, plumbing, and fire protection systems (1) not otherwise identified as an allowed setback encroachment; and (2) serving permitted uses on the zone lot; and (3) projecting no more than 18-inches from the exterior face of the exterior wall.
            - Includes but is not limited to electrical panelboards, controllers, sensors, meters, drains, hose bibs, hydrants, fire department connections, sprinklers, alarms, dryer vents, bathroom vents, furnace vents, radon exhaust fans, lighting fixtures, and similar minor utility features approved by the Zoning Administrator.
    - Building Coverage Exception:
        - Revise porch exception to align with intent: only unenclosed porches located between the Primary Street zone lot line and the Primary Street-facing façade of the structure can take the exception, and only if the porch provides access to the primary use in the structure.
        - Revise exception for DADU and Detached Garage building forms to clarify how to measure the 15-feet required openness between the detached accessory structure and primary structure.
    - Vehicle Access from Alley – Exceptions:
        - Clarify DOTI's role in reviewing and approving zoning exceptions to allowing access from the street rather than an existing alley.
        - Clarify and correct existing exception that allows existing street access to continue when the project/development scope retains both the primary house structure and an existing garage or carport (i.e., those structures are not demolished as part of project scope).
- **USES AND REQUIRED MINIMUM PARKING**
    - Allow the primary "Community Center" use to be unenclosed. This is necessary to permit privately owned and operated open areas, such as plazas, common greens, and playgrounds, where the unenclosed activity and use is the only primary use on the subject zone lot.
    - Revise the permitted types of home occupations to collapse and consolidate overlapping types. For example, instead of separately listing Beauty Shops/Salons, Custom Dress-making/Tailoring, and Clock/Watch Repair as home businesses allowed in

most zones, a new use called “Limited Retail Services and Repair” was added to the use tables and defined in Article 11 to include all these and other similar home-based retail services.
    - Add new “Limited Commercial Sales, Services” as a use accessory to permitted nonresidential primary uses, with limitations (see Article 11 changes), and allowed in all zone districts.

Article 10: General Design Standards

- **MULTIPLE BUILDINGS ON A SINGLE ZONE LOT**
    - New exception to compliance with required minimum Build-to standards when there are multiple buildings on the zone lot (either all new buildings or new and existing). Provides flexibility for Zoning Administrator to determine that percentage build-to standard may be applied to less than 100% of the relevant zone lot line frontage along a street. Provides criteria for the Zoning Administrator’s decision.
- **PARKING AND LOADING**
    - Based on recent parking studies, update alternative minimum parking ratio for projects containing affordable housing units: “affordable” threshold changed to affordable for persons with 60% (vs. 40%) area median income and below; qualifying projects may use a parking ratio of 0.1 spaces per unit (vs. 0.25).
    - Revise parking reduction for affordable housing projects to extend the previous reduction available in all zones except Main Street zone districts (20% reduction) to affordable housing projects in all zone districts.
    - Clarify that if a public alley is 13 feet or less in width, a new carport (in addition to garage doors) must have its open side (vehicle access side) setback at least 18 feet from the farthest alley ROW boundary line.
- **LANDSCAPING, FENCES, WALLS AND SCREENING**
    - Clarify that fences and walls used for screening purposes are subject to different standards specific for screening instead of general fence/wall standards.
    - Remove the “Informational Notice” requirement from zoning permit review of over-height fences and walls. This change was based on analysis of over-height fence and wall staff approvals/denials from the past 3-5 years, and BOA cases.
    - In general fence provisions, clarify that one-unit and two-unit dwellings in all zone districts (including commercial mixed use and industrial zones) are subject to the residential fence height provisions and general standards.
    - Clarify fence design standards for fences located on top of retaining walls (must be less than or equal to 50% opaque).
    - Clarify applicability of screening requirements; add new general design standards (moved from elsewhere in code and/or based on administrative practice).
- **SITE GRADING STANDARDS**
    - Clarified applicability to all development subject to a minimum primary street setback.
    - Reorganized primary street and side interior setback grading standards to better distinguish between the general rule/standard and exceptions to rule.
    - Clarified the minimum criteria that must be met to qualify for a grading exception.

- **PARKING OF VEHICLES ON PUBLIC RIGHT-OF-WAY ADJACENT TO RESIDENTIAL USES**
    - Deleted this section of zoning code because zoning does not regulate or control use of the public right-of-way (no jurisdiction). This section is duplicative of the prohibitions already found in the City's right-of-way/street standards part of the D.R.M.C., and the Department of Transportation & Infrastructure (DOTI) already enforces those rules.
- **SIGNS**
    - Add new general provision prohibiting obscene content (prohibition already existed in current signage rules for Downtown and Pena Next development, but not in the generally signage rules governing all parts of the city).
    - Add new severability provision to Article 10 (if any specific provision of sign code is declared invalid/unconstitutional, only the specific provision is affected and not the rest of the sign code).
    - Add "wind signs" to list of allowed temporary commercial signs.
    - Add new general allowance for "menu board" signs along drive-through facilities associated with restaurants. Zoning permit required, but menu board signs do not count against total number of signs allowed for a business/use according to more specific zone district rules.
    - Add new allowance for "gas pump signs" as part of a permitted automobile services use (e.g., gas station). Zoning permit required, but gas pump signs do not count against total number of signs allowed for a business/use according to more specific zone district rules.
    - Add new "canopy" sign type and allow "canopy" signs in all zone districts.

Article 11: Use Limitations

Primary Use Limitations

- **Two-Unit and Multi-Unit Dwellings**
    - Clarify that the zone lots containing a legal two-unit dwelling uses in a SU zone, or legal multi-unit dwelling uses in a SU or TU zone, cannot be amended in any way (i.e., no reductions/splits or combination with another zone lot).
- **Community Center**
    - Draft new limits for community centers that are operated entirely outdoors (i.e., a plaza or open space that is privately owned but open to the general public for seating, events, and gatherings).
- **Nonresidential Uses in Existing Business Structures in Residential Zones**
    - Clarify that more than one nonresidential use may be allowed in the same existing business structure, and that primary residential uses may be mixed with the nonresidential use in the existing business structure.

Accessory Use Limitations

- **General Provisions Applicable to All Accessory Uses**
    - Add additional clarification on permitted accessory uses and structures when the primary use is unenclosed.
    - Clarified that certain accessory uses located outdoors are not subject to size or area limitations, provided such accessory uses remain incidental and subordinate to the primary use. For example, drive-through facilities, outdoor eating/serving areas, gardens.
    - Add headings to sub-sections to enhance code navigation and organization.

- Create new table to organize and clarify code's limits on the size (max. gross floor area) of an accessory use when operating inside the primary structure.
    - Revise standard for an "attached" Accessory Dwelling Unit (ADU) use located inside the primary structure: the ADU use may occupy a maximum 75% of the gross floor area of the primary use, or 864 square feet, whichever is greater.
    - Clarify that there is no size limit on a permitted Short-term Rental accessory use, when operated inside the primary structure (e.g., short-term rental of the entire house is allowed).
    - Add new maximum size limit for the size of vehicle parking use inside the same structure as the primary residential use: in residential zones, a maximum 30% of the primary use GFA, or 1,000 sf, whichever is greater; and no maximum in other zone districts.

- **Accessory Dwelling Units (ADU)**
    - Clarify existing limitations/prohibitions on ADU use:
        - An ADU is not allowed if there is more than 1 primary structure on the same zone lot, and each primary structure contains a single-unit dwelling use (e.g., an ADU would not be allowed on a zone lot containing Tandem Houses).
        - Only one ADU use is allowed as accessory to the same primary single-unit dwelling use.
        - Clarify that size limits for ADU uses in a SU zone are limits on the total Gross Floor Area of the ADU use.
    - *See also* related ADU use changes in description of amendments to "General Provisions Applicable to All Accessory Uses" above, and related changes to the Detached Accessory Dwelling Unit building form in the description of amendments to Articles 3-9 above.
- **Short-Term Rentals (STR)**
    - Add new provision to align with current STR licensing ordinance: a short-term rental accessory use must be operated in a "dwelling unit" as defined in the zoning code, except that such unit may contain a "partial kitchen" instead of a "full kitchen" (see Article 13, Division 13.3 for definitions of key terms).
        - This means STRs are not allowed in a shed or garage that is not a legally permitted dwelling unit (i.e., must have a kitchen, bathroom, and sleeping area).
    - Clarify that a STR may be operated in a legally permitted ADU on the property.
    - Clarify that a STR cannot be operated by a person(s) maintaining their "primary residence" in an Accessory Dwelling Unit located on the property.
    - Provide additional clarification of the existing prohibition on a STR licensee hosting more than one rental contract at the same time.
- **Home Occupations - Animal Care Services**
    - Clarify that maximum number of animals allowed in the home business includes animals owned by residents of the home.
    - Add new provision that defines allowed maximum hours of operation: 6:00 am to 8 pm only; no overnight boarding allowed.
- **Home Occupations – Limited Retail Services and Repairs**
    - New home occupation use type that combines several home occupations previously listed as distinct home businesses, such as beauty shops/salons, craft work, clock/watch repair, tailor/dressmaking.
    - Limitations include: all services by appointment only; in-person retail/wholesale sales prohibited; limit to 6 students being tutored at one time as part of home business

- **Accessory Limited Commercial Sales and Services**
    - New accessory use that allows limited commercial sales/services as accessory to primary hospital, lodging, office, transit station, university/college, library, or museum uses. Allowed sales/services include banking/financial services, retail sales/repair/services, food/drink sales, and office uses.
    - Intended to explicitly allow and regulate convenience uses such as gift shops, coffee kiosks or shops, restaurants, convenience stores often found inside office buildings, hospitals, or museums across the city.
    - New limits are intended to keep such sales and services incidental and secondary to the primary use (if not, the sales/service use may be permitted as an additional primary use and provide requisite parking, etc.), includes: sales/service use is located entirely indoors; no outdoor signage; no separate exterior entrance; not visually evident from any street; limited to 1,000 sf of gross floor area and no more than 20% of the primary use's GFA.

Temporary Use Limitations

- Clarify that a temporary use may occupy required off-street parking spaces, unless the specific use limitations specifically prohibit it.
- **Temporary Tiny Home Village**:
    - Clarify that 4-year duration of zoning permit approval begins and is counted from the issue date of the village's certificate of occupancy.

Use Definitions

- Add new accessory use definition of "Limited Commercial Sales and Services".
- Add new home occupation definition of "Limited Retail Service and Repair".

Article 12: Zoning Procedures & Enforcement

- **Lapse of Approval Provisions/Extension of Approval Periods**
    - Reorganize Extension of Approval Period provisions to clarify procedure and review criteria applicable to extension requests.
    - Revise to allow requests for extension to be made at any time prior to expiration date (vs. 30 days in advance).
    - Clarify that an extension, if granted, counts from the expiration date of the original permit/plan approval.
- **Modification or Amendment of Applications, Plans and Permits**
    - Clarify that the zoning and procedural standards in effect at the time the modification/amendment decision is made are the standards that will be applied to review the modification/amendment.
- **Zoning Permit Review**
    - Revise the applicability provisions to make clear when alterations to an existing structure (vs. new construction) require a zoning permit. Make clear that alterations to an existing fence/wall generally do not require a zoning permit.
    - Clarify that, when applicable, landmark preservation approval must be obtained before a zoning permit for new development can be finally approved.

- **Site Development Plan Review**
    - Revise the applicability provisions to clarify when SDP review is required and when it is not required (SDP review is not required for development of one primary structure, on one zone lot, for establishment of a one-unit or two-unit dwelling use).
    - Add new trigger for SDP review for all zone lot amendments resulting in the creation of more than 2 new zone lots.
    - Allow flexibility to "release" projects that otherwise require SDP review if, after completion of the concept plan review step, the Zoning Administer determines that review under a different procedure (e.g., zoning permit review or zone lot amendment review) would be sufficient.
    - Remove obsolete code provisions.
- **Zone Lot Amendments**
    - Add new/more clear applicability provision.
    - Allow a limited number of zone lot amendments to be recognized or completed by the Zoning Administrator, without need for an owner-initiated application, including zone lot changes resulting from a governmental act such as condemnation, acquisition, or dedication for right-of-way.
    - Clarify that a zone lot amendment is required to include land transferred to private ownership after right-of-way vacation.
- **Administrative Adjustments**
    - Revise allowance for administrative adjustments needed to provide a reasonable accommodation under the Federal Fair Housing Act to allow adjustments to a definition as well as a standard in the Code.
- **Zoning Permit with Special Exception Review**
    - Clarify that all public notification requirements must adhere the Board of Adjustment rules and policies.
- **Official Map Amendments (Rezonings)**
    - Revise provisions to clarify when and how a member of City Council may initiate a rezoning, and who may initiate an application to rezone property to a PUD zone district or zone district with waivers or conditions (only owners of the subject property may initiate a PUD or waivers/conditions rezoning).
- **Compliant Structures**
    - Clarify provisions allowing and limiting additions to a Compliant Structure to encroach into a required side setback.
    - Clarify provisions related to Voluntary Demolition by adding Intent and Applicability provisions. Allow Zoning Administrator to determine whether actions at issue are necessary to maintain the compliant structure in good repair, versus voluntary demolition.
- **Nonconforming Uses**
    - Add new provision allowing new signage for nonconforming uses located in an Industrial zone district (similar allowances exist for nonconforming uses located in all other zones).
- **Nonconforming Structures**
    - Clarify provisions related to Voluntary Demolition by adding Intent and Applicability provisions. Allow Zoning Administrator to determine whether actions at issue are

necessary to maintain the compliant structure in good repair, versus voluntary demolition.

- **Nonconforming Signs**
  - Revise definition to reference signs that were legal prior to June 2010 effective date of the Denver Zoning Code, but which became nonconforming after such date.
- **Nonconforming Zone Lots**
  - Revise applicability provisions to make clear how use and development standards apply to "Carriage Lots."
  - Gives the Zoning Administrator final decision authority to determine the zone lot lines of a nonconforming zone lot.
  - Clarify which specific building form standards are allowed to be developed on a nonconforming zone lot located in a residential zone district: the building form must be allowed in the subject zone district; and only the suburban house or urban house building form is allowed if the nonconforming zone lot's area and/or width is less than the minimum required for any other building form allowed in the zone.
  - Revise the standards for development and uses on **Carriage Lots** to codify previous written code interpretations issued by the Zoning Administrator:
    - Add intent statement.
    - Clarify relationship between "zone lot" and "Carriage Lot".
    - Clarify requirement that Carriage Lot owner must have a "primary residence" on the same block.
    - Clarify which specific accessory uses are allowed, which specific accessory building forms are allowed, and what the limitations are on each. Allow unenclosed accessory Garden use on a Carriage Lot.
    - When a new ADU use is established on a Carriage Lot, clarify how the general use limitations for ADUs stated in Article 11 of the Code apply, and to what extent a structure housing the ADU use must comply with the zone district building form standards for that structure.
    - Clarify how many detached structures are allowed on a Carriage Lot.
    - Clarify how minimum zone lot size standards apply to development on a Carriage Lot.
    - Clarify how building coverage standards are applied to development on a Carriage Lot.
    - Authorize CPD to require the permittee to execute an agreement listing the terms and conditions fixed by the Zoning Administrator prior to receipt of a zoning permit; such agreement must be recorded.

Article 13: Rules of Measurement & Definitions

Rules of Measurement – General

- Consolidate multiple standards governing how "street-facing" building elements are measured/determined into one new rule of measurement for determining a "street-facing" building element. Ensures consistency.

Rules of Measurement – Building Height and Other Height Rules

- Clarify use of a base plane to measure building height in front and rear of a zone lot and authorize Zoning Administrator to set rear base plane elevations in cases where a side interior zone lot line does not intersect with a rear zone lot line.
- Clarify how to measure height in stories and rules for recognizing a half story.
- Clarify rules for defining a "mezzanine" for purposes of an exception to height in stories.
- Clarify rules for determining zone lot depth on Flag Lots (tied to height restrictions in rear of zone lot depth).
- Clarify intent of Side Wall height standard and clarify rules for side wall height measurement when structure has low-slope vs. pitched roof.

Rules of Measurement – Siting Form Standards

- Clarify zone lot width rules of measurement as applied to a Flag Lot.
- Clarify rules when zone lot area or width will be determined referencing historic Record documents (e.g., recorded plats) vs. actual, surveyed measurements.
- Clarify applicability of and various zone lot line determination rules, including what criteria the Zoning Administrator must use in deciding.
- Revise intent and rules for measuring all setbacks; clarify to more clearly distinguish the general rule of measurement and exceptions to the rule.
- Clarify how setbacks should be measured when a zone lot line is irregular or jogs (setback is a line or curve offset from and following along the respective zone lot line).
- Clarify rules of measurement for setbacks that are expressed as "min one side/min combined."
- Revise intent and rules for determining the Primary Street setback using Reference Lots (formerly referred to as "Block-Sensitive" primary street setback); clarify to more clearly distinguish the general rule of measurement and exceptions to the rule.
- Add new rules of measurement for determining the locating of detached accessory structures, sited in relationship to the primary street-facing façade of the primary structure.
- Add new rule of measurement for "building footprint" (used in measuring building coverage). Revise building coverage rule of measurement accordingly.
- Revise Floor Area Ratio to allow inclusion of zone lot area required by DOTI to be dedicated for public purpose as part of the subject development project.

Rules of Measurement – Building Design Standards

- Revise rule of measurement for attached garage design to make clearer.
- Add new rule of measurement for standards governing location of detached accessory structures relative to the primary structure's street-facing façade.
- Clarify rule of measurement for "dwelling unit oriented to the street".
- Revise transparency requirements to allow window signs using letters or logos with backing on windows used to meet transparency standard.
- Revise Permanent Public Art rules (as alternative to transparency/windows) to add criteria requiring staff to find that the Public Art will not have any adverse effects on abutting zone lots or public ROW, and will not harm the public health, safety, or welfare.
- Revise and clarify "Entry Feature" rules to promote better pedestrian-oriented design, including clarification that a walkway connecting the public street to the entry feature is required.

Rules of Measurement – Fence and Wall Height

- Clarify how height is measured when a fence/wall is placed on top of a retaining wall.
- Allow minor deviations in height for as-built fences and walls to account for changes in finished grade, but not to exceed 6 inches.

Rules of Measurement – Voluntary Demolition

- Add new rule for determining the "voluntary demolition" of a structure's exterior walls assemblies.

General Rules of Code Interpretation

- Delete rule related to Fractions.
- Clarify rule that states text of code controls over graphics and figures.

Definitions of Words, Terms & Phrases

- Clarify "alley" definition and add new definition of "private alley".
- Add new "awning" definition.
- Revise "balcony, exterior" definition.
- Delete "breezeway" definition (replaced by new "building connector" term).
- Add new "building connector" definition.
- Add new "cantilevered building element" definition.
- Delete "carriage house" definition (substantive parts of definition moved to Article 1)
- Revise "carriage lot" definition.
- Delete "eave" definition (replaced by revised "roof overhang" term).
- Add new "exterior wall" definition.
- Add new "fascia" definition.
- Revise "fence and wall" definition.
- Delete "floor area, habitable" definition.
- Delete "front porch" definition.
- Revise "gross floor area" definition.
- Delete "habitable room space", "habitable space", and "habitable story" definitions.
- Revise "kitchen" definition.
- Delete "landing" definition.
- Revise "manager" definition.
- Add new "obscene" definition (used in prohibition on signs with obscene content).
- Add new "party wall" definition (same definition for "common wall").
- Add new "patently offensive" definition (used in prohibition on signs with obscene content).
- Add new "porch, unenclosed" definition (takes the place of "front porch" term).
- Add new "primary residence" definition (used with limits on ADUs and STRs).
- Add new "prurient interest" definition (used in prohibition on signs with obscene content).
- Revise "residential occupancy or residential use" definition.
- Add new "residential only structure or residential only building" definition.
- Revise "roof, pitched" definition.
- Revise "rooftop and/or second story deck" definition.
- Revise "roof overhang" definition.

- Revise “room” definition.
- Delete “setback space or area” definition.
- Add new “sign, awning” definition.
- Add new “sign, canopy” definition.
- Delete “sign, marquee” definition.
- Revise “sign, roof” definition.
- Revise “sign, wall” definition.
- Delete “story, habitable” definition.
- Revise “structure, completely enclosed” definition.
- Revise “structure, partially enclosed” definition.
- Revise “structure, open” definition.
- Revise “structure, compliant” definition.
- Revise “structure, nonconforming” definition (includes illegally constructed structures, and structures that have a nonconformity and elements that are “compliant”).
- Revise “structure, detached” definition.
- Delete “tunnel/breezeway” definition (replaced by new “building connector” term).
- Revise “voluntary demolition” definition (clarifies which specific parts of an exterior wall assembly must be removed to constitute “removal of a structure’s exterior walls).
- Revise “zone lot, area of” and “zone lot size” definitions.
- Revise “zone lot, flag” definition.
- Revise “zone lot, nonconforming” zone lot to clarify that a zone lot is nonconforming if it fails to meet the minimum zone lot area/size or width standards of <u>all</u> building form standards allowed in the subject zone lot.
- Add new “zone lot, reference” definition.

Attachment 2: Comments Received on Public Review Draft of 2021 Bundle of Text Amendments (as of 4/13/21)

Anderson, Ryann E. - CPD City Planner Associate

From: Abu-Jaber, Amir M. - CPD Associate Architect
Sent: Thursday, March 18, 2021 4:34 PM
To: Anderson, Ryann E. - CPD City Planner Associate
Cc: Firnhaber, Mikaela - CPD Engineer-Architect Supervisor
Subject: FW: Installation of New Wood Burning Fireplaces

Dear Ryann:

Some information for your file below as it relates to the proposed bundle amendments and fireplace exceptions if this issue comes up again in the public comments. Generally it seems like new construction wood burning fireplaces of the type that are currently listed in the setback exceptions are not allowed per the municipal code, which supports removing the allowance except for existing fireplaces or alterations to existing fireplaces. Thank you!

Amir M. Abu-Jaber, RA | Architect
Community Planning and Development | City and County of Denver
p: (720) 865.3093 | amir.abu-jaber@denvergov.org

From: Maez, Jeanette S. - DPHE Env Pub Hlth Investigator II <Jeanette.Maez@denvergov.org>
Sent: Thursday, March 18, 2021 4:18 PM
To: Abu-Jaber, Amir M. - CPD Associate Architect <Amir.Abu-Jaber@denvergov.org>
Subject: RE: Installation of New Wood Burning Fireplaces

Hi Amir,

You are right about wood stoves and pellet stoves. Those are standalone that could not be placed in a fireplace. But, there are inserts that are considered to be wood stoves, which would fit in a fireplace. I'm sorry, I should have mentioned earlier that the state has a database that someone can search for the make and model of a unit to make sure it is on the approved list. Anyone purchasing at wood stove or pellet stove should check the database to make sure it has been approved before purchasing. Here is the link to the state for approved indoor burning devices: https://cdphe.colorado.gov/indoor-air-quality/approved-indoor-burning-devices. Also, this is the direct link for definitions of each type of burning devices, it can be found in the previous link but I figured I would just add it separately. https://www.epa.gov/burnwise/types-wood-burning-appliances#fireplace%20inserts.

If an EPA certified unit is being newly installed, it would be approved. If possible, anyone issuing a permit for an EPA certified unit should let the purchaser know to keep the information of the unit (make, model, serial number) in a safe place, if it is not easily seen on the unit, to show proof in case an inspector shows up because of a complaint to show that they are compliant.

Please let me know if you have any other questions.

Jeanette Maez
Environmental Public Health Investigator II
Environmental Quality
Denver Public Health & Environment
City and County of Denver
101 W. Colfax Ave., Suite 800
Denver, CO 80202
(p) 720-865-3184

(f) 720-865-5534

From: Abu-Jaber, Amir M. - CPD Associate Architect
Sent: Thursday, March 18, 2021 4:04 PM
To: Maez, Jeanette S. - DPHE Env Pub Hlth Investigator II <Jeanette.Maez@denvergov.org>
Subject: RE: Installation of New Wood Burning Fireplaces

Dear Jeanette:

Thanks for the quick response. I have some follow-up questions since it seems like a "wood stove" or "pellet stove" is different than the traditional masonry fireplace/chimney such as those found in a living room of a house (see attached image for an example). Can you confirm that a "wood stove" or "pellet stove" is considered a different from a fireplace? Are you generally aware of anyone getting approval for an EPA certified wood burning fireplace for new construction of the type I am thinking of, or is this always prohibited? Thank you!

Amir M. Abu-Jaber, RA | Architect
Community Planning and Development | City and County of Denver
p: (720) 865.3093 | amir.abu-jaber@denvergov.org

From: Maez, Jeanette S. - DPHE Env Pub Hlth Investigator II <Jeanette.Maez@denvergov.org>
Sent: Thursday, March 18, 2021 3:53 PM
To: Abu-Jaber, Amir M. - CPD Associate Architect <Amir.Abu-Jaber@denvergov.org>
Subject: Installation of New Wood Burning Fireplaces

Hi Amir,

Here is the link to our regulation through Municode: https://library.municode.com/co/denver/codes/code_of_ordinances?nodeId=TITIIREMUCO_CH4AIPOCO. T he section for installation of new wood burning fireplaces is: Chapter 4, Section 4-24 (c)(2) and (c)(3). Section (c)(2) states that the wood stove or pellet stove needs to be EPA certified and Section (c)(3) states that no more than one unit may be installed in a single-unit dwelling.

I hope this helps.

If you have any questions, please let me know.

Thank you.

Jeanette Maez
Environmental Public Health Investigator II
Environmental Quality
Denver Public Health & Environment
City and County of Denver
101 W. Colfax Ave., Suite 800
Denver, CO 80202
(p) 720-865-3184
(f) 720-865-5534

Anderson, Ryann E. - CPD City Planner Associate

From: Bill Lyons <bill@devexproperties.com>
Sent: Friday, March 26, 2021 9:54 AM
To: Anderson, Ryann E. - CPD City Planner Associate
Subject: [EXTERNAL] Public Comment on new Denver Zoning

Good morning Ryann! I hope you are doing really well. You have always been very helpful when we have worked together (albeit always virtually 😊) but I wanted to forward you my thoughts/comments on one of the proposed changes to the zoning code.

Revise "zone lot, nonconforming" zone lot to clarify that a zone lot is nonconforming if it fails to meet the minimum zone lot area/size or width standards of all building form standards allowed in the subject zone lot.

My business is residential development and I often redevelop lots that would no longer be eligible if this zoning change was passed. This would impact citizens in the following ways:

1. It will definitely affect my ability to find and develop properties. It is becoming EXTREMELY difficult right now to find properties to develop because of an extreme shortage.
2. The fewer development opportunities takes away from job creation/opportunities. This is not only for my immediate staff but for the hundreds of subcontractor employees, suppliers, etc.
3. Generally these redevelopments on smaller lots are priced lower than others. Denver is screaming for lower priced housing right now!
4. If this zoning amendment changes then all of the homeowners who own non-confirming lots would see their property value decrease, on average, about $200,000. It obviously depends on the area, but as a developer and real estate broker I believe that is a fair estimate.

I'm not sure why a homeowner who has a 40' wide lot platted in the late 1800s shouldn't be allowed to develop their lot as a duplex, for example, just like the neighboring parcel that may be 50' wide. Clearly all of the other current zoning regulations such as lot coverage, max heights (bulk plane) and setbacks need to be enforced but for all of the reasons above I believe the "substandard" lots should be allowed to be developed with the same 2-unit residential zoning. Please consider the items above and I strongly urge you to reconsider the amendment. Thank you Ryann!

Bill Lyons, *manager*

Office: (720) 489-4480 x20
Cell: (303) 419-3034

Devex Properties LLC
8301 East Prentice Avenue, Suite 203
Greenwood Village, CO 80111

devexproperties.com
DEVEX PROPERTIES

#DevexProperties
Devex Properties

Anderson, Ryann E. - CPD City Planner Associate

From: Bryan Gunn <bcgunn@studiogunn.com>
Sent: Thursday, March 18, 2021 11:20 AM
To: Anderson, Ryann E. - CPD City Planner Associate
Subject: [EXTERNAL] DZC bundle comments, quick initial questions

Importance: High

Hi Ryann – I hope this email finds you well!

I have a few preliminary questions about the proposed revisions to the Zoning Code, which will help me determine whether or not to comment on some particular items:

A. Are multi-story porches being eliminated?
B. Are chimneys in new construction being eliminated? How does one vent a new fireplace (code requirements for flue height above adjacent roof always make them bust the bulk plane/height limit)?
C. Are vents for direct-vent fireplaces in new construction not allowed to encroach on a side setback? Effectively pushing the wall of a new home with such a fireplace 6”-12” from the side setback?

Looking forward to your input here.

Many thanks!
Bryan

Bryan C. Gunn
Studio Gunn Architecture, LLC
501 South Cherry Street, suite 1100
Denver, CO 80246
303-388-5044
bcgunn@studiogunn.com
www.studiogunn.com

Anderson, Ryann E. - CPD City Planner Associate

From: Bryan Gunn <bcgunn@studiogunn.com>
Sent: Thursday, March 18, 2021 12:35 PM
To: Abu-Jaber, Amir M. - CPD Associate Architect
Cc: Anderson, Ryann E. - CPD City Planner Associate
Subject: RE: [EXTERNAL] DZC bundle comments, quick initial questions

Hello Amir,

Thank you for the prompt response.

With regard to chimneys, it seems they have been eliminated from setback (as in side setback) exceptions, effectively eliminating them from enlivening the side facades of new construction. Also, not clear as to whether they will still be allowed to break the bulk plane (unless that is related the height exception)?

Many thanks,
Bryan

Bryan C. Gunn
Studio Gunn Architecture, LLC
501 South Cherry Street, suite 1100
Denver, CO 80246
303-388-5044
bcgunn@studiogunn.com
www.studiogunn.com

From: Abu-Jaber, Amir M. - CPD Associate Architect [mailto:Amir.Abu-Jaber@denvergov.org]
Sent: Thursday, March 18, 2021 12:26 PM
To: bcgunn@studiogunn.com
Cc: Anderson, Ryann E. - CPD City Planner Associate
Subject: RE: [EXTERNAL] DZC bundle comments, quick initial questions

Dear Bryan:

To answer your questions below,

A. I am not aware of a proposal to eliminate multi-story porches at this time. You will notice in the proposed amendments that the separate defined terms in Section 13.3 for “Porch” and for “Porch, Front” are proposed to be collapsed into a single term “Porch, Unenclosed”. This proposed change to the definition alone does not change the zoning code analysis related multiple stories for those elements except to proposed to remove the

restriction that such elements are limited to “one or two-story”. It is important to note such elements are still subject to the building form standards applicable to the building form to which it is attached, including the standards for height in stories, as in the current adopted zoning code language.

B. I think you are referring to allowed height encroachments. I am not aware of a proposal to eliminate chimneys as an allowed height encroachment at this time. Reference in the bundle for example, Section 5.3.7.1.C table line item for “Unoccupied spires, towers, flagpoles, antennas, chimneys, flues, and vents” which is shown unchanged from the current adopted zoning code language.
C. That is not correct – for setback encroachments, the vents for direct-vent fireplaces has been proposed to be moved from, for example, Section 5.3.7.4.C.1 “Architectural Elements” to Section 5.3.7.4.C.3 “Service & Utility Elements”. Reference in the bundle the proposed new line item for example in Section 5.3.7.4.C.3 for “Wall-mounted fixtures, wiring, conduit, piping, and vents integral to conventional mechanical, electrical, plumbing, and fire protection systems” expanding on the allowances for such features within certain limitations.

Please feel free to contact me directly and copy Ryann (copied on this email) if you need any other clarifications prior to making comments. To make any formal comments, please make sure to send those to Ryann. Thank you!

Amir M. Abu-Jaber, RA | Architect
Community Planning and Development | City and County of Denver
p: (720) 865.3093 | amir.abu-jaber@denvergov.org

From: Anderson, Ryann E. - CPD City Planner Associate <Ryann.Anderson@denvergov.org>
Sent: Thursday, March 18, 2021 12:07 PM
To: Abu-Jaber, Amir M. - CPD Associate Architect <Amir.Abu-Jaber@denvergov.org>
Subject: FW: [EXTERNAL] DZC bundle comments, quick initial questions
Importance: High

Hi Amir,
Are you able to answer Bryan’s questions below? Thanks

From: Bryan Gunn <bcgunn@studiogunn.com>
Sent: Thursday, March 18, 2021 11:20 AM
To: Anderson, Ryann E. - CPD City Planner Associate <Ryann.Anderson@denvergov.org>
Subject: [EXTERNAL] DZC bundle comments, quick initial questions
Importance: High

Hi Ryann – I hope this email finds you well!

I have a few preliminary questions about the proposed revisions to the Zoning Code, which will help me determine whether or not to comment on some particular items:

A. Are multi-story porches being eliminated?
B. Are chimneys in new construction being eliminated? How does one vent a new fireplace (code requirements for flue height above adjacent roof always make them bust the bulk plane/height limit)?
C. Are vents for direct-vent fireplaces in new construction not allowed to encroach on a side setback? Effectively pushing the wall of a new home with such a fireplace 6”-12” from the side setback?

Looking forward to your input here.

Many thanks!
Bryan

Bryan C. Gunn

Anderson, Ryann E. - CPD City Planner Associate

From: Bryan Gunn <bcgunn@studiogunn.com>
Sent: Thursday, March 25, 2021 9:40 PM
To: Anderson, Ryann E. - CPD City Planner Associate
Cc: District 1 Comments; Flynn, Kevin J. - CC Member District 2 Denver City Council; Torres, Jamie C. - CC Member District 3 Denver City Council; Black, Kendra A. - CC Member District 4 Denver City Council; City Council District 5; Kashmann, Paul J. - CC Member District 6 Denver City Council; jolan.clark@denvergov.org; Herndon, Christopher J. - CC Member District 8 Denver City Coun; District 9; City Council District 10; stacie.gillmore@denvergov.org; kneichatlarge@denvergov.org; Deborah Ortega - Councilwoman At Large
Subject: [EXTERNAL] Zoning amendment commentary (local architect)

Good evening Ryann –

I hope this email finds you well. Please find below my "public commentary" on the proposed changes to the Denver Zoning Code.

Item #1:
Revise "zone lot, nonconforming" zone lot to clarify that a zone lot is nonconforming if it fails to meet the minimum zone lot area/size or width standards of all building form standards allowed in the subject zone lot. (excerpted from amendment summary)
This revision shall eliminate all possibilities of an existing lot that does not meet the minimum lot width standards and minimum lot size standards in "TU" zone districts of being developed as a 2-unit residential building form (e.g. Duplex or Tandem Homes). While these minimum lot widths and sizes are useful in guiding development/division of large parcels into new zone lots in larger planned developments, when applied to zone lots that were platted prior to the adoption of the original Zoning Code in 1955 this "one-size-fits-all" approach unfairly disadvantages perhaps hundreds or thousands of property owners across Denver. The opposite tack should be taken, whereby for example, a homeowner living on an existing lot that was platted in 1898 which is only 40' wide should be allowed to develop her lot as a 2-unit residential Duplex or Tandem Home – just like her neighbor next door that owns a lot that is 50' wide. This direction being proposed has a huge financial impact on Denver's citizens that is two-fold:

1. The down-zoning of "substandard" lots decreases the potential for more affordable housing in Denver, after all a Tandem Home or Duplex unit will sell for less than a single-family home.
2. **This decision will result in perhaps hundreds or thousands of property owner's seeing their property value drop by as much as $200,000 overnight, simply because the potential for 2-unit development was taken away.** Many homeowners who live on smaller lots do so because the homes on them are smaller, and that home was more affordable and perhaps the only option for their family to purchase in that neighborhood. Why should they be arbitrarily and unfairly punished by the Zoning code, and not treated as their neighbors are?

As long as all the other "guardrails" put in place by the Zoning Code are met (e.g. built coverage, setbacks, bulk plane, height limit) then "substandard" lots should be allowed to be developed with the same 2-unit residential buildings as their neighbors within "TU" districts where such development is permissible, provide they have existed as "substandard" lots since prior to the original Zoning Code. Please reconsider the amendment to allow this.

Item #2:
As suggested prior, and in lieu of item #1 above, consider reducing the minimum lot width/size requirements for Tandem Homes in U-TU-C zone districts to match those of the Urban House form (while maintaining current built coverage requirements) to promote the building of more affordable housing. While a side-by-side duplex may reasonably be required to have a wider lot than a single-family home, why should the Tandem House form - which arranges the buildings one behind the other - be required to have a minimum lot size wider than that of a single-family home, especially given that the each of the Tandem Homes will necessarily be smaller than a single-family home?

Item #3:
Proposed change to Article 13 definition of “Roof, Pitched” is as such: Roof, Pitched: A roof or portion of roof that has a sloping plane ***greater than 3:12*** and less than 20:12. For assemblies with a sloping plane of 20:12 or greater, see definition of "Exterior Wall."
This definition should be subtly changed to read: Roof, Pitched: A roof or portion of roof that has a sloping plane ***equal to or greater than 3:12*** and less than 20:12. For assemblies with a sloping plane of 20:12 or greater, see definition of "Exterior Wall."
The definition as proposed by the amendment means that homes with a roof pitch of 3:12, which is a standard minimum for a shingled roof and entirely consistent with the *historic Denver Square style,* get lumped into the “Roof, Low Slope” definition which has more restrictive requirements. The definition of “Roof, Low Slope” could be changed to read “A roof or portion of roof that has ***a*** sloping plane ***less*** than 3:12” so as to be harmonious with the suggested definition of “Roof, Pitched”.

Item #4:
Side Wall Height (Article 13, 13.1.4.3):
As suggested prior, this restriction is typically used in lieu of a bulk plane in certain districts, in order to minimize the effect of building massing on adjoining properties. As currently proposed, the definition demands that the side wall height be measured at the exterior face of the structure – no matter how far the structure sits away from adjoining properties. This creates a disincentive for developers to be “good neighbors” by locating their buildings further away from property lines, because doing so effectively reduces the volume of the uppermost story. If the side wall height were measured as a 45 degree line projected from the minimum side setback, then there would be no disadvantage to being a good neighbor. Please reconsider the method of measurement of Side Wall Height.

Thank you for your consideration of the humble opinions of an architect who, with his partner and wife Lynda Gunn, has created over 400 homes which beautify Denver’s streetscapes including a Denver Square style residence for former state senator Chris Romer.

Many thanks,
Bryan

Bryan C. Gunn
Studio Gunn Architecture, LLC
501 South Cherry Street, suite 1100
Denver, CO 80246
303-388-5044
bcgunn@studiogunn.com
www.studiogunn.com


REcolorado

Anderson, Ryann E. - CPD City Planner Associate

From: Cameron P Kruger AIA <camkruger@gmail.com>
Sent: Monday, March 15, 2021 11:04 AM
To: Anderson, Ryann E. - CPD City Planner Associate
Subject: [EXTERNAL] Proposed Text Amendments

Hi Ryan,

I have a question about the proposed text amendment regarding roof overhangs. The proposed change in the table under Section 3.3.7.1.C reads "Roof Overhangs extending no more than 3-feet, measured perpendicular from the exterior face of the Exterior Wall to the furthest edge of the projection." I assume that the gutters and attached downspouts could further encroach into that space, since they are attached to the edge of the roof. Is that correct?

Cameron

Kruger Design-Build LLC
Cameron P Kruger AIA
1200 South Williams Street
Denver, Colorado 80210
camkruger@gmail.com
720-937-3127
www.KrugerDesignBuild.com

Anderson, Ryann E. - CPD City Planner Associate

From: Cameron P Kruger AIA <camkruger@gmail.com>
Sent: Wednesday, March 17, 2021 5:50 PM
To: Abu-Jaber, Amir M. - CPD Associate Architect
Cc: Anderson, Ryann E. - CPD City Planner Associate
Subject: Re: [EXTERNAL] Proposed Text Amendments
Attachments: HH Tammen House.jpg; 0283_genMid.1152179_4 (1).jpg

Hi Amir,

Thanks for the email. The two links you sent are extremely helpful.

In a follow up email to Ryann, I had attached two images that I have attached here. These are both of the HH Tammen House, which is in the Humboldt Street Historic District, also known as Humboldt Island. This house, at 1061 Humboldt, is a fantastic example of a traditional design with 4'-0"+ eaves, and that's before you add the gutters to the projection.

I completely understand CPD's concern with open space. No doubt, you have encountered cases where huge eave overhangs have created virtual outdoor rooms, not counted against open space. I can see the need to establish some limits. However, I urge you to consider allowing 4'-0" or greater eaves. The Tammen House would not be the same building with 3'-0" eaves. In fact, I think your proposed rule will emasculate large houses designed in a Craftsman, Stick Style, or Prairie Style. And, I don't believe it's the role of the Zoning Code to be dictating style.

Additionally, I would like to see CPD measure that 3'-0" - or preferably 4'-0" - distance, from the outside face of the exterior wall to the outside face of the roof. In other words, I recommend against including the gutter in the calculation. If you include the gutter, architects and builders will be tempted to leave them off if they want a large overhang, and that's not a good idea in an urban environment like ours. The shedding rainwater will be a mess.

I think you have a tough brief to determine a set of rules that keep unethical designers from cantilevering roofs over outdoor rooms. However, I don't think the solution is to force everyone to build within the standards of mediocrity. One of the features that makes the Tammen House great are its majestic eaves. The city has rightly marked it for preservation. Please don't limit future architects from building something equally fantastic.

Cameron

Kruger Design-Build LLC
Cameron P Kruger AIA
1200 South Williams Street
Denver, Colorado 80210
camkruger@gmail.com
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www.KrugerDesignBuild.com

On Wed, Mar 17, 2021 at 9:24 AM Abu-Jaber, Amir M. - CPD Associate Architect <Amir.Abu-Jaber@denvergov.org> wrote:

> Dear Cameron:

To answer your question below, no the gutters and downspouts are not considered part of the “roof overhang” as defined, and the proposed amendment does not change the zoning code analysis with respect to gutters and downspouts. Both the current adopted zoning code and the proposed amendments do not include gutters and downspouts as allowed height exceptions in the section cited in your email. However, I think there is a good argument for including gutters and downspouts as a new line for allowed height exceptions since they are typically attached to roof overhangs which are allowed to exceed the height requirements as you mention. This may be outside of the scope of the current bundle, however I will pass on this suggestion to the planners for consideration in either this bundle (if possible) or the next.

For background, the amendments include a new definition in Section 13.3 for “Roof Overhang” of “The portion of a Roof extending over the top of an Exterior Wall which projects beyond the exterior face of the Exterior Wall.”. This is similar to the definition of “Eave” in the currently adopted zoning code of “The underpart of a sloping roof overhanging a wall.” However, the amendment clarifies that the roof overhangs projecting more than 3-feet generally do not qualify for exceptions to setbacks, height, bulk plane, and building coverage in conformance with current practice related to roof overhangs. There is some more information about current practice in the current zoning code policies linked below:

Zoning Administrator Clarification for Roof Overhang and Building Coverage issued May 14, 2020

Zoning Administrator Clarification for What Types of Roof Eaves Qualify for Exceptions to Zoning Bulk and Height Standards issued February 2, 2018

Thank you!

Amir M. Abu-Jaber, RA | Architect

Community Planning and Development | City and County of Denver

p: (720) 865.3093 | amir.abu-jaber@denvergov.org

From: Anderson, Ryann E. - CPD City Planner Associate <Ryann.Anderson@denvergov.org>
Sent: Tuesday, March 16, 2021 1:20 PM
To: Abu-Jaber, Amir M. - CPD Associate Architect <Amir.Abu-Jaber@denvergov.org>
Subject: FW: [EXTERNAL] Proposed Text Amendments

Hi Amir,

I think you drafted this section. Are you able to address Cameron's question? Please copy me on the response as I'm tracking comments. Thanks!

From: Cameron P Kruger AIA <camkruger@gmail.com>
Sent: Monday, March 15, 2021 11:04 AM
To: Anderson, Ryann E. - CPD City Planner Associate <Ryann.Anderson@denvergov.org>
Subject: [EXTERNAL] Proposed Text Amendments

Hi Ryan,

I have a question about the proposed text amendment regarding roof overhangs. The proposed change in the table under Section 3.3.7.1.C reads "Roof Overhangs extending no more than 3-feet, measured perpendicular from the exterior face of the Exterior Wall to the furthest edge of the projection." I assume that the gutters and attached downspouts could further encroach into that space, since they are attached to the edge of the roof. Is that correct?

Cameron

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720-937-3127

www.KrugerDesignBuild.com

Anderson, Ryann E. - CPD City Planner Associate

From: cp wong <cpwonger@yahoo.com>
Sent: Wednesday, March 17, 2021 9:31 PM
To: Anderson, Ryann E. - CPD City Planner Associate
Subject: [EXTERNAL] ADU's?

Follow Up Flag: Follow up
Flag Status: Flagged

Ryann -
I was reading the text amendment bundle and it's a huge document. having just gone through the east area plan process where ADUs are encouraged I was wondering if these code changes seek to codify that ADU's will now be allowed in all zone districts? or is there any loosening of restrictions in some section you can point me to? thanks. Chris

Anderson, Ryann E. - CPD City Planner Associate

From: cp wong <cpwonger@yahoo.com>
Sent: Monday, March 22, 2021 9:15 PM
To: Barge, Abe M. - CPD City Planner Principal
Cc: Anderson, Ryann E. - CPD City Planner Associate; Palmeri, Joshua P. - CPD CE0429 City Planner Senior
Subject: Re: [EXTERNAL] ADU's?

Thanks Abe. So in removing the 'southernmost' language, an ADU could be placed anywhere on the zone lot?

On Sunday, March 21, 2021, 12:37:50 PM MDT, Barge, Abe M. - CPD City Planner Principal <abe.barge@denvergov.org> wrote:

Hi Chris,

Ryann Anderson forwarded your message below to me because I (and my colleague Josh, CC'd here) work on longer-term zoning code updates, including implementation of Blueprint Denver recommendations regarding expansion of areas in which ADUs are allowed. The 2021 Bundle of Text Amendments does propose to address some Blueprint Denver objectives related to the removal of existing barriers to permitting ADUs in Denver, including proposing to:

- Remove a regulation that ADUs only be built along the southernmost boundary of a zone lot. This regulation is proposed for removal because it unnecessarily increases the cost of construction for ADUs and presents challenges for neighbors.
    - The intent of placing ADUs along the southern boundary of lots was to prevent the structure from casting shade on a neighboring property. However, this can be difficult to measure on a non-standard lot and can result in ADUs being located closer to neighbors than they otherwise would be. Instead, there are better zoning regulations already in place on how large and tall a structure can be (i.e., bulk plane standards), which also protect sunlight access.
    - Continuing to require ADUs to be placed along the southern boundary of a property can increase construction costs. Structures located within 5 feet or 3 feet of a property line must meet more stringent building and fire codes, which requires more expensive construction materials.
- Allow the minimum side setback for a detached ADU to match the minimum side setback for the primary structure.
    - On narrower lots, the zoning code currently requires a greater side setback for detached ADUs than for the primary structure.
    - Requiring a greater side setback for a smaller, subordinate accessory structure is likely unnecessary and increases barriers to the construction of detached accessory dwelling units on narrower lots.

The proposed amendments would also remove duplicative standards, such as separate standards governing the maximum floor area of an ADU, and would remove standards that are more restrictive when applied to ADUs than when applied to larger primary structures, such as requiring greater setbacks for ADUs on narrow lots than for the larger primary structure.

The proposed Bundle would not expand the areas in which ADUs are allowed. However, we are committed to a future project that will propose amendments to expand the geographic areas in which ADUs may be constructed. Josh will likely be leading these efforts, which could being in early summer of this year.

I hope you are having a good weekend!

-Abe

From: cp wong <cpwonger@yahoo.com>
Sent: Wednesday, March 17, 2021 9:31 PM
To: Anderson, Ryann E. - CPD City Planner Associate <Ryann.Anderson@denvergov.org>
Subject: [EXTERNAL] ADU's?

Ryann -

I was reading the text amendment bundle and it's a huge document. having just gone through the east area plan process where ADUs are encouraged I was wondering if these code changes seek to codify that ADU's will now be allowed in all zone districts? or is there any loosening of restrictions in some section you can point me to? thanks. Chris

Anderson, Ryann E. - CPD City Planner Associate

From: James Carpentier <James.Carpentier@signs.org>
Sent: Tuesday, March 23, 2021 12:36 PM
To: Anderson, Ryann E. - CPD City Planner Associate
Cc: David Hickey; pking@cosigns.org
Subject: [EXTERNAL] Sign Code question

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Ryann,

I wanted to find out if the bundled zoning code draft has combined all of the sign code regulations or are they still in a couple of other documents.

Thanks,

James B Carpentier AICP
Director State & Local Government Affairs

1001 N. Fairfax Street, Suite 301
Alexandria, VA 22314
(480) 773-3756 Cell
www.signs.org | www.signexpo.org
james.carpentier@signs.org

Anderson, Ryann E. - CPD City Planner Associate

From: James Carpentier <James.Carpentier@signs.org>
Sent: Friday, April 9, 2021 2:18 PM
To: Anderson, Ryann E. - CPD City Planner Associate; Shaver, Brandon A. - CPD Senior City Planner
Cc: pking@cosigns.org; David Hickey
Subject: [EXTERNAL] Colorado Sign Association/International Sign Association Comments
Attachments: Summary of Comments on Denver Zoning Code 2021 Bundle of Text Amendments.pdf; Model Sign Code (2019 Edition).pdf; Best-Practices-in-Regulating-Temporary-Signs r.pdf; SRF Resource _State of Sign Codes After Reed 3-16.pdf

Hi Ryann and Brandon,

I am contacting you on behalf of the Colorado Sign Association and the International Sign Association. Both associations work with jurisdictions to assist in the creation of beneficial and enforceable sign regulations. I have attached some recommendations and comments along with the cited resources for your consideration. Let me know if you have any questions.

Thanks,

James B Carpentier AICP
Director State & Local Government Affairs

1001 N. Fairfax Street, Suite 301
Alexandria, VA 22314
(480) 773-3756 Cell
www.signs.org | www.signexpo.org
james.carpentier@signs.org

SECTION 10.10.3 SIGNS PERMITTED IN ALL DISTRICTS

10.10.3.1 Signs Not Subject to a Permit

The following signs may be erected in all districts without a permit:

A. Signs required or specifically authorized for a public purpose by any law, statute or ordinance; may be of any type, number, area, height above grade, location, illumination or animation, authorized by the law, statute or ordinance under which the signs are required or authorized.

B. Signs limited in content to name of occupant and address of premises; signs of danger or a cautionary nature which are limited to: wall and ground signs; not more than 2 per street front for each use by right, or 2 for each dwelling unit; not more than 4 square feet per sign in area; not more than 10 feet in height above grade; may be illuminated only from a concealed light source; flashing signs are prohibited; and animated signs are prohibited.

C. Signs in the nature of cornerstones, commemorative tables and historical signs which are limited to: ground signs; not more than 2 per zone lot; not more than 6 square feet per sign in area; not more than 6 feet in height above grade; may be illuminated only from a concealed light source; flashing signs are prohibited; and animated signs are prohibited.

D. Signs which identify by name or number individual buildings within institutional or residential building group complexes and which are limited to: wall and ground signs; not more than 4 signs per building; not more than 20 square feet per sign in area; not more than 12 feet in height above grade; may be illuminated from a light source and if directly illuminated does not exceed 25 watts per bulb; flashing signs are prohibited; and animated signs are prohibited.

E. Flags on nonresidential zone lots. The flags listed herein are allowed on nonresidential zone lots without limitation as to type; number; area; height; or location. The listed flags may be externally illuminated; however, the illumination shall not flash, blink or fluctuate. For purposes of this Division 10.10, "nonresidential zone lot" means a zone lot used entirely or in part for a use other than a primary residential use listed within the "Residential Primary Use Classification" in the Use & Parking Tables found in Articles 3-9 of this Code.

1. Flags of nations, or an organization of nations;
2. Flags of states and cities;
3. Flags of fraternal, religious and civic organizations; and
4. Any other flag containing no commercial advertising copy or trademark.

F. Temporary commercial signs which identify, advertise or promote a temporary activity and/or sale of merchandise or service of a business use located on the same zone lot.

1. Shall be limited to:
   a. Window signs;
   b. Banners ~~with commercial advertising copy~~;
   c. Wall signs or posters which have been treated so as to be shielded from the elements (water, wind, sun, etc.);
   d. Streamers which are attached to vehicles located in the front row only of retail car lots when said vehicular sales lot is located on an arterial street and is not across from a residential zone district; and
   e. Window graphics consisting of paint or decals applied directly to glazing; and
   f. Wind signs.
2. Shall meet the following conditions:
   a. Shall be maintained in a clean, orderly and sightly condition;

Summary of Comments on Denver Zoning Code 2021 Bundle of Text Amendments

Page: 10.10-2

Author: jcarpentier Subject: Sticky Note Date: 3/23/2021 3:23:28 PM
The name of occupant is content regulation and we recommend that be avoided due to Reed vs. Town of Gilbert. See attached resource.

Author: jcarpentier Subject: Sticky Note Date: 3/23/2021 3:24:49 PM
We recommend that flags be regulated in a manner that is content neutral and just address time place and manner restrictions.

Author: jcarpentier Subject: Sticky Note Date: 3/23/2021 3:29:17 PM
We recommend that window signs have discrete regulations such as not to exceed 50% of the window area. The other regulations in this section are geared towards banners and similar type signs.

Author: jcarpentier Subject: Sticky Note Date: 3/23/2021 3:26:30 PM
We recommend that banners be regulated in a content neutral manner.

Author: jcarpentier Subject: Cross-Out Date: 3/23/2021 3:25:44 PM

b. Shall be placed in/on ground level windows/walls only (except for streamers);
c. Shall be limited in placement to 45 days for sign or copy;
d. May be illuminated only from a concealed light source;
e. Shall not be a flashing sign;
f. Shall not be an animated sign;
g. Shall be placed only on the business structure (except for streamers);
h. Shall not exceed 50 percent of the maximum use by right permitted sign area for the permitted use on the zone lot, plus either 65 percent of the unused permitted permanent sign area or 60 percent of the ground level window area, whichever is greater, neither of which is to exceed 75 square feet.

3. The Zoning Administrator may allow additional temporary signage area up to 100 square feet upon application in specific cases providing that the procedure outlined in Section 12.4.2, Zoning Permit Review With Informational Notice, is satisfied.

4. All portable signs regardless of location are specifically not allowed.

5. Parked motor vehicles and/or trailers are not allowed to be intentionally located so as to serve as an advertising device for a use by right, product or service.

G. Signs that identify or advertise the sale, lease or rental of a particular structure or land area and limited to: wall, window and ground signs; 1 sign per zone lot; not more than 5 square feet in area per face; not more than 6 feet above grade; no illumination; flashing signs are prohibited; and animated signs are prohibited.

H. Signs commonly associated with and limited to information and directions relating to the permitted use on the zone lot on which the sign is located, provided that each such sign is limited to wall, window and ground signs; not more than 100 square inches per sign in area, except that notwithstanding other limitations of Division 10.10, golf course tee box signs may contain up to 8 square feet of sign area of which 1 square foot may be devoted to advertising; not more than 8 feet in height above grade; may be illuminated only from a concealed light source; flashing signs are prohibited; animated signs are prohibited except that gauges and dials may be animated to the extent necessary to display correct measurement.

I. Noncommercial signs on residential zone lots shall meet the following conditions. For purposes of Division 10.10, "residential zone lot" means a zone lot that is used in its entirety for a use listed within the "Residential Primary Use Classification" in the Use & Parking Tables found in Articles 3-9 of this Code.

1. Noncommercial signs may be erected on any residential zone lot.

2. Noncommercial signs shall be limited to the following types:
a. Wall signs;
b. Window signs; and
c. Ground signs not more than 6 feet above grade, unless mounted to a single pole no taller than 25 feet.

3. The size of each noncommercial sign erected on any zone lot shall not exceed the area of 15 square feet.

4. Noncommercial signs shall meet the following conditions:
a. Shall be maintained in a clean, orderly, and sightly condition;
b. Shall not be illuminated;
c. Flashing signs are prohibited; and

Page: 10.10-3

Author: jcarpentier Subject: Sticky Note Date: 3/23/2021 3:42:23 PM
This language is too vague in nature and may lead to undue discretion. We recommend more specific standards. See the attached reference Best Practices in Regulating Temporary Signs.

Author: jcarpentier Subject: Sticky Note Date: 3/23/2021 3:45:06 PM
The sign designed by sale or lease is content regulation and we recommend that be avoided due to Reed vs. Town of Gilbert. See attached resource. We recommend that these signs be regulated by type with reasonable time place and manner restrictions.

Author: jcarpentier Subject: Sticky Note Date: 3/23/2021 4:18:15 PM
It appears that this section may conflict with section 10.10.2.3 Substitution of Messages, since they should be allowed where signs area allowed in a residential zone with the same restrictions.

C. Signs displaying only the name and address of a subdivision or of a planned building group of at least 8 buildings each containing a use or uses by right and limited to: wall and ground signs; 1 per street front; not more than 20 square feet per face in area; not more than 6 feet in height above grade; may be illuminated only from a concealed light source; flashing signs are prohibited; and animated signs are prohibited.

D. Signs consisting of illuminated buildings or parts of buildings which do not display letters, numbers, symbols or designs and limited to: illumination from a concealed light source which may not flash or blink, but may fluctuate by a change of color or intensity of light, provided that each change of color or dark to light to dark cycle shall have a duration of 1.5 minutes or longer; animated signs are prohibited.

E. Directional Signs, Menu Board Signs Associated with Drive-Through Facility, and Gas Pump Signs

1. **Directional Signs Allowed**
   Signs giving parking or traffic directions and other directional information commonly associated with and related to the permitted use on the zone lot on which the sign is located; provided that such signs are limited to: wall and ground signs; 1 sign for every 1,000 square feet of land area up to 10,000 square feet, thereafter only 1 additional sign for every 5,000 square feet; not more than 4 square feet per face in area, not more than 6 feet in height above grade; may be illuminated from a concealed light source; flashing signs are prohibited; and animated signs are prohibited.

2. **Menu Board Signs Associated with Drive-Through Facility Allowed**
   Signs giving information about food or drink choices to persons using an accessory Drive-Through Facility on the same zone lot as a primary Eating and/or Drinking Establishment use ("menu board signs") are limited to: (a) No more than 3 menu board signs are allowed in or abutting a single Drive-Through Facility; (b) Not more than 20 square feet per sign face in area; (c) not more than 6 feet in height over grade; (d) may be illuminated from a concealed light source; (e) flashing signs are prohibited; and (f) animated signs are prohibited.

3. **Gas Pump Signs Allowed**
   Signs directly attached to or integrated into a gasoline pump structure that is as part of an Automobile Services primary use located on the same zone lot ("gas pump sign") are limited to: (a) No more than 1 sign per single gasoline pump structure, regardless of the number of nozzles and gas lines attached to such structure; (b) Not more than 4 square feet per face in area.

F. Signs on canopies or awnings located over public rights-of-way or forward of any Primary Street-facing facade~~into any required front setback space~~; limited in content to name of building, business and/or address of premises; no sign shall exceed 10 square feet per face in area. All such canopies and awnings over public rights-of-way are subject to approval by the ~~d~~Department of ~~public works~~Transportation and Infrastructure ("DOTI").

G. Off-premise signs identifying new residential developments within the city as regulated by the following provisions. Notwithstanding the provisions of Section 10.10.21 (outdoor general advertising devices), off-premise signs identifying new residential developments in the city shall:

1. Be limited in area to 32 square feet per face and shall not be more than 6 feet in height above grade,

2. Be limited in content to the name of the project, the name of the developer or construction company and/or directional information or symbols,

3. Be limited to wall signs or ground signs which set back a minimum of 5 feet from every street right-of-way line,

Page: 10.10-5

Author: jcarpentier Subject: Sticky Note Date: 3/23/2021 4:03:08 PM
We recommend that gas pump signs not be permitted since they are not designed to be legible or viewed from the ROW.

Author: jcarpentier Subject: Sticky Note Date: 3/23/2021 4:06:13 PM
We recommend that the content not be regulated in this manner (limited in content...) since it may conflict with Reed vs. Town of Gilbert.

Author: jcarpentier Subject: Sticky Note Date: 3/23/2021 4:19:31 PM
This type of regulation is content (residential development) and may conflict with Reed v. Town of Gilbert.

4. Be limited to 2 signs on each side of a public street for each 600-foot length of right-of-way with a minimum spacing of 100 feet between signs,
5. Be limited to no more than 6 signs per project,
6. Utilize a concealed light source if illuminated;
7. Not be a flashing sign;
8. Not be an animated sign;
9. Be valid for a period not to exceed 1 year during the construction, development, original rent-up or sales period; and
10. Not be renewed for more than 3 successive periods for the same project.

H. Signs which identify a structure containing any use by right other than a single unit dwelling. Such signs shall be:

1. Limited in content to the identification by letter, numeral, symbol or design of the use by right and/or its address;
2. Attached to a fence or wall located on the front line of the zone lot or within the front setback ~~area~~;
3. Limited in number to 1 sign per street front for each structure;
4. Regulated by the sign provisions for the zone district in which the zone lot is located except that the requirements of this Section will take priority in case of a conflict;
5. Counted as a part of the total sign area permitted on the zone lot;
6. Limited in height to 6 feet above grade; and
7. Attached to a fence or wall so that the display surface is parallel to and extends frontward no further than 6 inches beyond the front plane of the wall or fence.
8. If illuminated at all, illuminated only from a concealed light source.
9. Shall not be a flashing sign; and
10. Shall not be an animated sign.

I. Inflatables, balloons and/or streamers/pennants shall be allowed as a promotion of a special event only. Advertising of a product or service in this manner shall not be allowed except as a part of the promotion of the special event. The Zoning Administrator shall issue a summons and complaint for inflatables, balloons, streamers / or pennants emplaced without a permit and shall not issue a permit for said location for the next event application. Inflatables and balloons may be shaped/formed as a product and may have commercial copy; streamers/pennants shall not have any commercial logos or copy; and shall meet the following conditions:

1. Shall be limited in placement to 5 days;
2. Shall be placed on the zone lot as determined by the Zoning Administrator;
3. Shall be limited to no more than 1 permit per quarter per zone lot; and
4. Streamers and/or pennants shall not exceed in measurement 2 times the zone lot front line measured in linear feet (the property address front line shall be used for this calculation); and shall be counted as part of the maximum allowed temporary sign area at a ratio of 1 linear foot to 1 square foot of temporary signage allowed.

Page: 10.10-6

Author: jcarpentier Subject: Sticky Note Date: 3/23/2021 4:22:37 PM
This type of regulation is content (limited in content to the identification... of the use...) and may conflict with Reed v. Town of Gilbert.

J. Signs which are works of art as defined by Section 20-86 of the Denver Revised Municipal Code. Such signs shall be primarily artistic in nature, but up to 5 percent of the sign may be the name or logo of a sponsoring organization. The percentage of the sign devoted to the sponsoring organization may be increased up to 10 percent of the sign if the Zoning Administrator, with input from the director of the mayor's office of art, culture and film, determines the portion of the sign devoted to the sponsor does not detract from the artistic quality of the sign.

K. Off-premises identification sign. A sign identifying a public facility which is located on a different zone lot than that containing the sign. The number, location, height, size and illumination of such signs shall be approved by the director of planning and the Zoning Administrator or their designated representatives; however, in no case shall such sign exceed 10 feet in height or 40 square feet in area. A decision to approve such signs must be based on a favorable evaluation of their compatibility with nearby structures and signs. The installation of such identification signs shall not reduce the size or number of other signs permitted on a specific site by other provisions of Division 10.10.

10.10.3.3 Signs Subject to a Comprehensive Sign Plan

Notwithstanding more restrictive provisions of Division 10.10, signs, large facilities may have signs according to an approved comprehensive sign plan for the facility.

A. Intent

The intent of these provisions is to allow flexibility in the size, type and location of signs identifying the use and location of large facilities. Flexibility is generally offered because these facilities often have a need for additional or different types of signage due to the complexity of the issues and varied physical layout of the facility. This flexibility is offered in exchange for a coordinated program of signage ensuring a higher standard of design quality for such signs. This process should mitigate any possible adverse impacts of large facility signs on surrounding uses. The flexibility in size, type and location of signs identifying the use and location of certain large facilities is not a matter of right, and a proposed comprehensive sign plan for a large facility must be reviewed pursuant to the provisions of this Section 10.10.3.3.

B. Description of Qualifying Uses

These provisions shall apply to large facilities located on a zone lot in a Mixed Use Commercial Zone District or in a nonresidential zone district. Such facilities must have a minimum ground floor area of 50,000 square feet, or a minimum zone lot area of 100,000 square feet. They may consist of 1 or more buildings but the site must consist of contiguous zone lots. Street or alleys do not destroy the contiguity of adjacent zone lots for the purpose of this Section 10.10.3.3.

C. Process to Establish Comprehensive Sign Plan

1. Plan Submittal

The following items and evidence shall be submitted to the Zoning Administrator to explain a proposed comprehensive sign plan for a facility:

a. A site plan or improvement survey of the facility drawn to scale showing existing and proposed buildings, Off-Street Parking Areas, landscaped areas, drainage swales, detention ponds, adjoining streets and alleys.

b. Scaled drawings showing the elevations of existing and proposed buildings and structures that may support proposed signage.

c. Design descriptions of all signs including allowable sign shapes, size of typography, lighting, exposed structures, colors, and materials, and any information on the frequency of changeable graphics.

d. All information on sign location shall also be provided: wall elevations drawn to scale showing locations of wall, window, projecting and roof signs, and site plans drawn to scale showing allowable locations and heights of ground signs;

e. Calculations of sign area and number.

Page: 10.10-7

Author: jcarpentier Subject: Sticky Note Date: 3/23/2021 4:58:14 PM
The allowable sponsoring organization determination allows for undue discretion since a determination that the sponsor does not detract from the artistic quality is totally subjective.

H. Animation
Flashing signs and animated signs shall not be allowed except when the sign is a projecting sign which is readable from the 16th Street Mall, in which case the provisions of 10.10.17.4.C shall apply.

I. Rules and Regulations
The planning board has the authority to adopt rules and regulations concerning its review of comprehensive sign plans.

J. Fee
The applicant shall pay the fee for review of a comprehensive sign plan for large facilities at the same time the application is submitted.

SECTION 10.10.4 SIGN AREA / VOLUME MEASUREMENT

10.10.4.1 General

The area of a sign shall be measured in conformance with the regulations according to this Section, provided that the structure or bracing of a sign shall be omitted from measurement, unless such structure or bracing is made part of the message or face of the sign. Where a sign has 2 or more display faces, the area of all faces shall be included in determining the area of the sign unless the display faces join back to back, are parallel to each other and not more than 48 inches apart, or form a V type angle of less than 90 degrees. See special rules for measuring the volume/area of projecting signs below.

10.10.4.2 Sign With Backing

The area of all signs with backing or a background material or otherwise, that is part of the overall sign display shall be measured by determining the sum of the areas of each square, rectangle, triangle, portion of a circle or any combination thereof which creates the smallest single continuous perimeter enclosing the extreme limits of the display surface or face of the sign including all frames, backing, face plates, non structural trim or other component parts not otherwise used for support. See special rules for measuring the volume/area of projecting signs below.

10.10.4.3 Signs Without Backing

The area of all signs without backing or a background, material or otherwise, that is part of the overall sign display shall be measured by determining the sum of the area of each square, rectangle, triangle, portion of a circle or any combination thereof which creates the smallest single continuous perimeter enclosing the extreme limits of each word, written representation (including any series of letters), emblems or figures of similar character including all frames, face plates, non structural trim or other component parts not otherwise used for support. See special rules for measuring the volume/area of projecting signs below.

10.10.4.4 Projecting Signs

A. Sign Volume - Relationship to Maximum Sign Area Allowed
The sign area allowed for projecting signs shall be deducted from the permitted maximum sign area allowed in the applicable zone district. For these purposes, a cubic foot of projecting sign or graphic volume is considered to be equivalent to a square foot of sign area.

B. Calculation of Projecting Sign Volume - Minor Sign Elements

1. The volume of a projecting sign shall be calculated as the volume within a rectilinear form constructed to enclose the primary form of the sign.

2. Minor sign elements may project beyond the primary boundaries of this volume at the discretion of the Zoning Administrator. Minor elements will be defined as those parts of the sign that add to the design quality without adding significantly to the perceived volume and mass of the sign.

Page: 10.10-10

Author: jcarpentier Subject: Sticky Note Date: 3/25/2021 12:51:23 PM
Section B.2. needs to be more specific so as to not allow for undue discretion with the following type of language:

Minor appendages, such as ascenders and descenders to a particular regular shape shall not be included in the total area of a sign.

B. The sign standards contained within this Section apply to the following zone districts:

SUBURBAN NEIGHBORHOOD CONTEXT	URBAN EDGE NEIGHBORHOOD CONTEXT	URBAN NEIGHBORHOOD CONTEXT
S-SU-A	E-SU-A	U-SU-A
S-SU-D	E-SU-B	U-SU-A1
S-SU-Fx	E-SU-B1	U-SU-A2
S-SU-F	E-SU-D	U-SU-B
S-SU-F1	E-SU-Dx	U-SU-B1
S-SU-Ix	E-SU-D1	U-SU-B2
S-SU-I	E-SU-D1x	U-SU-C
	E-SU-G	U-SU-C1
	E-SU-G1	U-SU-C2
		U-SU-E
		U-SU-E1
		U-SU-H
		U-SU-H1

10.10.5.2 Permanent Signs

Permanent signs shall comply with the following standards:

Contents	Identification by letter, numeral, symbol or design of the use by right by name, use, hours of operations, services offered and events.
Sign Types	Wall, window, canopy and ground.
Maximum Number	2 signs for each front line of the zone lot on which the use by right is located.
Maximum Sign Area	Public and Religious Assembly or Elementary or Secondary School: 20 square feet or 2 square feet of sign area for each 1,000 square feet of zone lot area not, however, to exceed 80 square feet of total sign area for each zone lot. All Others: 20 square feet or 2 square feet of sign area for each 1,000 square feet of zone lot area not, however, to exceed 60 square feet of total sign area for each zone lot and provided that no one sign shall exceed 20 square feet.
Maximum Height Above Grade	Wall and window signs: 20' Ground signs: 6'
Location	Wall and window signs shall be set back from the boundary lines of the zone lot on which they are located the same distance as a building containing a use by right; provided, however, wall signs may project into the required setback ~~space~~ the permitted depth of the sign. Ground signs shall be set in at least 10' from every boundary line of the zone lot.
Illumination	May be illuminated but only from a concealed light source, and shall not remain illuminated between the hours of 11:00 p.m. and 6:00 a.m..Flashing signs are prohibited.
Animation	Animated signs are prohibited.

10.10.5.3 Temporary Signs

Subject to the conditions hereinafter set forth and upon application to and issuance of a zoning permit therefore, signs identifying or advertising new construction, remodeling, rebuilding, development, sale, lease or rental of either a use by right or a designated land area; each such permit shall be valid for a period of not more than 12 calendar months and shall not be renewed for more than one successive period at the same location.

A. Permitted sign types: Wall and ground.

B. Permitted maximum number: 1 sign for each zone lot or designated land area on which the sign is located.

Page: 10.10-12

Author: jcarpentier Subject: Sticky Note Date: 3/25/2021 3:45:12 PM
We recommend to avoid content regulation of this manner.

Author: jcarpentier Subject: Sticky Note Date: 3/25/2021 3:47:50 PM
We recommend that the allowable sign ratios be based on the building frontage rather than building area. This will ensure that the sign area will be in proper scale with the facade area.

C. Permitted sign area: 12 square feet plus 1 square foot per acre not to exceed 50 square feet for each zone lot or designated land area.

D. Permitted maximum height above grade: 12 feet.

E. Permitted location: Shall be set in at least 5 feet from every boundary line of the zone lot or designated land area.

F. Permitted illumination: May be illuminated but only from a concealed light source, and shall not remain illuminated between the hours of 11:00 p.m. and 6:00 a.m.

G. Prohibited: Flashing signs are prohibited; and animated signs are prohibited.

SECTION 10.10.6 MULTI-UNIT ZONE DISTRICTS SIGN STANDARDS

10.10.6.1 General

A. Signs may be erected, altered and maintained only for and by a use by right in the district in which the signs are located; shall be located on the same zone lot as the use by right and shall be clearly incidental, customary and commonly associated with the operation of the use by right; provided, however, that no sign of any type shall be erected or maintained for or by a single unit dwelling except signs permitted according to Sections 10.10.3.1.A, 10.10.3.1.B, 10.10.3.1.E, 10.10.3.1.G, 10.10.3.1.I and signs identifying home occupations as regulated by Section 11.9.2.4.

B. The sign standards contained within this Section apply to the following zone districts:

SUBURBAN NEIGHBORHOOD CONTEXT	URBAN EDGE NEIGHBORHOOD CONTEXT	URBAN NEIGHBORHOOD CONTEXT	GENERAL URBAN NEIGHBORHOOD CONTEXT	MASTER PLANNED CONTEXT
S-RH-2.5	E-TU-B	U-TU-B	G-RH-3	M-RH-3
S-MU-3	E-TU-C	U-TU-B2	G-MU-3	
S-MU-5	E-TH-2.5	U-TU-C	G-MU-5	
S-MU-8	E-MU-2.5	U-RH-2.5	G-MU-8	
S-MU-12		U-RH-3A	G-MU-12	
S-MU-20			G-MU-20	

D. Permanent Signs
Permanent signs shall comply with the following standards:

Contents	Identification by letter, numeral, symbol or design of the use by right by name, use, hours of operations, services offered and events.
Sign Types	Wall, window, canopy and ground.
Maximum Number	2 signs for each front line of the zone lot on which the use by right is located.
Maximum Sign Area	Hospitals: 2 square' of sign area for each 5 linear' of street frontage of the zone lot not, however, to exceed 96 square feet of sign area to be applied to any 1 street front and not more than 2 street fronts, 1 contiguous with the other, shall be used. University or College: The following regulations shall apply to the contiguous Campus only: 2 square feet of sign area for each 5 linear' of street frontage of the zone lot; provided, however, that the total area of all signs along any 1 street front shall not exceed 150 square' of sign area;, and no sign over 50 square feet shall be located within 100' of the zone lot line or campus boundary. All Others: 20 square feet or two square feet of sign area for each 1,000 square feet of zone lot area; however, not to exceed 96 square feet of total sign area for each zone lot and provided that no 1 sign shall exceed 32 square feet.

Page: 10.10-13

Author: jcarpentier Subject: Sticky Note Date: 3/25/2021 3:55:07 PM
We recommend to avoid content regulation of this manner.

Author: jcarpentier Subject: Sticky Note Date: 4/1/2021 7:15:29 PM
We recommend that sign area not be regulated by use rather the zoning district, since this type of regulation is speaker based (hospitals, university)and may be subject to script scrutiny. See attached reference material in regards to Reed v. Town of Gilbert.

Author: jcarpentier Subject: Sticky Note Date: 3/25/2021 4:00:29 PM
We recommend that the allowable sign ratios be based on the building frontage rather than building area. This will ensure that the sign area will be in proper scale with the facade area. the allowable area and number of signs appears to be too restrictive for some users such as hospitals.

E. Permitted location of temporary signs: Shall be set in at least 5 feet from every boundary line of the zone lot or designated land area.

F. Permitted illumination of temporary signs:

1. CMP-H, CMP-H2, CMP-EI, CMP-EI2: May be illuminated but only from a concealed light source, and shall not remain illuminated between the hours of 11:00 p.m. and 6:00 a.m.

2. CMP-ENT, CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F, CMP-NWC-R zone districts: May be illuminated and all direct illumination shall not exceed 25 watts per bulb unless otherwise permitted by a District Sign Plan in accordance with Section 10.10.8 of this Code.

G. Prohibited: Flashing signs are prohibited and animated signs are prohibited unless otherwise permitted by a District Sign Plan in accordance with Section 10.10.8 of this Code.

10.10.7.4 Joint Identification Signs - CMP-H2, CMP-EI2, CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F and CMP-NWC-R zone districts

Subject to the conditions hereinafter set forth and upon application to and issuance a zoning permit therefore, joint identification signs are permitted for 3 or more primary uses on the same zone lot as the signs, excluding parking. The following joint identification signs are in addition to all other signs:

A. Permitted sign types: Wall and ground.

B. Permitted maximum number: 1 wall sign or 1 ground sign for each front line of the zone lot.

C. Permitted sign area: 1 square foot of sign area for each 2 linear feet of street frontage; provided, however, that the total sign area shall not exceed 200 square feet.

D. Permitted maximum height above grade: 20 feet.

E. Permitted location: Shall be set back at least 5 feet from every boundary line of the zone lot in districts requiring a front setback for structures; otherwise need not be set back from the boundary lines of the zone lot. Wall signs may project into the required setback ~~space~~ the permitted depth of the sign. In districts not requiring a front setback for structures, wall signs attached to walls which are adjacent to a street right-of-way line may project into the right-of-way in accordance with D.R.M.C., Section 49-436.

F. Permitted illumination: May be illuminated and all direct illumination shall not exceed 25 watts per bulb unless otherwise permitted by a District Sign Plan in accordance with Section 10.10.8 of this Code.

G. Prohibited: Flashing signs are prohibited and animated signs are prohibited unless otherwise permitted by a District Sign Plan in accordance with Section 10.10.8 of this Code.

SECTION 10.10.8 DISTRICT SIGN PLAN FOR CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F AND CMP-NWC-R ZONE DISTRICTS

10.10.8.1 Signs Subject to a District Sign Plan

Notwithstanding more restrictive provisions of this Division 10.10, Signs, the CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F and CMP-NWC-R zone districts may have signs in accordance with a single approved District Sign Plan. All signs expressly allowed through this Section 10.10.8 must be in conformance with an approved District Sign Plan.

10.10.8.2 Intent

The intent of this Section 10.10.8 is to:

Page: 10.10-19

Author: jcarpentier Subject: Sticky Note Date: 4/1/2021 7:17:08 PM
The overall administration of this District Sign Plan is overly complex and should be streamlined.

A. Allow flexibility in the size, type, location and attributes of signs and Special Lighting Elements in order to support a unique education, entertainment and employment destination at the National Western Center. Unique signage within the district are intended to be incorporated and displayed in ways that foster civic pride and economic vitality, and which reflect the unique design vision for the National Western Center, which may include:

1. Creative and artistic signs
2. Special Lighting Elements
3. Self-illuminated signs
4. Signs integrated with one or more iconic or distinctive features
5. Non-standard or one-of-a-kind advertising opportunities
6. Signs infused with art

B. Facilitate development of a coordinated program of signage and illumination elements that enhances the aesthetic values of the city and ensures quality design; enhances the city's attraction to and creates excitement and anticipation for residents, employees, and visitors; and promotes good urban design.

C. Mitigate possible adverse impacts of signs and Special Lighting Elements, particularly on surrounding residential uses.

10.10.8.3 Applicability

A. The provisions of this Section 10.10.8 shall apply only with respect to:

1. Signs that are located in the CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F or CMP-NWC-R zone districts and permitted by the District Sign Plan.
2. Special Lighting Elements that are located in the CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F or CMP-NWC-R zone districts and permitted by the District Sign Plan.

B. Notwithstanding Section 10.10.8.3.A, the provisions of this Section 10.10.8 shall not apply to signs otherwise permitted in Division 10.10 Signs, except Section 10.10.8.4.B Minimum Pixel Pitch for Signs Using Digital Illumination shall apply to such signs, and

C. Unless otherwise expressly required by this Section 10.10.8, a sign or Special Lighting Element that is exempt from permitting under the provisions of the D.R.M.C or this Code shall not be deemed to require a zoning permit or a building permit due to the provisions of this Section 10.10.8.

10.10.8.4 Sign Types, Placement and Design

A. Glare
Signs and Special Lighting Elements permitted under this Section 10.10.8 or under the terms of the District Sign Plan shall be deemed to comply with all standards in this Code regarding Glare (as that term is defined in Division 13.3).

B. Minimum Pixel Pitch for Signs Using Digital Illumination
A sign using digital illumination shall have a minimum pixel pitch of 11 millimeters, unless otherwise specified in the District Sign Plan.

C. Sign Content
Sign content relating to products, services, uses, businesses, commodities, entertainment or attractions sold, offered or existing elsewhere than upon the same zone lot where such sign is displayed, including Outdoor General Advertising Devices and Off-Site Commercial Signs, are allowed within the area subject to an approved District Sign Plan.

Page: 10.10-20

Author: jcarpentier Subject: Sticky Note Date: 3/25/2021 11:52:10 AM
We recomend that pixel pitch not be regulated since the end user and sign company typically determines the optimal pixel pitch based on a particular application and viewing distance.

D. Sign Types and Special Lighting Elements

1. All sign types allowed by or defined in this Code, including but not limited to off-premises signs and outdoor general advertising devices, are allowed in the CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F and CMP-NWC-R zone districts. In addition, the District Sign Plan may define and allow other sign types not otherwise allowed or defined in this Code or prohibit certain sign types from particular areas. All such signs shall be subject only to the limits, conditions, and procedures specified in the District Sign Plan, except that Division 12.9, Nonconforming Signs, shall apply to all signs permitted in the CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F and CMP-NWC-R zone districts according to an approved District Sign Plan.

2. Special Lighting Elements are allowed in the CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F and CMP-NWC-R zone districts. For purposes of this Section 10.10.8, "Special Lighting Elements" means, where both the lighting source and the illuminated surface or medium are located within the CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F and CMP-NWC-R zone districts, the illumination of:
   a. The outside surface of any building, structure, part of a building or structure, or
   b. Any water, mist, fog, smoke, or other surface, material, medium or substrate located outdoors.

3. In the CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F and CMP-NWC-R zone districts, Outdoor General Advertising Device Ground Signs shall not be supported only by a pole or poles unless sufficient architectural enhancements are included as approved in the District Sign Plan.

E. Maximum Number

There is no maximum on the number of signs or Special Lighting Elements that are allowed, unless otherwise stated in the District Sign Plan.

F. Maximum Sign Area

Unless otherwise stated in the District Sign Plan, there is no maximum on: (1) the amount of area for any individual sign or Special Lighting Element, (2) the cumulative area of signage for any building or area, or (3) the cumulative area covered by Special Lighting Elements.

G. Maximum Height Above Grade

1. Except as provided by Section 10.10.8.4.G.2 and Section 10.10.8.4.G.3 below, the District Sign Plan shall not allow the height of any sign or equipment constituting any Special Lighting Element to exceed the maximum height specified in the allowed building form with the highest maximum height in feet, not including height exceptions, in the applicable zone district.

2. The District Sign Plan may allow temporary portable signs of any maximum height, subject to any limitations on time, area, size, number, design, illumination, location or other standards identified in the District Sign Plan. Such portable signs shall require a zoning permit.

3. Temporary portable signs and equipment for Special Lighting Elements may extend above the maximum allowable height for the zone district within which the sign is located for limited timeframes for special events approved by the City for a period not to exceed the duration of the permitted special event.

4. Roof signs, and equipment for Special Lighting Elements, may extend above the Roof Line of the building to which the sign or Special Lighting Element is attached to the extent allowed by the District Sign Plan; however, the District Sign Plan shall not allow any sign or

Page: 10.10-21

Author: jcarpentier Subject: Sticky Note Date: 4/2/2021 9:55:37 PM
Are special lighting elements any type of exterior illumination of a building? This seems to be requirements that should be in an illumination code rather than a sign code unless this is referring to a projection sign.

Author: jcarpentier Subject: Sticky Note Date: 3/29/2021 9:45:46 PM
The words "sufficient architectural enhancements" needs to be clarified since this vague language will lead to undue discretion. For example architectural enhancements could be described as, architectural pole wraps that are a minimum of 24" in width and compliment the building.

10.10.9.3 Temporary Signs

Subject to the conditions hereinafter set forth and upon application to and issuance of a zoning permit therefore, signs identifying or advertising new construction, remodeling, rebuilding, development, sale, lease or rental of either a use by right or conditional use or a designated land area; each such permit shall be valid for a period of not more than 12 calendar months and shall not be renewed for more than one successive period at the same location.

A. Permitted sign types: Wall and ground.

B. Permitted maximum number: 1 sign for each zone lot or designated land area on which the sign is located.

C. Permitted sign area: 20 square feet or 2 square feet of sign area for each acre of zone lot or designated land area not to exceed 150 square feet.

D. Permitted maximum height above grade: 12 feet.

E. Permitted location: Shall be set in at least 5 feet from every boundary line of the zone lot or designated land area.

F. Permitted illumination: May be illuminated but only from a concealed light source; and shall not remain illuminated between the hours of 11:00 p.m. and 6:00 a.m.

G. Prohibited: Flashing signs are prohibited and animated signs are prohibited.

10.10.9.4 Joint Identification Signs

Subject to the conditions hereinafter set forth and upon application to and issuance a zoning permit therefore, joint identification signs are permitted for 3 or more uses by right or conditional uses on the same zone lot as the signs, excluding parking. The following joint identification signs are in addition to all other signs:

A. Permitted sign types: Wall and ground.

B. Permitted maximum number: 1 wall sign or 1 ground sign for each front line of the zone lot.

C. Permitted sign area: 1 square foot of sign area for each 2 linear feet of street frontage; provided, however, that the total sign area shall not exceed 200 square feet.

D. Permitted maximum height above grade: 20 feet.

E. Permitted location: Shall be set back at least 5 feet from every boundary line of the zone lot in districts requiring a front setback for structures; otherwise need not be set back from the boundary lines of the zone lot. Wall signs may project into the required setback ~~space~~ the permitted depth of the sign. In districts not requiring a front setback for structures, wall signs attached to walls which are adjacent to a street right-of-way line may project into the right-of-way in accordance with D.R.M.C., Section 49-436.

F. Permitted illumination: May be illuminated and all direct illumination shall not exceed 25 watts per bulb.

G. Prohibited: Flashing signs are prohibited and animated signs are prohibited.

Page: 10.10-32

Author: jcarpentier Subject: Sticky Note Date: 4/2/2021 10:04:07 PM
This code has a lot a duplicative language by having a section for temporary signs in each district. Temporary signs needs to have only one section and regulations that are applicable for each respective district.

Maximum Height Above Grade	Wall, window and arcade signs: • Dwellings, multiple unit and all uses by right other than lodging accommodations, office and bank: 25'. • Lodging accommodations, office and bank: The roof line of the building to which the sign is attached. Ground signs: 25'. Projecting signs: The bottom of any projecting sign must be at least 8' above the sidewalk or Street Level finished floor level, whichever is higher. The top of any projecting sign may be no higher than 15' above the sidewalk or Street Level finished floor level, whichever is higher.
Location	Wall, window and arcade signs: Shall be set back from the boundary lines of the zone lot on which located the same distance as a building containing a use by right or conditional use; provided, however, wall signs may project into the required setback ~~space~~ the permitted depth of the sign. Ground signs: Shall be set in at least 5' from every boundary line of the zone lot. In no case shall there be more than 1 ground sign applied to any street front. Projecting Signs: • Projecting graphics may project no more than 5' out from a building. • Projecting signs shall not exceed the height of the parapet of the building on which mounted. • Projecting signs shall not be placed less than 8' apart.
Illumination	All Sign Types: May be illuminated but only from a concealed light source. Flashing signs are prohibited. Additional Standards for Projecting Signs: • Illumination of projecting signs shall be permitted by direct, indirect, neon tube, light emitting diode (LED), and fluorescent illumination for users with over 20 linear feet of frontage. Users with fewer than 20 linear feet of frontage may have direct external illumination only. • Fully internally-illuminated plastic sign boxes with internal light sources are prohibited. • Projecting signs may use a variety of illuminated colors.
Animation	Animated signs are prohibited.

10.10.10.3 Temporary Signs

Subject to the conditions hereinafter set forth and upon application to and issuance of a zoning permit therefore, signs identifying or advertising new construction, remodeling, rebuilding, development, sale, lease or rental of either a use by right or conditional use or a designated land area; each such permit shall be valid for a period of not more than 12 calendar months and shall not be renewed for more than one successive period at the same location.

A. Permitted sign types: Wall and ground.

B. Permitted maximum number: 1 sign for each zone lot or designated land area on which the sign is located.

C. Permitted sign area: 20 square feet or 2 square feet of sign area for each acre of zone lot or designated land area not to exceed 150 square feet.

D. Permitted maximum height above grade: 12 feet.

E. Permitted location: Shall be set in at least 5 feet from every boundary line of the zone lot or designated land area.

F. Permitted illumination: May be illuminated but only from a concealed light source; and shall not remain illuminated between the hours of 11:00 p.m. and 6:00 a.m.

G. Prohibited: Flashing signs are prohibited and animated signs are prohibited.

10.10.10.4 Joint Identification Signs

Subject to the conditions hereinafter set forth and upon application to and issuance of a zoning permit therefore, joint identification signs are permitted for 3 or more uses by right or conditional uses on the same zone lot as the signs, excluding parking. The following joint identification signs are in addition to all other signs:

Page: 10.10-34

Author: jcarpentier Subject: Sticky Note Date: 4/2/2021 10:05:01 PM
What does a concealed light source mean?

F. Relationships to the building facade. Maximum projecting sign dimensions, volumes and locations may additionally be restricted by the dimensions of the building facade on which signage is to be located and the relationship to other tenant signage on the same facade:

1. Signs shall not exceed the height of the parapet of the building on which mounted.

2. Signs shall not be placed less than 8 feet apart.

10.10.16.6 Illumination

Illumination of graphics as defined herein shall be permitted by direct, indirect, neon tube, light-emitting diode (LED), and fluorescent illumination for users with over 20 linear feet of frontage. Users with fewer than 20 linear feet of frontage may have direct external illumination only. The following additional provisions also apply to the illumination of street graphics:

A. Color of light. Graphics as defined herein may use a variety of illuminated colors.

B. Fully internally-illuminated plastic sign boxes with internal light sources are prohibited.

C. Flashing signs are prohibited.

D. Animated signs are prohibited.

SECTION 10.10.17 SPECIAL PROVISIONS FOR D-C, D-TD, D-LD, D-CV, D-AS, D-AS-12+, D-AS-20+, D-CPV-T, D-CPV-R, AND D-CPV-C

10.10.17.1 General

The provisions of this Section 10.10.17 shall apply to the D-C, D-TD, D-LD, D-CV, D-AS, D-AS-12+, D-AS-20+, D-CPV-T, D-CPV-R, and D-CPV-C districts. The other provisions of this Division 10.10 (Signs) shall remain in full force and effect in the D-C, D-TD, D-LD, D-AS, D-AS-12+, D-AS-20+, D-CPV-T, D-CPV-R, and D-CPV-C districts, and there is no requirement that proposed signs be submitted for approval pursuant to this Section. However, an application for a sign may be submitted pursuant to the provisions of this Section in which case this Section will be applicable with respect to the issuance of the sign permit.

10.10.17.2 Purpose

The purpose of this Section is to create the policy for a comprehensive and balanced system of signs and street graphics to facilitate the enhancement and improvement of the D-C, D-TD, D-LD, D-AS, D-AS-12+, D-AS-20+, D-CPV-T, D-CPV-R, and D-CPV-C districts through the encouragement of urban, innovative signs and street graphics which will aid in the creation of a unique downtown shopping and commercial area, facilitate an easy and pleasant communication between people and their environment and avoid the visual clutter that is potentially harmful to traffic and pedestrian safety, property values, business opportunities, and community appearance. To accomplish these purposes, it is the intent of this Section to encourage and to authorize the use of signs and street graphics which are:

A. Compatible with and an enhancement of the character of the surrounding district and adjacent architecture when considered in terms of scale, color, materials, lighting levels, and adjoining uses.

B. Compatible with and an enhancement of the architectural characteristics of the buildings on which they appear when considered in terms of scale, proportion, color, materials and lighting levels.

C. Appropriate to and expressive of the business or activity for which they are displayed.

D. Creative in the use of unique 2 and 3 dimensional form, profile, and iconographic representation; employ exceptional lighting design and represent exceptional graphic design, including

Page: 10.10-51

Author: jcarpentier Subject: Sticky Note Date: 4/2/2021 10:14:08 PM
The term plastic sign boxes is not utilized in the industry. The intent needs to be clarified.

2. Flashing signs and animated signs are expressly limited to those properties which are contiguous to the 16th Street pedestrian and transit mall. All such signs must be readable from the 16th Street Mall. Bare bulb illumination is expressly discouraged.
   a. The appropriateness of flashing signs, where otherwise allowed, will be based on the character and uses of the face block, existing uses within the building and the surrounding vicinity, and the protection of public safety.
   b. Use of flashing signs shall be limited to entertainment uses such as, by way of example and not by way of limitation, theaters, movie houses, restaurants, and cabarets, and is limited to the times the business is open.
3. Fully illuminated plastic sign boxes with internal light sources will not be allowed.

10.10.17.5 Design Review Committee

There is hereby created a separate Design Review Committee for each of the D-C, D-TD, D-LD, D-AS, D-AS-12+, D-AS-20+, D-CPV-T, D-CPV-R, and D-CPV-C districts, which shall be composed and comprised as hereinafter set forth, and which shall have the powers and authorities described herein.

A. Within the D-C, D-TD, D-AS, D-AS-12+, D-AS-20+, D-CPV-T, D-CPV-R, and D-CPV-C zone districts, when signage is proposed on a zone lot with landmark designation or located in a landmark district, the Denver Landmark Preservation Commission shall be the Design Review Committee.

B. Within the D-C and D-TD districts, except as provided by Section 10.10.17.5.A above, the Design Review Committee shall be comprised of 7 members as follows:

   1. 1 property owner, who owns property in the D-C or D-TD district;
   2. 2 business operators, who operate businesses in the D-C or D-TD district;
   3. 1 member of Downtown Denver, Inc., nominated by Downtown Denver, Inc.;
   4. 2 design professionals;
   5. 1 resident of Denver, with preference given to a resident of the D-C or D-TD district; and
   6. The Manager, or his designee, who shall serve as an ex officio member.

   Members of the D-C and D-TD Design Review Committee shall be nominated by downtown businesses, residents and property owners in the D-C and D-TD districts and shall be appointed by the mayor. The term of membership on the Design Review Committee is 3 years with initial appointments being of 3 appointees for 1 year terms, 2 appointees for 2 year terms and 2 appointees for 3 year terms.

C. Within the D-LD district, the Lower Downtown Design Review Board shall comprise the Design Review Committee.

D. Within the D-AS, D-AS-12+, D-AS-20+, D-CPV-T, D-CPV-R, and D-CPV-C districts, except as provided by Section 10.10.17.5.A above, the planning office staff shall act as the Design Review Committee.

E. Each Design Review Committee shall meet monthly or within 14 calendar days of a special request.

F. Authority is hereby expressly granted to the applicable Design Review Committee to review and recommend approval to the Zoning Administrator of applications for signs and street graphics in the applicable district pursuant to the provisions of this Section.

10.10.17.6 Design Review

Applications for sign permits submitted for approval pursuant to the provisions of this Section shall be forwarded to the applicable Design Review Committee by the department of zoning administra-

Page: 10.10-55

Author: jcarpentier Subject: Sticky Note Date: 4/2/2021 10:17:50 PM
It is not clear what signs in what districts require design review. Does this section refer to the entire sign code?

tion. The applicable Design Review Committee shall prepare a recommendation and submit it to the Zoning Administrator. After taking into consideration the recommendation of the applicable Design Review Committee, the Zoning Administrator shall approve or deny the permit, except that the Zoning Administrator may not approve a permit if the Lower Downtown Design Review Board has recommended denial.

10.10.17.7 Review Provisions

A. The applicable Design Review Committee may recommend approval of a sign permit for single or multiple uses if the sign(s) is compatible with the theme and overall character to be achieved in the area, and the committee shall base its compatibility determination on the following criteria:

1. The relationship of the scale and placement of the sign to the building or premises upon which it is to be displayed.
2. The relationship of colors of the sign to the colors of adjacent buildings and nearby street graphics.
3. The similarity or dissimilarity of the sign's size and shape to the size and shape of other street graphics in the area.
4. The similarity or dissimilarity of the style of lettering on the sign to the style of lettering of nearby street graphics.
5. The compatibility of the type of illumination, if any, with the type of illumination in the area.
6. The compatibility of the materials used in the construction of the sign with the material used in the construction of other street graphics in the area.
7. The aesthetic and architectural compatibility of the proposed sign to the building upon which the sign is suspended and the surrounding buildings.
8. The proposed signs shall be of high quality, durable materials such as hardwoods, painted wood, metal, stainless steel, painted steel, brass or glass.

B. Submission of a single sign or multiple sign application:

1. The application for sign permit shall be forwarded to the applicable Design Review Committee at least 2 weeks prior to the regularly scheduled Design Review Committee meeting.
2. Recommendations to the Zoning Administrator will be made in writing with reasons for acceptance, rejection, or acceptance with changes within 15 days of each committee meeting; in the event a written recommendation is not made within said 15 days, the application shall be deemed to have a recommendation for rejection.
3. A graphics plan shall be submitted which shall contain visual representations of the lettering, illumination, color, area and height of graphics and may also indicate the areas and building where they may be placed and located.
4. Submitted photographic or drawn elevations of a minimum of 266 feet of frontage (context of individual sign) photographic or drawn perspective with the individual sign superimposed and a drawing of the sign at 0.5-inch to 1-inch scale shall be submitted.
5. Additionally, proof of consent or attempt to get consent, with reasons for failure, of the managers of all properties within the face block must be provided.

Page: 10.10-56

Author: jcarpentier Subject: Sticky Note Date: 4/2/2021 10:19:52 PM
Signs should not be required to have colors similar to adjacent signs due to trademark protections under the Lanham Act.

Author: jcarpentier Subject: Sticky Note Date: 4/9/2021 3:46:11 PM
Signs should not be required to have a similar or dissimilar relationship to fonts or lettering on adjacent building as this could infringe on trademark protection or the Lanham Act.

Author: jcarpentier Subject: Sticky Note Date: 4/9/2021 3:23:50 PM
Signs should not be required to have compatibility with materials in the construction of other street graphics in the area. All of these similar requirements for compatibility and relationship with adjacent or nearby street graphics is "overreach." Signs are not architecture and should be treated in the same manner.

Author: jcarpentier Subject: Sticky Note Date: 4/2/2021 10:26:57 PM
Signs should not be required to have compatibility with materials in the construction of other street graphics in the area.

Page: 10.10-58

Author: jcarpentier Subject: Sticky Note Date: 4/2/2021 10:29:28 PM
Why do projecting signs require a CSP?

10.10.18.3 Temporary Signs

Subject to the conditions hereinafter set forth and upon application to and issuance of a zoning permit therefore, signs identifying or advertising new construction, remodeling, rebuilding, development, sale, lease or rental of either a use by right or a designated land area; each such permit shall be valid for a period of not more than 12 calendar months and shall not be renewed for more than 1 successive period at the same location.

A. Permitted sign types: Wall and ground.

B. Permitted maximum number: 1 sign for each front line of the zone lot or designated land area on which the signs are located.

C. Permitted sign area: 32 square feet of sign area for a land area up to 5 acres and 64 square feet of sign area for a land area of 5 acres or more, provided that no sign shall exceed 100 square feet.

D. Permitted maximum height above grade: 25 feet.

E. Permitted location: Shall be set back at least 25 feet from all boundary lines of the zone lot or designated land area on which the signs are located.

F. Permitted illumination: May be illuminated but only from a concealed light source.

G. Prohibited: Flashing signs are prohibited and animated signs are prohibited.

SECTION 10.10.19 CHERRY CREEK NORTH ZONE DISTRICTS SIGN STANDARDS

10.10.19.1 Purpose

The purpose of this Section is to create a comprehensive and balanced system of signs and street graphics, to facilitate the enhancement and improvement of the Cherry Creek North zone districts (C-CCN) through the encouragement of innovative signs and graphics which will aid in the creation of a unique mixed-use neighborhood, facilitate an easy and pleasant communication between people and their environment and avoid the visual clutter that is potentially harmful to traffic and pedestrian safety, property values, business opportunities and community appearance.

10.10.19.2 General

Signs may be erected, altered and maintained only for and by a use by right in the C-CCN zone districts; shall be located on the same zone lot as the use by right; and shall be clearly incidental, customary and commonly associated with the operation of the use by right.

10.10.19.3 Comprehensive Sign Plan

Projecting signs shall be permitted only after a comprehensive sign plan for the entire building containing a use or uses by right has been approved. Such plan shall indicate how signs are allocated among all the individual uses, approximate designated sign locations, and allowable types of sign construction and illumination.

10.10.19.4 Design Review

In adopting the rules and regulations governing signage, the following criteria shall be utilized. These criteria shall also be the basis of all findings and recommendations regarding signage that the design advisory board shall forward to the Zoning Administrator. Signage shall be:

A. Compatible with the character of the surrounding district and adjacent architecture when considered in terms of scale, color, materials, lighting levels, and adjoining uses;

B. Compatible with the architectural characteristics of the buildings on which the signs are placed when considered in terms of scale, proportion, color, materials and lighting levels;

C. Expressive of the business or activity for which they are displayed;

MODEL SIGN CODE

SIGN RESEARCH FOUNDATION™

Table of contents

Introduction

PURPOSE OF THIS MODEL CODE

The purpose of this Model Code is to convey to communities (councils, planning commissions, appeals boards, and the administrative staff including planners) the optimal framework for formulating on-premise sign regulations that fully respect the comprehensive purpose of signs from the perspective of both community and business interests.

Among others, these purposes are:

- **To use signs as a legitimate business advertising function.**
- **To assure that signs and their message are of sufficient size to be legible and comprehendible by the intended audience, which is typically passing motorists and pedestrians.**
- **To use signs to identify and advertise a facility as a means of “wayfinding,” assuring that the signs efficiently direct the motorists from the road to adjacent facilities.**
- **To assure that signs are sized and arranged to prevent unsafe conditions and minimize visual clutter.**

While this Model Code is intended for communities of all sizes, "smaller" communities – say those with populations up to several hundred thousand may find it of particular value. These communities "typically" possess the variety of character areas that are the basis for this Model Code (See Part I). While larger cities may have many similar character areas, they may also have a wider variety of unique areas that warrant special considerations that are not addressed in this model.

The Model Code is particularly important because there is a prevailing community tendency to limit sizes of signs to such a great extent that the message cannot be comprehended by motorists; and to impose limitations based on concerns about traffic safety that cannot be readily supported.

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

- To protect the First Amendment rights of citizens and businesses, in compliance with the *Reed v. Gilbert* decision.
- To ensure that the administration of the code is evaluated and enhanced or minimized so as to achieve a streamlined administration, including, time lines, design review and any other approval processes.
- To assure that a reasonable time is provided for non-conforming signs to remain before they must be brought into compliance.
- To encourage communities to acknowledge the importance and benefits of the latest in signage technologies to businesses and communities and that they can be accommodated without compromising the public's interests.
- To convey to communities that to be effective, the bottom of the freestanding sign (pole signs) must be above parked or moving vehicles. Conversely, ground type signs are often blocked by vehicles or landscaping.
- To have communities realistically evaluate their existing codes – particularly enforcement – rather than reaching a "knee jerk" conclusion that poor enforcement of the existing regulations should trigger a new code with more restrictive regulations.

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

One instance where regulatory authority may differ concerns the types of decisions that can lawfully be made by a Planning Commission (or Design Review Commission) versus those that must be made by a Board of Zoning Appeals (BZA). Because we believe that a reasonable degree of regulatory flexibility can enhance how well a sign code achieves its goals, we suggest throughout this Model Code that regulatory decisions be made, whenever possible, by the Planning Commission rather than the Board of Zoning Appeals. We make that recommendation because a Planning Commission,

which functions primarily in an administrative or quasi-legislative manner, has greater leeway to make nuanced or creative judgments about how a sign code should be applied to best achieve its goals. In contrast, a Board of Zoning Appeals, which almost always functions in a quasi-judicial manner, normally must follow "the letter of the law" even where doing so fails to best achieve the goals of the sign code. In addition, Planning Commissions are more familiar with sign regulations because they are required to recommend amendments to the legislative body.

Development of This Model Code

This Second Edition of *A Framework for On-Premise Sign Regulations* has been prepared by Alan C. Weinstein, Inc. in association with David. B. Hartt, Senior Adviser, Planning Services, CT Consultants, Inc. Planning and Development Consultants, with funding provided by the Sign Research Foundation (SRF). Technical assistance has been provided by an ad hoc review committee of the Sign Research Foundation.

Acknowledgements

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The authors additionally wish to acknowledge and extend appreciation to the following individuals who provided valuable technical assistance, technical resources, insight, and review to the authors in creation of the First Edition of this *A Framework for On-Premise Sign Regulations.*

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Part I
The Framework for Formulating Sign Regulations

Fundamental Considerations

The basic regulatory framework (Part III) is guided by principles that have been developed by both planners and various groups within the sign industry. For more than 20 years, the standards applicable to each of these factors have been documented in several books and other publications. Additionally, these principles were recently supported by the American Planning Association in its 2015 Planning Advisory Service Report No. 580, *Street Graphics and the Law*, 4th Ed.

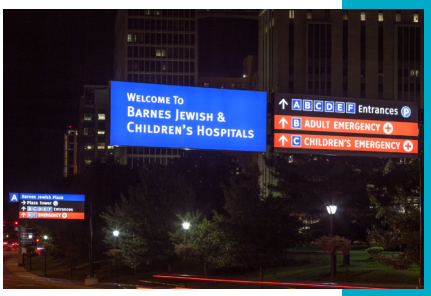
The purpose of this first section is to summarize the numerous interrelated factors that contribute to whether a sign is able to fulfill its primary purpose: to be able to be read by its intended audience. It is not our intention, however, to duplicate the extensive documentation that has been previously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

Sign design, readability, and comprehension are influenced by:

- The size of the lettering or logos—minimum size of the letters has been established based on the distance that viewers are from signs.
- The relationship of the lettering/logos, which is the message area–to the background area—often referred to as the "white space" or "negative space"—of the sign.
- The thickness and spacing of the letters.
- The number of elements—words, syllables, symbols, logos, etc. —that can be comprehended in the short period of time that viewers (typically motorists) likely have available. This is particularly relevant to wall signs that need to be seen and comprehended instantaneously.
- Color contrasts between the message and the background.
- Letter style.
- Lighting.

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

- Be within the viewer's "cone of vision"–both to the side of the highway and vertically so the eyes and head of the motorist will not waiver far from the roadway.
- Be at a height that will not be easily blocked by obstructions–mainly other cars and trucks on the roadway or parked nearby.
- Have increased letter sizes when the signs are located farther from the viewer who is typically on the adjacent street.



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

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

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

Principles of a Sign Code

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

The sign code should:

1. Include regulations for all types of on-premise signs, including: commercial (office, retail, etc.), industrial, multi-family developments, institutional, and public uses (including those public and institutional uses that are typically in residential districts), and entry signs for large subdivisions.

2. Include regulations for other "attention getting devices" such as balloons, banners, etc.

3. Include the following:
   - A statement of the purposes to be achieved.
   - Definitions.
   - Standards for measuring sign areas.
   - Regulations governing sign placement, height, and area.
   - Enforcement.
   - Regulations for temporary signs.
   - Prohibited signs.
   - Regulations for non-conforming signs.
   - Administrative provisions, variances, and appeals.

4. Be content-neutral to the greatest possible degree as required under the Supreme Court's *Reed v. Town of Gilbert* ruling to avoid favoring some types of signs—or sign users—over others. This means that sign regulations will not be based upon a sign's message. Instead, the regulations will be based upon the sign's function and its placement on the building or site. *Note: The meaning and implications of "content neutrality" are further explained in Part II of this document.*

Image source: reddit.com

5. Include standards that are content-based to are content based address the variety of use/character areas that are typically found in communities. This framework document cannot address the specific zoning districts for communities since they vary so widely from community to community. This document, however, does describe "typical character areas" and the suggested standards for each area, to be used as a guide in determining for themselves what precise standards are best for communities. Related to this, it is possible, even likely, that communities of different sizes (with different characteristics) may legitimately advance different sign regulations, even when the zoning districts in the distinctly different communities are similar. The typical character areas, which are described more fully in the next section, include:

- Downtowns
- Small Localized Retail areas that are likely to be in close proximity to residential areas and, which are typically characterized by:
  - Having a traditional neighborhood form, or;
  - Being a more "suburban style" center
- General Commercial Areas along major arterials
- Highway/Interchange Commercial
- Office Districts
- Industrial Parks
- Mixed Use Developments

6. Have separate requirements for different types of signs (*e.g.* wall signs, free standing signs, projecting signs, and window signs) because each type of sign has different needs. This contrasts to a single maximum allowance for signage on each site that can be divided or shifted between wall and freestanding signs. This approach ensures that both wall and freestanding signs are in proportion to the building and/or the site and are context-based. Otherwise, for example, if a code allows most of the total permitted sign area for a site to be on the freestanding sign, the freestanding sign(s) could be too large for the site.

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

7. Establish area and height requirements for wall and freestanding signs based on the "nature and character" of the Character Areas, so as to be context-based.. In all cases, however, the signs shall be in such location and of such size so the sign message is easily discerned and the intended audience, generally the passing motorist, can react and make necessary traffic maneuvers safely.

8. Have procedures that permit bonuses to sign areas, sign height, and number of signs based on unique design considerations when such additional signage will not compromise the public interest or set a precedent that could then be requested and applied routinely in other more conventional locations in communities.

9. Consider the need to establish a reasonable program for the elimination of legal-non-conforming signs (*e.g.* amortization) provided:

- The time for removal is 10 years or longer;
- The Code incorporates provisions that permit the extension of the time limits for compliance based on considerations such as the value of the sign and the length of time the sign has been in place; the amount of depreciation claimed; the length of the current lease or expected occupancy; the degree of non-compliance; and
- Owners or tenants are permitted to replace the panels/inserts on non-conforming signs when uses or ownership is changed and there are no other change, such as structural changes to the existing non-conforming sign (this is sometimes referred to as "face changes"); and
- The provision is made for signs that have landmark status (see also Appendix A, which is available at the end of the full report at signresearch.org/modelsigncode.).

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

Description of the Typical Character Areas

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

A. Downtown.

In traditional downtowns, buildings are primarily placed at the street line with the parking to the rear or in parking decks. The building width extends across all, or at least most, of the lot frontage. The buildings could be multiple stories with, typically, retail on the first floor and residential or offices above.

B. Small, Localized Retail.

These are usually older commercial areas that may have one of the following two characteristics:

Traditional Neighborhood Form. These retail areas are generally older and have the traditional neighborhood form. That is, the form and character are similar to a traditional downtown. These commercial areas are often located in close proximity to and thus convenient to surrounding residential areas. Although these areas are smaller than downtowns, their form and design characteristics are similar; therefore, the permissible sign allowances should also be similar.

Suburban Form. However, some of these small, commercial areas may be newer and have been developed with what is now considered the suburban form. These are similar to the general commercial areas, described below, except that these more localized commercial areas

are apt to be on more minor streets and will likely be in close proximity to residential areas.

C. General Commercial Areas. The buildings are typically setback from the street with parking in the front of or surrounding the building. These commercial areas are usually on major arterial streets. Commercial areas often include a variety of large and small facilities. Multiple commercial facilities may be grouped on a single site or single businesses, or may be developed on an independent site. Typically, these areas are comprised of one story buildings.

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

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

F. Employment Districts. Provide diverse options for types of employment-oriented areas, ranging from landscaped sites in campus-like settings, to mixed-use commercial and industrial areas, to industrial only areas.

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

The Relationship between Highway Characteristics and Sign Standards

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

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

The sizes and heights for the various signs recommended in these guidelines are based on previous studies that have documented the letter height, design clarity, and areas needed to assure that the signs can be read and comprehended. These sources are included in Appendix C, which is available at the end of the full report at signresearch.org/modelsigncode.

Local Government Regulation of Business Signs

1. Overview.

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

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

Sign regulations normally place limits on the location, number, size (both in area and height), and illumination of business signs. They also specify standards for the construction, erection, and maintenance of sign structures. The basic enforcement tool for local business sign regulation is to require a business to obtain a permit prior to erecting a new sign or modifying the structure of an existing sign. Obviously, a permit is issued only when the proposed sign or modification complies with the provisions in the code. In some communities, the sign regulations also require periodic examination of existing signs to ensure they are properly maintained.

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

As previously noted, a sign code will normally regulate the location, number, size, etc. of business signs. It is common for sign regulations to vary depending on the zoning district in which a business is located. For example, businesses located in a "Highway Business" District might be allowed larger or taller signs than businesses located in a "Local Business" District. Such differences in regulatory treatment between districts may be justified by differences in such factors as the size and speed of the districts' roadways or the typical setbacks from the rights-of-way in the district. In some instances, variations in regulatory treatment depend on the nature of the business itself; i.e. one type of business (*e.g.*, an auto dealership) may be allowed more or bigger signs than another type of business (*e.g.*, an appliance store); in some cases, the signs should reflect the site's acreage rather than being based merely on road frontage. *As discussed later, however, regulatory distinctions based on the type of business can raise significant legal issues.*

3. Permit Application Requirements.

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

The permit process usually begins with applicants obtaining a permit application from a zoning or building official in the local government office or online. Permit applications normally require applicants to submit information related both to the construction and installation

of the sign and the site where it will be installed or erected. Submission requirements will vary from community to community. For example, while some codes will require only a sketch or photograph of the property where a sign will be installed, others require the submission of a formal site plan. The application must be filled out completely and accurately, and the accompanying application fee paid in full, before the application will be reviewed.

4. Permit Review Procedures.

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

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

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

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

5. Sign Variances.

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

Requests for a variance due to the peculiarities of the property involved are also appropriate when sign regulations are applied to specific properties. A commonly occurring situation is where adherence to the sign code would seriously compromise the visibility of a sign and thus potentially harm the economic viability of the business. This situation can occur, for example, where a

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

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

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

[1]California Business and Professions Code Section 5499.

Legal Issues in Regulation of Business Signs

1. Overview.

While there can be no doubt that, as a general matter, the "police power" authorizes local government regulation of business signs, specific regulations may be unlawful because they violate rights guaranteed by the federal, or a state's, constitution or those granted by federal or state statutes.

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

a. The First Amendment's guarantee of "freedom of expression."

b. The Fifth Amendment's (or a state law's) protection of property rights.

c. The Fourteenth Amendment's separate guarantees of due process of law and equal protection under the law.

d. The Lanham Act's protection of federally registered trademarks.

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

The single most important concern in sign regulation is whether the regulation is "content-based" or "content-neutral." A content-neutral regulation will apply to a sign regardless of the content of the message displayed. The most common form of content-neutral regulation is so-called "time, place or manner" regulation which, as the name suggests, does no more than place limits on when, where, and how a message may be displayed on a sign. In contrast, a sign regulation that bases the regulatory treatment of the sign on the content of the message displayed—or the identity of the entity displaying the sign—is "content-based." Provisions in sign ordinances that are content-based are not automatically considered invalid. Rather, courts apply a more stringent level of judicial review to provisions in sign ordinances that are content-based (strict scrutiny) compared to provisions that are content-neutral (intermediate scrutiny).

When local governments enact sign regulations that are entirely content-neutral, courts have little difficulty upholding the regulations against a legal challenge. Conversely, content-based regulations that are found by courts to regulate on the basis of the message displayed on a sign are almost always ruled invalid.

The legal rules governing content-neutrality are guided by the U.S. Supreme Court's 2015 decision in *Reed v. Town of Gilbert.*[2] *Reed* is, undoubtedly, the most definitive and far-reaching statement that the Court has ever made regarding day-to-day regulation of signs. While the sign code provisions challenged in *Reed* involved only the regulation of temporary non-commercial signs, the Court's majority opinion, authored by Justice Clarence Thomas, applies to the regulation of *all* signs: permanent signs as well as temporary signs, business signs as well as residential signs, and to both commercial and non-commercial signs.

The rules that Justice Thomas announced in *Reed* could not be more straight-forward. A sign regulation that "on its face" considers the message on a sign to determine how it will be regulated is content-based. Justice Thomas emphasized that if a sign regulation is content-based "on its face" it does not matter that a government did not intend to restrict speech or favor some category of speech for benign reasons. Further, a sign regulation that is facially content-neutral, if justified by—or that has a purpose related to—the message on a sign, is also a content-based regulation. For example, a code provision that allowed more temporary retail business signs between Thanksgiving and Christmas would be facially content-neutral, but might be challenged as being justified by or have a purpose related to allowing messages advertising gifts or holiday decorations for Christmas.

Whether content-based "on its face" or content-neutral but justified in relation to content, Justice Thomas specified that the regulation is presumed to be unconstitutional and will be invalidated unless government can prove that the regulation is narrowly-tailored to serve a compelling governmental interest. This is known as the "strict scrutiny" test and few, if any, regulations survive strict scrutiny. This may be particularly true in regard to sign regulations given that a number of federal courts have previously ruled that aesthetics and traffic safety, the "normal" governmental interests supporting sign regulations, are not "compelling interests."

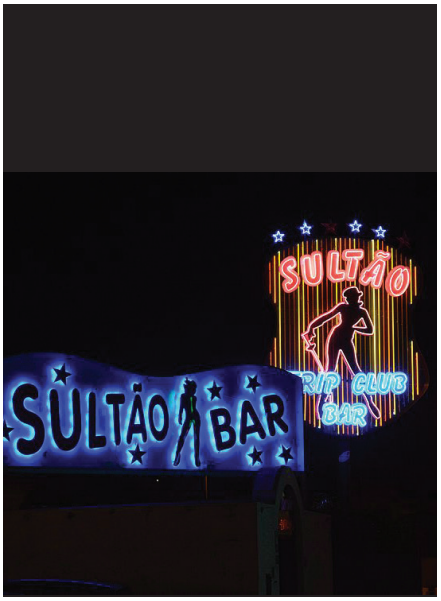


Image Source: OgreBot, Wikimedia Commons

As noted previously, the facts in *Reed* involved temporary non-commercial signs and so provided scant guidance about how courts should treat sign regulations that apply to commercial business signs. These issues are now being addressed in the lower federal courts and we are beginning to receive some guidance about how *Reed* applies to issues more important to regulation of business signs, such as whether codes that differentiate between on-premise and off-premise signs, or commercial and non-commercial messages,are content based and, therefore, subject to strict scrutiny.

o date, state courts and two federal circuit courts have found that the on/off-premise distinction is not content-based, but the 6th circuit court of appeals decided in September 2019 that the traditional distinction is indeed content-based, creating a split in the circuit courts.

Meanwhile, the courts that have addressed the question of whether a code that differentiates between commercial and non-commercial signs is content based and thus subject to strict scrutiny have ruled unanimously that *Reed* should not be applied to regulations that affect commercial signs. The following quote from one case is typical: "*Reed* is of no help to plaintiff either ..., it does not purport

[2]*Reed v. Town of Gilbert, Arizona*, 135 S.Ct. 2218 (2015)

to eliminate the distinction between commercial and noncommercial speech. It does not involve commercial speech, and does not even mention *Central Hudson*."[3]

Sign regulations that contain content-based exemptions have not fared well under *Reed*. A recent federal Circuit Court of Appeals decision is a good example.[4] There, in a challenge first decided before the *Reed* decision, a federal Appeals Court had concluded that a sign regulation exempting flags, emblems, and works of art was content-neutral and, applying intermediate scrutiny, held that the regulation was a constitutional exercise of the city's regulatory authority. But when the challenge was renewed after *Reed*, the Court of Appeals reversed its decision and agreed with the plaintiffs that, under *Reed*, the regulation now was a content-based restriction that cannot withstand strict scrutiny. In a similar case,[5] a federal district court ruled that a regulation that exempted certain signs, but not political signs, from restrictions placed on temporary signage, was a content-based restriction that did not withstand strict scrutiny.

In contrast, courts that have ruled on challenges to content-neutral time-place-manner regulations after *Reed* have had little difficulty upholding the regulations. For example, one court upheld a content-neutral ban on all painted wall signs,[6] and another[7] upheld a content-neutral prohibition on signs extending more than 40 feet above curb level as a reasonable time, place, and manner restriction on speech.

While the full effect of the Supreme Court's *Reed* decision remains to be seen, planners and local government officials can take steps now to minimize legal risk in the wake of the Supreme Court's decision. Those efforts should be guided by the recognition that, even before *Reed*, most local sign codes contained at least some provisions of questionable constitutionality along with the recognition that developing an entirely content neutral sign code may be impossible for some, or even most, local governments. Further, such a code might not function well in addressing legitimate aesthetic and traffic safety concerns. Sign code drafting is an imprecise exercise, subject to the influences of planning, law, and, perhaps most importantly, local politics. Planners and local government officials should therefore view sign regulation with an eye toward risk management. If the local government is willing to tolerate some degree of legal risk, it may be appropriate to take a more aggressive, if less constitutionally-tested approach to sign regulation. Conversely, if the local government is unwilling to accept the risks associated with more rigorous regulation of signs, it would be advisable to adopt a more strictly content-neutral—if less aesthetically effective—approach.

In a risk management approach to sign regulation, the local government's adopted regulations should reflect a balance between the community's desire to achieve certain regulatory objectives and the community's tolerance for legal risk in the wake of the *Reed* case. In keeping with the recommendations in the Model Code, communities are advised to review sign regulations for potential areas of content discrimination and to take precautions against potential sign litigation. However, we also advise communities to consider (or perhaps reconsider) the level of legal risk that the community is willing to tolerate in order to preserve the aesthetic character of the community and to further the safety interests of community members. In some areas of sign regulation and for some local jurisdictions, preservation of

[3] *Lamar Cent. Outdoor, LLC v. City of Los Angeles*, 2016 WL 911406, (Cal. Ct. App. Mar. 10, 2016). Note: The Central Hudson reference is to the 1980 Supreme Court ruling establishing that regulation of commercial speech should be subject to a form of intermediate scrutiny rather than strict scrutiny.
[4] *Central Radio Co. Inc. v. City of Norfolk, Va.*, 811 F.3d 625 (4th Cir. 2016).
[5] *Marin v. Town of Southeast*, 136 F.Supp.3d 548 (S.D.N.Y. 2015).
[6] *Peterson v. Vill. of Downers Grove*, 150 F.Supp.3d 910 (N.D. Ill. 2015).
[7] *Vosse v. The City of New York*, 144 F.Supp.3d 627 (S.D.N.Y. 2015), *aff'd*, 666 Fed.Appx. 11 (2d Cir. 2016).

aesthetic character may run counter to minimizing legal risk, and it will be up to each community to determine the appropriate balance between the community's desired planning outcomes and the community's risk tolerance.

In all communities, special care should be taken to avoid regulating signs that have minimal impact on the community's established interests in sign regulation. For example, avoiding regulation of signs which are not visible from a public right-of-way, or which are small enough in size so as to have a negligible visual impact is good sign regulation practice and is in keeping with the notion that regulations should only go as far as necessary to further the interests of the regulating body. In the same vein, communities should focus on addressing "problem areas" of sign regulation specific to the community instead of regulating for problems that do not exist. Employing this approach to sign regulation will likely result in the outcomes desired by the community while providing an appropriate level of protection against costly and time-consuming litigation.

While providing comprehensive guidance on how cities should respond to the *Reed* decision is beyond the scope of this discussion, we have provided numerous explanatory Comments in the text of the Code to assist cities in ensuring that their regulation of business signs are content-neutral to the greatest degree possible in line with the *Reed* decision.

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

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

Recent court decisions involving prior restraint challenges to reasonable sign permitting procedures in cases where the code is content-neutral, have almost uniformly upheld reasonable procedures under the rationale announced by the U.S. Supreme Court in a 2002 case, *Thomas v. Chicago Park District*.[8] These recent decisions have also shown that courts are reluctant to strike down a permitting procedure based merely on a claim that the procedure could be—rather than has been—used to discriminate among applicants.

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

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

Sign codes can be subject to strict scrutiny when they impose a total prohibition on an entire category of signs, even where the regulation is not content-

[8] 534 U.S. 316 (2002).
[9] Granite State Outdoor v. City of St. Petersburg, 348 F.3d 1278 (11th Cir. 2003).

based. In a 1994 case,[10] the U.S. Supreme Court struck down a total prohibition on lawn signs in a St. Louis suburb's sign code. Even though the code did not regulate the signs based on their content, the Court ruled that the signs homeowners place on their lawns constitute an important and distinct medium of expression for political, personal, or religious messages. Thus, the city's total ban on such signs, in conjunction with the city's failure to provide adequate substitutes for such an important medium, was an unconstitutional restriction on expression.

Challenges to a complete ban on pole signs have had mixed results depending on the specific facts in the case. In one case, an Ohio federal district court found that a selective ban on pole signs that carried commercial messages was unconstitutional.[11] But a Ninth Circuit Court of Appeals case from a Portland, Oregon suburb[12] found that a content-neutral prohibition on pole signs was permissible.

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

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

These two principles—termed "void for vagueness" and "overbreadth"—require that government regulation of expression be precise. This ensures that: (1) individuals will know exactly what forms of expression are restricted and (2) laws that legitimately regulate certain forms of expression are not so broadly written that they also illegitimately regulate other types of expression. These two principles are closely related, and courts often find that an ordinance violates both; however, there have been very few successful challenges to on-premise sign codes based on vagueness and overbreadth.

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

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

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

Many codes also require that a sign be brought into conformity if there is a change in the message displayed on the sign. Court decisions prior to *Reed* were mixed on whether such a provision is content-based. Several state court decisions ruled such a provision is unlawful, including cases from Alabama,[13] Arizona,[14] New Hampshire,[15] New Jersey,[16] and New York.[17] While such a

[10] City of Ladue v. Gilleo, 512 U.S. 43 (1994)
[11] North Olmsted Chamber of Commerce v. City of North Olmsted, 108 F.Supp. 792 (N.D. Ohio 2000).
[12] G.K. Ltd. Travel v. City of Lake Oswego, 436 F.3d 1064 (9th Cir. 2006).
[13] Budget Inn of Daphne, Inc. v. City of Daphne, 789 So.2d 574 (Ala. 2000).
[14] Motel 6 Operating Ltd. Partnership v. City of Flagstaff, 195 Ariz. 569, 991 P.2d 272 (1999).
[15] Ray's Stateline Market, Inc. v. Town of Pelham, 140 N.H. 139, 665 A.2d 1068 (1995).
[16] Rogers v. Zoning Bd. of Adjustment of the Village of Ridgewood, 309 N.J.Super. 630 (App.Div. 1998), aff'd 158 N.J. 11, 726 A.2d 258 (N.J. 1999).
[17] Kevin Gray East Coast Auto Body v. Village of Nyack, 566 N.Y.S.2d 795 (N.Y.App.Div. 1991).

provision was upheld by the Ninth Circuit in a case from a Portland, Oregon suburb,[18] that ruling is now questionable after *Reed*.

Regardless of whether such a provision is adjudged content-neutral, there is really no compelling argument in favor of ending the non-conforming status of a sign absent a simultaneous change in ownership of the business *and* the sign face. Otherwise, the retention of the non-conforming status is subject to an arbitrary determination. For example, as actually happened in the *North Olmsted* case, a Chrysler dealer lost the non-conforming status of a sign when the corporate name changed from Chrysler to Daimler-Chrysler while the Toyota, Ford, Buick, etc. car dealers' signs retained their non-conforming status because there were no corporate name changes.

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

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

7. Fifth Amendment Issues: Sign Permitting Fees.

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

Note, however, that if a sign permit fee is challenged, local government will bear the burden of proving that the fee charged bears a reasonable relationship to the actual costs of administering the permit system. If the fee has been calculated properly, this is not a problem. However, courts will invalidate sign permit fees if a local government fails to show that the fee was reasonably related to the costs of enforcement.[19]

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

In its first ruling on a broad-based challenge to a local sign code, the *Metromedia* case,[20] the U.S. Supreme Court ruled that local governments could normally regulate signs based on concerns about traffic safety and aesthetics without having to provide any evidence that their sign regulations in fact served those interests. After that decision, courts were extremely deferential to government claims that its sign regulations are based on aesthetics and/or traffic safety concerns.

[18] G.K. Ltd. Travel v. City of Lake Oswego, 436 F.3d 1064 (9th Cir. 2006).
[19] *See, e.g.*, South Suburban Housing Center v. Greater South Suburban Bd. of Realtors, 935 F.2d 868 (7th Cir. 1991).
[20] Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981).

It is important to note, however, that in *Metromedia* the Supreme Court ruled that the code in question was content-neutral and therefor applied what is known as "intermediate scrutiny" to determine if it was constitutional. When courts apply intermediate scrutiny, they ask whether the code is supported by a *substantial* governmental interest. In contrast, when a court finds that a code is content-based, as was the case in *Reed*, it will apply "strict scrutiny." When courts apply strict scrutiny, they ask whether the code is supported by a *compelling*—as opposed to *substantial*—governmental interest. As noted previously in the discussion of the *Reed* case, a number of federal courts have previously ruled that aesthetics and traffic safety, the "normal" governmental interests supporting sign regulations, are not "compelling interests."

Further, even some decisions applying intermediate scrutiny have looked more closely at a government's claim that its sign regulations are easily justified merely by reference to traffic safety and aesthetics as substantial governmental interests.

In a recent case from a Cincinnati, Ohio suburb,[21] the majority of the judges on a federal appeals court ruled that a village could not justify its restrictions on "for sale" signs posted on vehicles merely by citing *Metromedia*'s approval of aesthetics and traffic safety concerns as justifying sign regulations. The majority noted that the *Metromedia* court had declined to disagree with the "accumulated common-sense judgments of local lawmakers and of the many reviewing courts [that found] that billboards are real and substantial hazards to traffic safety;" but in this case, the record demonstrated "no comparable legislative or judicial history supporting the conclusion that restrictions placed on 'For Sale' signs posted on vehicles address concrete harms or materially advance a governmental interest." [22]

The dissenting judges in this case argued, however, that requiring any evidence that the prohibition substantially advanced the government's interest in traffic safety would burden government with "pointless formalities." Rather, the dissenters claimed "The justification for forbidding the placement of for-sale automobiles on the public streets—for inspection by potential buyers—is simply obvious: people may be drawn to stand in the street for non-traffic purposes."[23]

In another case,[24] a federal district court ruled that a Los Angeles ban on new billboards did not directly advance the city's claimed interests in traffic safety and aesthetics given the city's exempting from the ban new off-site signs on thousands of kiosks, transit shelters, and benches from which the city would derive revenue.

In a similar case from a Seattle suburb,[25] the sign code had a restriction on portable signs that had numerous exemptions, including one for real estate signs. The regulation was

[21]Pagan v. Fruchey, 492 F.3d 766 (6th Cir. 2007).
[22]492 F.3d at 774-75.
[23]492 F.3d at 779.
[24]Metro Lights, L.L.C. v. City of Los Angeles, 488 F.Supp.2d 927 (C.D. CA 2006).
[25]Ballen v. City of Redmond, 466 F.3d 736 (9th Cir. 2006).

challenged by a store owner who had hired an employee to stand on the sidewalk wearing a sign to attract the attention of motorists. While the federal appeals court acknowledged that the challenged regulation served the city's interests in aesthetics and traffic safety, it ruled that the city's failure to demonstrate why real estate signs compromised those interests so little that they could be lawfully displayed meant that the regulation failed under what is knows as the "reasonable fit" analysis, which the Supreme Court adopted in a 1993 case from Cincinnati.[26] Note, however, that after the Reed case, such an exemption would be found to be content-based and thus a reviewing court would apply strict scrutiny rather than intermediate scrutiny.

Other pre-*Reed* decisions have followed *Metromedia*'s deferential stance. In particular, two cases upheld bans on electronic message centers (EMCs) by accepting the local governments' assertion that the ban served traffic safety and aesthetic interests without requiring any evidentiary showing from the local governments.[27] Note that because the challenged code provisions in these cases involved restrictions on sign illumination, and did not regulate the messages displayed, they would likely be considered content-neutral under *Reed*. That means that a court considering a similar challenge brought today would still apply intermediate scrutiny.

9. Fourteenth Amendment Issue: Permit Review Procedures.

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

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

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

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

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

[26]City of Cincinnati v. Discovery Network, Inc., 507 U.S. 410 (1993).
[27] *See*, Naser Jewelers, Inc. v. City of Concord, 2008 WL 276529 (D.N.H.), *aff'd*, 538 F.3d 17 (1st Cir. 2008) and Cha-pin Furniture Outlet v. Town of Chapin, 2006 WL 2711851 (D.S.C.), *vacated and remanded for dismissal on other grounds*, 2007 WL 3193854 (4th Cir.); Marras v. City of Livonia, 575 F.Supp.2d 807 (E.D. Mich. 2008); Carlson's Chrysler v. City of Concord, 938 A.2d 69 (N.H. 2007).

unique, eye-catching logo, such as a jumping fish, that would add liveliness to the streetscape. Such a method rewards both businesses and sign producers for creative efforts.

10. Fourteenth Amendment Issue: Sign Variances.

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

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

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

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

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

Image Source: Under Armor

Example of a typical corporate trademark

While the language in the 1982 Amendment prohibits state and local governments from requiring the "alteration" of a trademark, the Amendment does not specifically mention sign regulations. As a result, the two federal appellate courts that have considered Lanham Act challenges to local sign regulations have reached opposite decisions. In a case from a suburb of Rochester, New York,[28] the federal appeals court for the Second Circuit rejected a Lanham Act challenge to a local sign code that required a business owner to change the color or some other element of a federally registered trademark. But in a case from Tempe, Arizona,[29] the federal appeals court for the Ninth Circuit upheld such a challenge.

[28]Lisa's Party City, Inc. v. Town of Henrietta, 185 F.3d 12, 15 (2d Cir. 1999).
[29]Blockbuster Videos, Inc. v. City of Tempe, 141 F.3d 1295 (9th Cir. 1998).

Thus, as of this writing, the only business owners who are assured they have the right to display a federally registered trademark on their business signs are those in states comprising the Ninth Circuit Court of Appeals: California, Oregon, Washington, Arizona, Nevada, Idaho and Montana, plus Alaska & Hawaii. Business owners in states comprising the Second Circuit Court of Appeals—New York, Connecticut & Vermont—clearly have no such protection, while business owners in all other states lack clear guidance on whether they are protected by the Lanham Act.

Despite the legal uncertainties outside the Ninth and Second Circuits, from a traffic safety standpoint there is little to be said for any local regulation altering a trademark/logo on a sign. Such logos, with their distinctive colors and designs, are easily and quickly recognized by motorists and allow for quick decision-making, and thus safe traffic maneuvers, while driving.

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

When a local government violates an individual's constitutional rights, that individual is entitled to sue the local government in federal court under a federal statute, Section 1983 of the Civil Rights Act of 1871.[30] Section 1983 clearly applies when local governments unlawfully interfere with a business owner's property and/or first amendment rights associated with a lawfully erected business sign. In addition to making municipalities potentially subject to money damages for violation of a business owner's constitutional rights,[31] a successful demonstration of a violation of constitutional rights pursuant to a Section 1983 claim may entitle the injured party to attorneys' fees[32] and punitive damages, depending on the motive and intent of the government official and whether the official has absolute or qualified immunity.[33] It should be noted that, by law, municipalities cannot be held liable for punitive damages under Section 1983.[34]

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

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

[32] 42 U.S.C. § 1988 provides that reasonable attorneys' fees and costs may be awarded to the prevailing party in a law-suit brought under 42 U.S.C. § 1983. Thus, for example, in a case from a suburb of Cleveland, Ohio, the court award-ed $308,825.70 in attorneys' fees and costs to a Realtors' association that had successfully challenged a sign ordinance's ban on real estate lawn signs. See Cleveland Area Bd. of Realtors v. City of Euclid, 965 F.Supp. 1017 (N.D. Ohio 1997).

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

[34]City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981).

Part III Model Regulatory Guidelines

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

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

Comment: The purposes of the sign regulations are to balance public and private interests in a manner that recognizes the importance of business advertising, through signs, by acknowledging that signs and their message must be visible and comprehensible in order to provide identification and thus assuring that the intended audience is able to find their way while protecting the obligation to be content neutral as directed, in several rulings, by the US Supreme Court

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Section 100. Purpose of the Regulations.

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

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

e. Assure that the provisions of this Chapter are not intended to infringe on the rights of free speech as protected by the First Amendment to the United States Constitution and [insert here the relevant provision addressing freedom of speech from your state Constitution]. All sections in this chapter are to be construed, whenever possible, to protect the rights of residents and visitors to speak freely. All provisions of this chapter shall be interpreted in a content-neutral manner excepting those narrow, legally-recognized exceptions explicitly identified in this Chapter.

Section 101. Measurement Standards.

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

101.01. Determining Sign Area and Dimensions.

1. For a wall sign which is framed, outlined, painted or otherwise prepared and intended to provide a background for a sign display, the area and dimensions shall include the entire portion within such background or frame.

2. For a wall sign comprised of individual letters, figures or elements on a wall or similar surface of the building or structure, the area and dimensions of the sign shall encompass a regular geometric shape (rectangle, circle, trapezoid, triangle, rhombus, square), or a combination of regular geometric shapes, which form, or approximate, the perimeter of all elements in the display, the frame, and any applied background that is not part of the architecture of the building. When separate elements are organized to form a single sign, but are separated by open space, the sign area and dimensions shall be calculated by determining the geometric form, or combination of forms, which comprises all of the display areas, including the space between different elements. Minor appendages to a particular regular shape shall not be included in the total area of a sign.

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

3. For a freestanding sign, the sign area shall include the frame, if any, but shall not include:
    a. A pole or other structural support unless such pole or structural support is internally illuminated or otherwise so designed to constitute a display device, or a part of a display device.
    b. Architectural features that are either part of the building or part of a freestanding structure, and not an integral part of the sign, and which may consist of landscaping, building, or structural forms complementing the site in general.

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

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

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

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

101.02. Determining Sign Height.

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

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

2. Clearance for freestanding and projecting signs shall be measured as the smallest vertical distance between finished grade and the lowest point of the sign, including any framework or other embellishments.

101.03. Determining Building Frontages and Frontage Lengths.

1. **Building Unit.** The building unit is equivalent to the tenant space. The frontage of the tenant space on the first floor shall be the basis for determining the permissible sign area for wall signs.

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

2. **Primary and Secondary Frontage.** The frontage of any building unit shall include the elevation(s) facing a public street, facing a primary parking area for the building or tenants, or containing the public entrance(s) to the building or building units.
    a. The primary frontage shall be considered the portion of any frontage containing the primary public entrance(s) to the building or building units.
    b. The secondary frontage shall include those frontages containing secondary public entrances to the building or building units, and all building walls facing a public street or primary parking area that are not designated as the primary building frontage by subsection "a" above.

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

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

101.04. Length of Building Frontage.

1. The length of any primary or secondary building frontage as defined in Section 107 shall be the sum of all wall lengths parallel, or nearly parallel, to such frontage, excluding any such wall length determined by the Zoning Enforcement Officer or Planning Commission as clearly unrelated to the frontage criteria.

2. For buildings with two or more frontages, the length of the wall and allowable sign area shall be calculated separately for each such building frontage.

3. The building frontage for a building unit shall be measured from the centerline of the party walls defining the building unit.

Section 102. Signs Permitted.

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

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

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

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

Exhibit 1. Signs Permitted in Each Character Area

Character Area	Downtown	Small Commercial		General Commercial	Highway Commercial	Mixed Use	Office	Employment
		Traditional	Suburban					
Wall Sign	●	●	●	●	●	●	●	●
Projecting Sign	●	●	O	O	O	●	O	O
Building Entrance Sign for Interior Tenants	●	●	●	●	●	●	●	●
Signs for Upper Floor Tenants (1)	●	●				●	●	
Building I Signs	●	●	●	●	●	●	●	●
Freestanding Signs (2) RESTORE:			●	●	●	●	●	●

● The sign would be generally permitted

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

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

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

Comment: The standards for number and size of free-standing signs should be based on the size of the site or physical characteristics of the right of way and speed limits. The owner of the parcel is responsible for allocating the content of the signs—within the permissible sign area and number of signs—among the name of the project, key tenants (that pay for the rights in their leases) or some, or all, tenants.

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

Section 103. Development Standards.

103.01. Wall Signs.

1. The basic allowance for wall signs shall be limited to_____ square feet of sign area for each lineal foot of building or tenant frontage. *See Exhibit 2*.

2. The minimum sign area for each tenant shall not be less than ____ square feet *(say, 20 or 25 square feet).*

3. Each tenant may have multiple wall signs as long as the total wall sign area does not exceed the allowances established for wall signs *using Exhibit 2*.

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

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

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

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

Exhibit 2. Wall Signs, Basic Allowances

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

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

4. The wall sign or signs, shall not be greater than eighty (80%) percent of the length of the tenant space or the length of the building frontage for single tenant buildings.

5. The area of any wall sign may be increased by twenty-five (25%) percent when the building is setback at least two hundred (200) feet from the public right-of-way and may be further increased an additional twenty five (25%) percent for each additional two-hundred (200) feet of setback, or fraction thereof, up to a maximum increase of one-hundred (100%) percent.

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

7. The following additional wall signs may be permitted:

    a. **Projecting signs.** In addition to the allowances for wall signs, projecting signs are permitted when designed and placed for the purpose of being viewed by pedestrians walking along the same side of the street as the business they seek or such sign is under a continuous rain canopy projecting from the building. Projecting signs shall have a maximum area of ___ square feet; the bottom of the sign shall be a minimum of eight (8) feet above the sidewalk; the sign shall not project more than ___ feet from the wall of the building on which the sign is placed; and adjacent projecting signs shall not be closer than ____ feet.

    b. **Building Entrance Sign.** In addition to the wall signs otherwise permitted by these regulations, an additional sign may be permitted up to a maximum of ____ square feet for the use of first floor or upper floor tenants who are not otherwise entitled to a sign on the exterior of the building.

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

c. **Additional Wall Signs for Multiple Story Buildings.** An additional building sign is permitted on each of the building's primary and secondary frontages according to the following:

i. For a building with two (2) floors, the additional permitted sign area is ____ square feet for each eligible wall.

ii. This additional permitted sign area may be increased by _____ square feet for each additional building floor.

iii. The sign must be placed at the height for which the bonus has been granted.

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

103.02. Freestanding Signs.

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

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

Exhibit 3. Freestanding Signs, Basic Area Allowances

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

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

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

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

Comment: The maximum setback should not place the sign outside of the driver's cone of vision which is no greater than ten (10) degrees from either side of the driver's line of sight. No portion of a freestanding sign shall be in, or project over, a public right-of-way.

.

Exhibit 4. Freestanding Signs, Basic Height Allowances

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

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

3. Additional freestanding signs shall be permitted:

    a. For every ____ feet of site frontage, in excess of ____ feet of lot frontage and for corner lots; and,

    b. One (or two) additional signs at each public access entrance to the property with each sign not exceeding two to six square feet each and with a maximum height of two to four feet from the ground.

Comment: Additional freestanding signs ensure that large single development sites are generally afforded the same number of signs as multiple and contiguous smaller sites. If this "equity" is not provided, the large sites are penalized in which case the owner may seek a subdivision of the land in order to obtain its proportional share of signage. An additional sign on the second street frontage (corner lot) grants appropriate sign visibility for its passing traffic on both streets.

4. The permitted sign area may be aggregated into fewer and larger signs, at the election of the property owner/business, provided that the size of any single sign does not exceed the area permitted pursuant to "1" or "2" above by more than __%.

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

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

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

103.03. Electronic Message/Changeable Copy Signs.

Comment: A community, in formulating its sign regulations, should recognize the emerging technology and benefits of electronic messages. Important to note that EMC's provide the opportunity to notify a community of natural disasters or emergency notifications such as Amber Alerts. The technology has sufficiently advanced so that electronic message centers (EMCs) are more in demand because they offer more effective business identification and promotion relative to their cost. The EMCs also enable multiple tenants in a building or complex to achieve identification "at the street" – on a single freestanding sign. These typically are instances where the regulations and/or the property owner's allocation (of the available area) does not permit: (1) any additional signs for the tenant; or (2) space on the permitted sign for the use of all tenants.

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

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

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

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

1. Changeable copy by non-electronic means may be utilized on any permitted sign.

2. Only one (1) EMC sign is permitted on a zoning lot for each street on which the development fronts and the sign is visible unless additional EMCs are approved by the _____.

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

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

4. In the _____ Character Areas EMCs are permitted with unlimited motion (or animation) provided the electronic message center does not exceed ____ *(say 30%, of the total sign area permitted on the site).*

5. In the _____ Character Areas the EMCs are not limited.

6. All EMCs are required to have automatic dimming capability that adjusts the brightness to the ambient light at all times of the day and night.

7. The electronic message center message shall not change more than once every eight (8) seconds. Such EMC shall contain static messages only, and shall not have movement, or the appearance or optical illusion of movement. The transition duration between messages shall be instantaneous or may dissolve or fade with a duration of not to exceed one (1) second.

8. EMCs shall not flash per 106.042.

Exhibit 5A.
Electronic Message Center Location and Other Considerations

	Permitted: Yes (Y) or No (N)	Could Apply to Part of Character Area	Away from Residential	Confine to Main Street
Downtown	Y	Yes	Yes	Yes
Small Commercial – Traditional	N			
Small Commercial – Suburban	Y	No		
General Commercial	Y	Yes	Yes	Yes
Highway Commercial (1)	Y	No		
Mixed Use	Y	No		
Offices	Y	No (2)		
Employment	Y	No (2)		
Special Use Districts/Uses (3)	Y			

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

Exhibit B. Electronic Message Center Regulations

Character Area	Permitted Yes (Y) or No (N)	Hold Time	Size Limitation	
			EMCs as a Maximum % of the Total Sign Area Permitted on the Site	EMCs as a Maximum % of a Single Sign
Downtown	Y	8 seconds to Unlimited	30% to 100%	100%
Small Commercial – Traditional	N			
Small Commercial – Suburban	Y	8 seconds	30% to 50%	67%
General Commercial	Y	8 seconds to Unlimited	30 % to 50%	80%
Highway Commercial (1)	Y	8 seconds	30 % to 50%	80% to 100%
Mixed Use	Y	8 seconds	15% to 30%	50% to 80%
Offices	Y	8 seconds	15% to 30%	50% to 67%
Industrial	Y	8 seconds to Unlimited	30% to 50%	50% to 80%
Special Use Districts/Uses (2)	Y	None	None	

1. Assumes that Highway Commercial is a relatively small geographic area focused at a highway interchange
2. These Special Use Districts/Uses are not necessarily part of the Character Areas, above

103.04. Brightness Limitations for EMCs.

1. All EMC's are required to utilize photocell, or similar technology, that adjusts the brightness of the sign automatically as ambient light conditions change at all times of day and night.

2. The brightness of the EMC's, as measured by "illuminance limits" (as defined in sub-section 3, herein) shall not exceed 0.3 foot-candles above the ambient light level.

3. Illuminance is the amount of additional light - measured in foot-candles, at a perpendicular distance, in front of the EMC, and based on an all-white (*i.e.*, maximum brightness) illuminated display – compared to the ambient light level when the EMC is turned off.

4. The permitted illuminance shall be measured by applying the following formula: Measurement Distance = Area of Sign Sq. Ft. x 100.

103.05. Signs During Construction.

1. One (1) temporary sign not to exceed _____ square feet may be permitted on each street frontage during the period that construction on a property is occurring.

Comment: While the Supreme Court did not specifically address construction signs, the authors believe that signs during construction serve a legitimate and unique public interest during the properties "period of transition." This is a property's third time, place, and manner stage in the sequence from vacant, construction, and developed. While the sign(s) are expected to include the traditional messages (name of project, address, contractor, architect, engineer, etc.) it must be recognized that these signs may be used for unrelated non-commercial messages.

103.06 Instructional Signs.

1. Instructional or "way-finding" signs shall be permitted in addition to all other signs when they are of such size and location that satisfy the intended instructional purpose and based on their size, location, and intended purpose will not constitute additional advertising. Instructional signs shall be permitted pursuant to ____ (#1 or #2 in the comment, below) and may include the name of the business and logos. (DBH)

Comment: Instructional Signs, when approximately sized and located to facilitate traffic safety and business and customer needs and convenience also serve a legitimate public interest even though these signs continue to have an "intended" content. However, since the needs of businesses vary so widely based on the use and parcel size it is difficult to create a "one size fits all" content neutral standard for generically permitting additional "site signs." It is generally "expected" that these signs will be sized and located to meet legitimate operating interests related to the use of the property and will not be sized and located to constitute "significant" additional advertising that can be easily viewed from off the premise. Therefore, community has essentially two choices:

1. *Permit these signs on a "case by case" basis recognizing such signs, like all others, may be used for non-commercial messages; or*
2. *Establish objective standards recognizing that such standards would likely capture "less than 100% of the signs typically required. In such cases the applicant could appeal to the _____ when additional signs are needed for public safety.*

103.06. Window Signs.

1. Permanent and temporary window signs shall not exceed 25%- 50% percent of the area of a window and the total area of all window signs.

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

103.07. Temporary Signs: All commercial enterprises and institutional uses (institutional uses, *ie*. places of worship, schools, non-profits) are permitted:

1. Up to _____ signs and/or other devices (signs, banners, balloons, etc.) that can be displayed for a maximum of _____ days per year. No such sign or other device shall be greater than _____ square feet and all such signs or devices shall be located _____ on the property.

2. One temporary sign, not to exceed ____ square feet or ____ feet in height.

Comment: Based on recent United States Supreme Court decisions, temporary signs - when permitted – must be granted as a right for any on-site commercial message or non-commercial message (for a commercial enterprise) or a non-commercial message for institutional uses. Conversely, such signs shall not be confined to an event or activity. See page 15 for the legal analysis.

Section 104. Non-Conforming Signs

104.01. General Provisions.

1. Nonconforming signs shall be maintained in good condition pursuant to Section 106.

2. A nonconforming sign shall not be altered, modified, or reconstructed except:
   a. When such alteration, modification, or reconstruction would bring such sign into conformity with these regulations;

   b. Any alteration, modification, or reconstruction permitted in this section shall be limited to the replacement of a sign panel, replacing individual letters and logos within the same area or repainting a sign face, and does not permit changes to the structure, framing, erection, or relocation of the sign unless such changes conform to subsection "a" above.

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

104.02. Limitations for Non-Conforming Signs.

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

2. Extension of time to comply - The dates established in this Section for a sign to be brought into compliance with the requirements of these regulations may be extended at the request of the sign owner or lessee. In evaluating the extension of time for a nonconforming sign, the City shall consider the following factors to determine whether the owner of the sign has had a reasonable amount of time to recoup the initial investment:
    a. The value of the sign at the time of construction and the length of time the sign has been in place;
    b. The life expectancy of the physical structure and its salvage value, if any;
    c. The amount of depreciation and/or amortization of the sign already claimed for tax or accounting purposes;
    d. The length of the current tenant lease or expected occupancy compared to the date the sign is to be brought into compliance;
    e. The extent to which the sign is not in compliance with the requirements of these regulations;
    f. The degree to which the City determines that the sign is consistent with the purposes of these regulations; and
    g. Whether the sign has “historical” or “landmark” significance and should, therefore, be exempt from amortization *(See also Appendix A.)*

Section 105. Sign Review Procedures.

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

1. **Time Limits.** All sign applications shall be reviewed for compliance with these regulations within ten (10) business days from the time a completed application has been accepted by the Zoning Enforcement Officer.

2. All deviations regarding the sign ordinance would be heard by a community's Planning Commission rather than by a Board of Zoning Appeals if not otherwise prohibited by law.

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

3. A Comprehensive Sign Plan (CSP) may be submitted that permits consideration of unique conditions, flexibility, and creativity. Such CSP is subject to approval by the Planning Commission. The Planning Commission shall only approve such CSP when they make a determination that the creativity and flexibility demonstrated in the CSP better advances the public interests of the community and the purposes of these regulations than strict compliance with the standard regulations of this Chapter. The application of such plan cannot be viewed as imposing more restrictive requirements than permitted by the basic standards, but rather, may permit additional signs and/or sign area based on the applicant's demonstration of unique characteristics of the design, building, and/or site and appropriate landscaping associated with the freestanding signs. Once a CSP has been approved, subsequent applications for specific signs shall be approved administratively when the proposed sign is in compliance with the approved CSP.

Comment: Among several other unique considerations, a CSP determination could be most applicable for a large business or mixed-use development that has an unusually limited frontage, with an access drive, on the main streets compared to the size of the parcel and/or unique building design and/or site attributes that suggest a unique approach to signs. Through an agreed CSP the goals of both the community and the Applicant could be better achieved rather than through strict compliance with the basic Code requirements.

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

Section 106. Supplemental Considerations.

106.01. Construction Standards.

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

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

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

1. Signs shall be structurally sound and located so as to pose no reasonable threat to pedestrian or vehicular traffic.

2. All permanent freestanding signs shall have self-supporting structures erected on, or permanently attached to, concrete foundations.

3. If possible, signs should not be in locations that obscure architectural features such as pilasters, arches, windows, cornices, etc.

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

4. The signs should not be in locations that interfere with safe vehicular and pedestrian circulation or public safety signals and signs.

5. No signs shall be erected, constructed or maintained so as to obstruct any fire escape, required exit, window, or door opening used as a means of egress.

6. Signs shall be structurally designed in compliance with ANSI and ASCI standards. All elective signs shall be constructed according to the technical standards of a certified testing laboratory.

7. Signs (other than EMCs whose brightness is regulated in Section 103.04) may be illuminated — by external or internal means — provided that:
    a. The brightness and intensity shall not be greater than necessary to meet reasonable needs of the business or use served;
    b. Light sources shall be shielded from all adjacent buildings and streets; and
    c. The lighting shall not create excessive glare to pedestrians and/or motorists, and shall not obstruct traffic control or any other public informational signs.

106.02. Maintenance.

All signs shall be maintained in accordance with the following:

1. The property owner shall maintain the sign; in a condition appropriate to the intended use; to all City standards; and has a continuing obligation to comply with all building code requirements.

2. If the sign is deemed by the Zoning Enforcement Officer to be in an unsafe condition, the owner of the business shall be immediately notified in writing, and shall, within 48 hours of receipt of such notification, respond to the City with a plan to correct the unsafe condition, remove the unsafe sign, or cause it to be removed. If after ____ days, the unsafe condition has not been corrected through repair or removal, the Zoning Enforcement Officer may cause the repair or removal of such sign, at the expense of the property owner or lessee. If the total costs are not paid in full within ____days of the repairs or removal, the amount owed shall be certified as an assessment against the property of the sign owner, and a lien upon that property, together with an additional ____ percent penalty for collection as prescribed for unpaid real estate taxes.

3. In cases of emergency, the Zoning Enforcement Officer may cause the immediate removal of a dangerous or defective sign without notice.

4. Whenever any sign, either conforming or nonconforming to these regulations, is required to be removed for the purpose of repair, re-

lettering or re-painting, the same may be done without a permit or without any payment of fees provided that all of the following conditions are met:

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

106.03. Signs Exempt from the Regulations.

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

1. Any public purpose/safety sign and any other notice or warning required by a valid and applicable federal, state, or local law, regulation, or resolution.

2. Works of art that do not include a commercial message.

3. Religious and other holiday lights and decorations containing no commercial message, and displayed only during the appropriate time of the year.

4. Flags of the United States, the State or Commonwealth, foreign nations having diplomatic relations with the United States, and any other flag adopted or sanctioned by an elected legislative body of competent jurisdiction. These flags must be flown in accordance with protocol established by the Congress of the United States for the Stars and Stripes. Any flag not meeting these conditions shall be considered a sign and shall be subject to regulations as such.

5. Building markers.

106.04. Prohibited Signs.

The following signs are prohibited in the City:

1. Abandoned signs, as defined in Section 107.

2. Animated, flashing, rotating signs, and festoons as defined in Section 107, inflatable signs, tethered balloons, banners, pennants, searchlights, streamers, exposed light bulbs, strings of lights not permanently mounted to a rigid background, and any clearly similar features, except those specifically exempt from regulation in Section 106.03, temporary signs permitted in 103.0___, or electronic message centers as permitted in Section 103.0___.

3. Signs on vehicles when the vehicle is placed in a location not normally expected for such vehicles, and the location is determined to have the primary purpose of attracting attention or providing messages in addition to the signs that are permitted on the building(s) or site pursuant to this Chapter.

4. Signs containing any words or symbols that would cause confusion because of their resemblance to highway traffic control or direction signals.

5. Merchandise, equipment, products, vehicles, or other items which are not available for purchase on the property of the sign, but are intended to attract attention, or for identification or advertising purposes.

6. Signs located on trees, utility poles, public benches, or any other form of public property or within any public right-of-way unless explicitly permitted by the regulations.

7. Other signs or attention getting devices that raise concerns substantially similar to those listed above.

Section 107. Definitions.

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

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

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

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

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

Attraction or Reader Board. Any sign having changeable copy**.** (*Note*: Not sure this definition continues to be needed.)

Awning. A shelter extending from the exterior wall of a building and composed of non-rigid materials except for the supporting framework.

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

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

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

Billboard or Poster Panel. An off-premises sign.

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

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

Changeable Copy Sign. A sign or portion thereof on which the copy or symbols change either automatically through electrical or electronic means or manually through placement of letters or symbols on a panel mounted in or on a track system.

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

Construction, Sign during. A temporary sign on a building or site during the period of construction.

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

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

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

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

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

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

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

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

Instructional Signs. A sign, or signs, permitted by the Zoning Enforcement Officer, that are not otherwise permitted by these Regulations and which support and facilitate traffic flow and safety needs and otherwise support the operational convenience for the benefit of facility owner or tenant and the customers alike.

Length of Frontage.

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

2. For buildings with two or more frontages, the length and allowable sign area shall be calculated separately for each such frontage.

3. The building frontage for a building unit shall be measured from the centerline of the party walls defining the building unit.

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

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

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

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

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

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

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

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

Noncommercial Signs. Any sign otherwise permitted by these regulations that is used for the purpose of expressing a noncommercial message of any sort and which may not be related to the advertisement of any product or service or the identification of any business.

or

Noncommercial Messages. Any message for the purpose of expressing a noncommercial speech of any sort and which may not be related to the advertisement of any product or service or the identification of any business.

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

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

1. For multi-tenant buildings, the portion of such building that is owned, or leased by a single tenant, shall be considered a building unit.

2. The primary frontage shall be considered the portion of any frontage containing the primary public entrance(s) to the building or building units.

3. The secondary frontage shall be considered the portion of any frontages containing secondary public entrances to the building or building units, and all walls facing a public street or primary parking area not designated as the primary frontage by subsection 153.03©(1)(A) above.

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

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

Revolving or Rotating Sign. An animated sign.

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

Sign. Any name, figure, character, outline, display, announcement, or device, or structure supporting the same, or any other device of similar nature designed to attract attention outdoors, and shall include all parts, portions, units, and materials composing the same, together with the frame, background, and supports or anchoring thereof. A sign shall not include any architectural or landscape features that may also attract attention.

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

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

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

Temporary Sign. Any sign which is installed for a period not to exceed ____days.

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

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

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

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

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

Appendix

A. Examples of "Landmark Status" Signs.

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

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

Three Options Based on Highway Speeds

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

Source: Street Graphics & the Law

C. Sources

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BEST PRACTICES IN REGULATING TEMPORARY SIGNS

By **Wendy E. Moeller, AICP**

(Updated with *Reed v. Town of Gilbert* Supreme Court Case)

SIGN RESEARCH FOUNDATION™

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TABLE OF CONTENTS

TABLE OF CONTENTS

INTRODUCTION

Communities seem to have a love-hate relationship with temporary signs. Most understand the need for temporary signs when it comes to things such as business promotion, identifying properties that are for sale or lease, or promoting special events, but they also struggle with the administration and enforcement of temporary signs due to the ever-changing nature of this type of sign. The purpose of this guide is to provide communities with some best practices to use when evaluating and writing temporary-sign regulations that are easier to administer and enforce, while also allowing for the reasonable use of such signage for residents and businesses alike. This guide also includes updated commentary and recommendations related to the June 2015 ruling by the Supreme Court of the United States in the *Reed vs. Town of Gilbert*, Arizona case.

DEVELOPMENT OF THIS GUIDE

This guide was developed with the help of numerous communities and organizations. An initial step in determining this guide's direction involved creating an online survey that sought information on how communities regulate temporary signs, and what issues they face in administering temporary sign regulations. Over the course of a month, representatives from more than 99 communities in 31 states responded to the survey. This information, along with a review of many of the responding communities' ordinances, provided a general understanding of common approaches to regulating temporary signs, as well as new approaches to administration and enforcement. The survey also identified where staff members struggled with temporary signs. For example, each participant was asked to identify the issues they struggle with the most regarding temporary signs (each could choose up to three issues). The 78 respondents to the question reported various issues, all of which are discussed in this guide. The biggest problems identified administration and enforcement of the regulations, as well as addressing new sign types. Only four respondents (5.1%) reported no issues and even then, one of the four still chose addressing new sign types as an issue. See **Figure 1**.

Besides the survey, research for this guide included a review of newspaper articles and public meeting minutes where temporary sign regulations were discussed. This effort sought to identify temporary-sign issues as seen by local businesses and people affected by the regulations. These articles contributed to many of the best practices outlined in this document because often, a controversy with sign regulations triggered a larger discussion among community and business leaders to develop a solution.

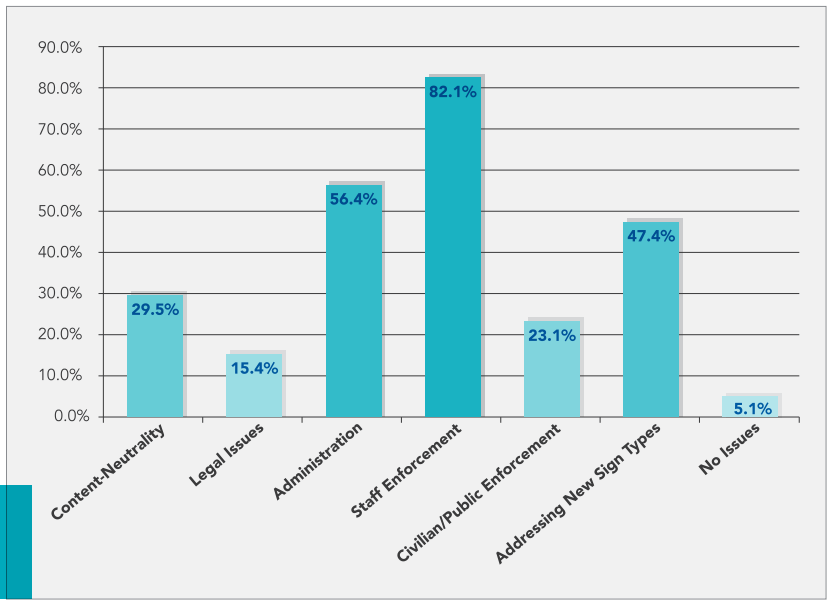


Figure 1: Online responses to questions about issues that communities struggle with in regulating temporary signs?

WHY TEMPORARY SIGNS?

A discussion of how to regulate temporary signs must begin with an understanding of how and why temporary signs are necessary for businesses, residents, and local institutions. Generally speaking, signs are necessary to provide effective wayfinding in our communities. This is evident, because signage is everywhere, but conflict arises when discussing excessive signage or preventing signs that detract from community character. Typically, one "bad" sign can influence overall opinions about signage in general. It is not uncommon that the negative reaction to temporary signs is actually aimed at illegal signs (Figure 2) that are not used by local businesses and/or capitalize on a lack of enforcement. It is often discussions about illegal signs that lead to decisions that prohibit or severely restrict signs. This can, in turn, significantly impact local businesses, and even residents who may want to advertise a garage sale or local events, yet do not want to have to go through the red-tape of permitting.

A vast majority of survey respondents said communities regulated temporary signs for safety and aesthetics, but nearly 50% also stated they regulate temporary signs for business promotion. See Figure 3. In reviewing the ordinances, no clear distinction separated communities that regulate temporary signs for business promotion versus those that do not. The communities that said they regulated for business promotion did not clearly allow more temporary signage and, in some cases, they even had temporary sign regulations more restrictive than the majority of other ordinances. The only connection appears to be that the support of businesses and economic development was a stated purpose to the overall sign regulations. Regardless, there is a clear relationship between temporary sign regulations and the ability of businesses to advertise. There is increasing evidence that demonstrates the value of signage to both businesses and communities, and that this value also applies to the use of temporary signs.

Figure 2: It is often illegal signs, such as the ones above, that cause a negative reaction toward temporary signage, resulting in the creation of excessive regulations.

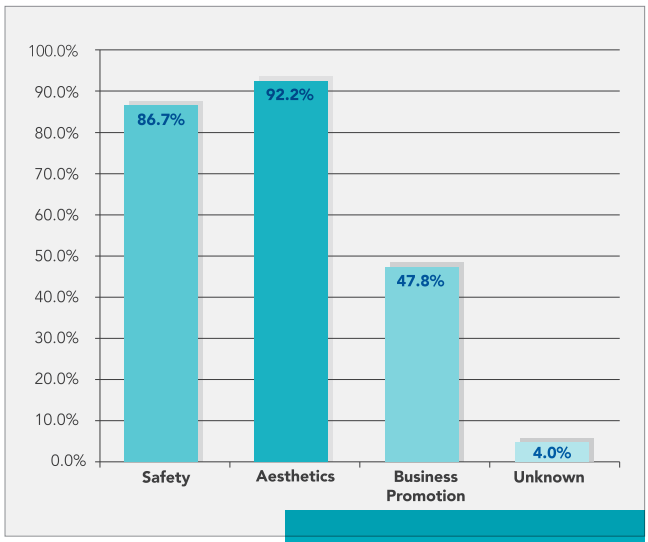


Figure 3: Online response to a question about why communities regulate temporary signs. Communities could check multiple reasons.

In the BrandSpark/Better Homes and Gardens American Shopper Study™, more than 100,000 consumers were surveyed about their household shopping activities, and more than 60.8% reported they have driven by and failed to find a business because the signage was too small or unclear. It also is evident that signage is more vital to a small business than to chains who might have a brand identity and large advertising budgets. In the temporary-sign articles discovered during the research for this guide, small businesses repeatedly noted how existing requirements or proposed restrictions impacted their business. For example, the Town of Newington, Connecticut, recently proposed a ban on temporary signs in all business districts, except in the downtown area, and small-business owners expressed concern. One small-business owner said "Any way I can draw attention to myself is absolutely necessary" and that "I do advertise, but as a small business, you have a small budget." In the 2013 case of *Fears vs. City of Sacramento*, the owners of a local gym challenged a sign regulation that prohibited them from posting a temporary sandwich board sign outside the building to advertise the gym. Although the lawsuit primarily focused on the lack of content-neutrality, the business noted in the court documents that they attracted 5-6 more walk-ins daily when the sign was posted outside. While reasonable sign regulations are important, an amicable balance will allow reasonable advertising and efficient wayfinding that, in turn, will contribute positively to the community character and economy.

USING THIS GUIDE

This guide is not designed or intended to be a model temporary sign code that you can simply cut and paste, as a single element, into a complete sign ordinance. For an effective and defensible set of sign regulations, a community needs to consider numerous variables, including the needs of local businesses, neighborhood character, and legal requirements. These variables cannot be accommodated from a one-size-fits-all model code. Instead, this guide suggests best practices, or things to consider, when updating your sign regulations to address temporary signs. These best practices are divided into two major sections: considerations when evaluating the overall temporary sign regulations, and best practices that apply to individual sign types. This approach allows better evaluation of the optimal regulation of temporary signs based on a community's individual needs.

Just as communities can vary greatly in their goals and character, so can sign regulations. This guide recognizes that, while in the past, sign-related case law has varied state-by-state and court-by-court, the U.S. Supreme Court's decision in *Reed v. Town of Gilbert*, Arizona now applies a more uniform standard of absolute content-neutrality to all temporary signs. Although this guide briefly discusses temporary-sign law, and includes a list of resources to help create a legally defensible set of sign regulations, it does not provide any legal opinions. **Always seek local, legal advice pertaining to local, state, and federal laws while updating your sign regulations.**

[1] Kellaris, James J. (2011), "100,000 Shoppers Can't Be Wrong: Signage Communication Evidence from the BrandSpark International Grocery Shopper Survey." The Science of Signage: Proceedings of the National Signage Research & Education Conference, Sign Research Foundation, Cincinnati, October 12-13, 2011.

[2] Hoffman, Christopher, "Business Group Rallies Again Proposed Ban on Temporary Signs in Newington," Hartford Courant, July 31, 2014.

BEST PRACTICES FOR THE OVERALL REGULATION OF TEMPORARY SIGNS

This project's research identified some essential best practices for developing comprehensive temporary sign regulations, as well as for the regulation of individual sign types. These best practices emerged from the survey, as well as discussions with both planners and sign-industry representatives. This section of the guide addresses overall best practices, administration and enforcement, and addressing new sign types as part of the overall regulation of temporary signs.

GENERAL PRACTICES

1 Make a clear distinction between a temporary sign and a temporary message.

There is a significant gray area when it comes to making a distinction between a temporary sign and a temporary message. A temporary sign is a portable structure that is intended to be used for a brief period of time. A temporary message does not have a structure in and of itself. It is a message that may be changed manually or digitally as part of a permanent sign structure. For example, electronic message centers are permanent signs that display temporary messages at set intervals. Similarly, communities often allow for signage on permanent structures such as light poles (See Figure 4.) or fuel pumps, where there is a permanent support structure for a temporary message. Conversely, in an equal number of examples, as shown in Figure 5, a sign owner may attach a temporary sign to a permanent structure. In these cases, the temporary sign is an independent structure temporarily attached to a permanent structure that was not intended to accommodate the sign and, quite often, communities prohibit this additional signage. Such signage should be regulated as a temporary sign, whereas temporary messages on permanent structures should be regulated as a permanent sign with allowances for temporary message changes.

Figure 4: An example of a temporary message attached to a permanent structure that should be regulated as permanent signage with allowances for temporary messages.

Figure 5: An example of a temporary sign that is attached to a permanent structure and should be regulated as a temporary freestanding sign.

2 Evaluate the regulation of temporary signs as part of an overall review of your sign regulations.

Both permanent and temporary signs are important and have a place in each community, but it is nearly impossible to address them as separate and distinct issues. Communities should always evaluate signage in a comprehensive manner. As part of such comprehensive review, the community can first develop a strong purpose statement and set of objectives. This type of evaluation will also allow the community to identify potential conflicts between the standards and the stated purpose of the regulations. For example, if a community goal is to limit temporary signage, but promoting local businesses is an essential purpose of the regulations, then expanding the permanent sign allowances could be the compromise (e.g., increased permanent signage area or allowance for digital message centers). It is also important to try to eliminate any unintended conflicts between temporary and permanent sign regulations. For example, communities that focus on limiting the size and height of permanent signs due to aesthetics may unintentionally end up allowing much larger temporary signs. For example, Figure 6 illustrates a conflict where a temporary sign has better visibility and legibility than an adjacent permanent sign. Would a larger permanent sign create any more negative impact on aesthetics than the temporary sign? In fact, the larger real-estate sign's better visibility and legibility would likely enhance traffic safety, an important purpose for regulating signage.

When updating your regulations, test how the provisions for permanent and temporary signs would apply to existing development sites as a way of identifying potential conflicts.

Although the *Reed* case was related to a temporary sign, the ruling itself has implications for both temporary and permanent signs. As noted earlier, there were differing opinions on the definition of "content-neutrality" prior to the ruling in the *Reed* case. Thus, the vast majority of regulations reviewed as part of the survey for this report had some level of regulations that were based on content. The most common examples were specific standards or exemptions for real-estate or election signs. In the wake of the *Reed* case, it is important that communities evaluate their sign regulations in a comprehensive manner, for the reasons identified in this section, but also to address any content-based regulations.

Figure 6: Apparent conflicts in regulating temporary and permanent signage can undermine the purpose statement for your sign regulations.

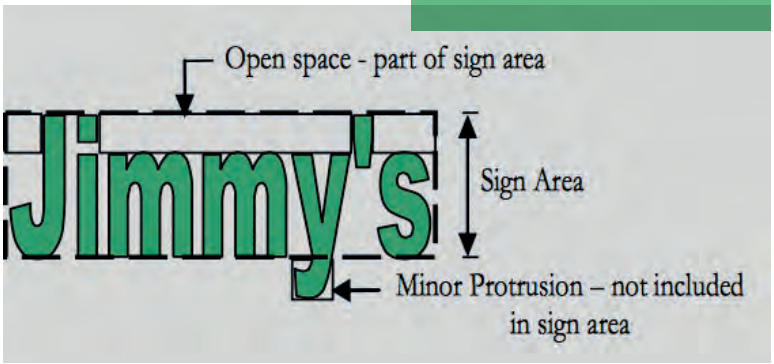
3 Engage all stakeholders in updating your sign regulations.

Too often, a community updates its sign regulations without querying business owners. Using a planning commission or an appointed committee has the tendency to result in heavy influence from residents who may not fully understand the need and/or benefit of temporary signs. Signage impacts both residential and business areas, but the biggest sign controversies stem from situations where businesses believe the local government is being too heavy handed. Prevent this situation by engaging a cross-section of stakeholders, including residents, local business owners and tenants, county board of elections, and members from the chamber of commerce and local sign industry when updating your temporary sign regulations. Such a group can establish the overall goals and priorities for sign regulations and find common ground. Local businesses can explain how proposed regulations can benefit or hurt the local economy through the regulation of both temporary and permanent signs. Local business representation will also help create stronger support for regulations that are easier to enforce and administer.

4 Be practical in sign area calculations.

The method of calculating the total sign area greatly impacts temporary signs and legibility. Tight restrictions can unintentionally prevent unique or creative signage. Measuring freestanding signs is fairly straightforward, due to their defined shape, but regulating window signs, without a defined background, can be more challenging. Some communities are beginning to distinguish between signs with a distinct background and those without. In the latter situation, the measurement should not include open or blank space. Multiple examples of this approach are referenced in the model sign codes listed in the "Additional Reading" section of this guide.

Figure 7: Sign-area calculation from *A Framework for On-Premise Sign Regulations* that illustrates an example of a practical sign-area calculation that allow for more design flexibility and enhanced legibility. A link is available in the **Additional Reading** section.



5 Avoid sign allowances shared between temporary and permanent signs.

Some communities have attempted to simplify allowable sign area by ignoring the differences in temporary and permanent signage and simply allowing "X" amount of signage. However, this can actually create an administrative nightmare because recalculations will be required every time the owner wants to make a change to the temporary or permanent signage. Second, if the total amount of sign area allowed is very restrictive, the permanent signs may be too small in terms of legibility, and any temporary sign may become quasi-permanent to compensate for insufficient advertising options. Such issues are only compounded for multi-tenant buildings. The "total overall sign area" approach may make it necessary to exceed best-practice parameters elsewhere. An alternative is to clearly distinguish the total area allowed for permanent signs separately from the total area allowed for temporary signs.

One approach communities are taking to ensure content-neutrality after the *Reed* decision is to establish a maximum amount of temporary, commercial speech sign area that is allowed year round, in individual zoning districts. This year-round signage is typically restricted to limited types of temporary sign structures (e.g., freestanding/yard signs or banners) with further restrictions to the number, height, and location of the individual sign structure type. The amount and type of signage allowed will vary based on individual zoning districts and the scale, form, and context of development, but is designed to allow for the most common temporary signs found in a community including those types of signs we have tradionally called real-estate signs or business information signs (e.g., open or closed signs). In addition to the temporary signage that is allowed year-round, communities often allow for some additional temporary signage for a specified amount of time, and a specifed number of occurences per year (e.g., up to 14 days, four times a year), based on the allowed sign type. Again, the community needs to specify the type of temporary sign structure allowed which, in these situations, may include an expanded list of allowable sign structures including those that are often less popular such as balloons, air graphics, human signs, or portable message centers. For all types of sign types allowed, the community should include any standards specific to that sign type, including, but not limited to, setbacks, maximum heights, maximum numbers, and seperation distances.

6 Consider allowing temporary signage as an interim-sign option.

Some communities establish special provisions for temporary signs that may be used by new businesses as an interim sign until permanent signage can be installed. For example, the regulations might allow for a temporary banner until a permanent wall sign can be installed. This often happens when there is potential for a change in occupancy (e.g., a multi-tenant building), and the old signage will not be removed until the new signage is ready. Additionally, the temporary-sign option can be used when the permanent sign is destroyed. In such cases, a time limit of 60 days should be sufficient, and the new permanent sign would immediately replace the temporary sign. A few communities even allow temporary signs for new businesses, for a period of up to six months, to allow testing of different signage options before designing the permanent sign. In such cases, the type of temporary sign should be specified with banners and yard signs being the most common examples of temporary signs allowed as an interim option.

Figure 8: This temporary banner is being used as an interim sign until a permanent wall sign can be installed. It is similar in size to the proposed permanent wall sign.

7 Avoid treating all temporary signs the same.

Sign ordinances can often be lengthy documents that lay out the rules for every conceivable type of sign type and/or situation. Typically, permanent signs are the focus of the regulations, with minimal thought given to temporary signs. Many communities subsequently want to simplify temporary-sign regulations by establishing a single time limit that applies to all temporary signs but then only allow for banner signs and freestanding/yard signs. Administratively, this seems wise, but temporary signs serve varied purposes and therefore demand different treatment, based on the type of sign. Communities need to allow all property owners some allowance for temporary signage year-round to accommodate activities such as the sale or lease of land that are often long-term. For year-round signage, it is not unreasonable to strictly limit the types of signs allowed to the most common types of banner or freestanding/yard signs. The problem is that a community needs to consider that there will always be special events or activities that warrant additional signage, but on a restricted time frame. For temporary signs that will only be allowed for limited time periods, consider allowing for an expanded list of sign types to give property owners more options.

Figure 9: Many communities are willing to provide for the possibility of using balloon signs as long as they are not used year-round. These may be a sign type that your community restricts to a certain number of days per year.

Figure 10: Freestanding/yard signs are often allowed year-round to provide for property owners the ability to accommodate routine activities not tied to specific dates, such as when used to advertise the sale or lease of land.

8 Consider the context of a sign's location.

As with permanent signs, the neighborhood and street context will typically drive the types of signs used or desired by businesses. In writing your regulations, consider the different characteristics of your community's residential and business activity areas to define the types and sizes of signs within zoning districts.

- Downtowns and high-density urban areas tend to have more foot traffic, so there is typically more demand for banners and sidewalk signs.

- Suburban or rural areas, or high-traffic streets and highways, typically require larger and taller signage for good visibility, so there tends to be more demand for yard signs, blade signs, and banners that are visible to drivers, rather than pedestrians.

- Many types of temporary signs are prohibited in historic districts, including banners or pennants, but sidewalk signs, window signs, and other types are traditionally allowed.

An increasing number of communities are also using form-based codes that focus on building form and the relationship between public and private areas, as compared to a focus on the use of land. These codes provide an opportunity to also write sign regulations specific to the form of development.

Figure 11: Signs in a downtown or urban setting tend to be smaller in area and height.

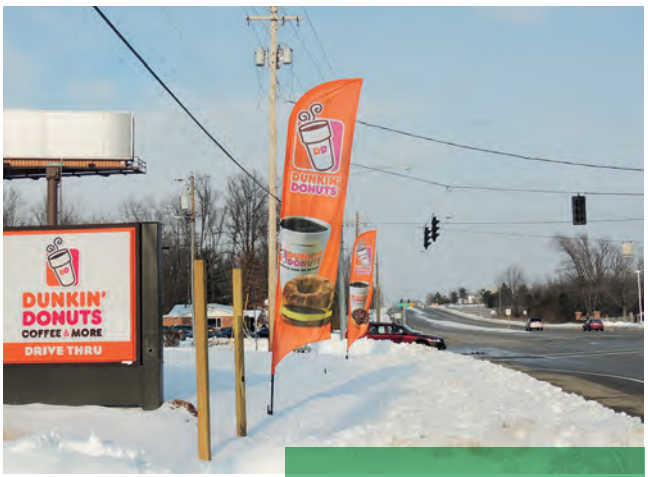


Figure 12: Signs along major highways or more rural settings need to be larger to allow for visibility, such as these blade signs along a four-lane, state highway.

9 Consider allowing off-premise temporary signs.

Many sign regulations prohibit all off-premise signs to prevent billboards, without any exceptions. Temporary signs often advertise off-premise special events or activities, such as local community festivals, recreational opportunities, and even business events, such as farmer's markets. Provided the temporary-sign regulations clearly establish sign area, height, duration, and even the number of signs, off-premise temporary signs should pose no threat. The only caveat is mandating the landowner's approval for off-premise signs. It is also appropriate to establish what types of temporary signs can be on-premise or off-premise.

While the decision in the *Reed* case helped clarify what was once differing opinions about the definition of content-neutrality in the lower courts, it has raised other questions as to whether sign regulations that distinguish between on-premise versus off-premise signs and commercial speech versus noncommercial speech are content-based. Since the ruling in the *Reed* case, several lower courts have heard cases on such questions, and thus far the majority of court decisions favor viewing these distinctions as content neutral based on Supreme Court rulings prior to *Reed*. In updating sign regulations, you should work with legal counsel to consider any potential risks in making these distinctions as well as any rulings within applicable state or federal courts.

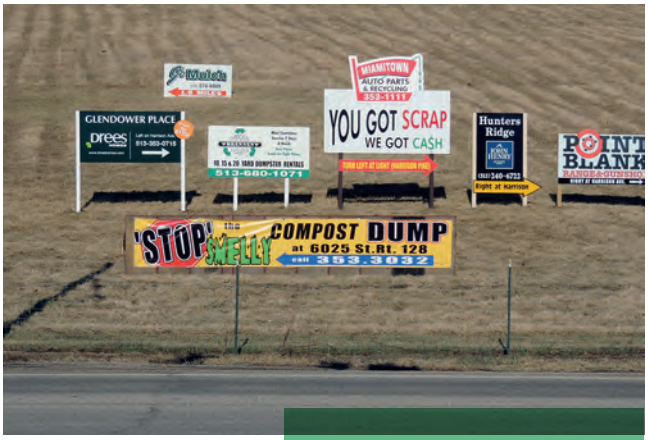


Figure 13: A mixture of off-premise signs that include temporary signs (real estate and pretest signs) as well as permanet signs.

10 Avoid prohibiting all signs in rights-of-way.

In the survey, approximately 73% of the communities stated they do not allow signs in any right-of-way. The other 27% limit them to situations like sidewalk signs or where pre-empted by state law. Most communities want to limit signs in rights-of-way largely for safety and visibility reasons, and because public spaces are not traditionally an appropriate location for private commercial advertising. The problem is that some limited signage in the right-of-way can provide effective marketing and add to the atmosphere, such as along sidewalks in pedestrian-focused areas. While defining a sidewalk sign in a content-neutral manner is simple enough, the *Reed* decision has made it difficult to make exceptions, such as temporary signs in certain right-of-ways rather than others. If your community does want to allow for some limited signage on sidewalks, consider an approach of allowing a temporary sidewalk sign (e.g., A-frame or T-frame sign) on any public sidewalk that has a width sufficient to accommodate the sign and clear passage of pedestrians (e.g., four feet of clearance). Most communities only have sidewalks of this width in more compact areas, such as downtown, so a similar sign would not be allowed where there are narrow sidewalk widths. Be sure to involve the state and county transportation departments and/or engineers in discussions related to signs in the right-of-way. Their departments may be affected, and they may be able to assist in crafting tailored regulations to individual situations.

Figure 14: Most sidewalk signs are located in the right-of-way, so a complete prohibition may limit advertising in more pedestrian focused areas of your jurisdiction where there is sufficient space for the sign and clear passage for pedestrians.

11 Be cautious when limiting the number of temporary signs.

Placing a limit on the total number of temporary signs permitted on any one site can be tricky due to a number of variables. Some courts have found this as potentially limiting to our freedom of speech when regulating noncommercial speech. For commercial signs, the variables include the number of tenants on a property, the types of temporary signs allowed, and the amount and type of permanent signage allowed. If limits are desired, consider putting a cap on individual sign types, with allowances for a temporary, wall-hung banner for each tenant, and limits on the number of freestanding temporary signs on a single property at any one time. Most communities, however, exempt temporary signs on lots for sale or lease, or signs that contain noncommercial speech signs from these types of regulations.

12 Be specific about when illumination of temporary signs is allowed or prohibited.

Communities commonly prohibit the illumination of all temporary signs, but this may minimize the effectiveness of specific types of temporary signs that may otherwise be allowed. For example, many advertising murals, banner signs used for the interim covering of permanent signs, portable message centers, projected-image signs, and light or support pole banners are illuminated either internally or externally. It is important, when considering the types of temporary signs that your community is going to allow, to also determine if it is reasonable to allow some limited illumination, typically based on the type and size of the sign, as well as the length of time the sign will be allowed. In all cases, be clear when illumination is allowed or prohibited, and if allowed, identify any applicable lighting regulations. Additionally, it will be important to cross-reference any building or electrical-code requirements (e.g., requirements for burial of any conduit) that may be applicable.

13 Visibility issues that apply to permanent signs also apply to temporary signs.

An extensive amount of recent research has linked sign visibility and legibility with safety. Some studies have focused on electronic signs, while others have focused on design implications, such as sign location, color contrast, and sign orientation. The same design principles that affect the visibility and legibility of permanent signs also apply to temporary signs. The "Additional Reading" section references several recent studies and model codes that can provide additional guidance on visibility issues.

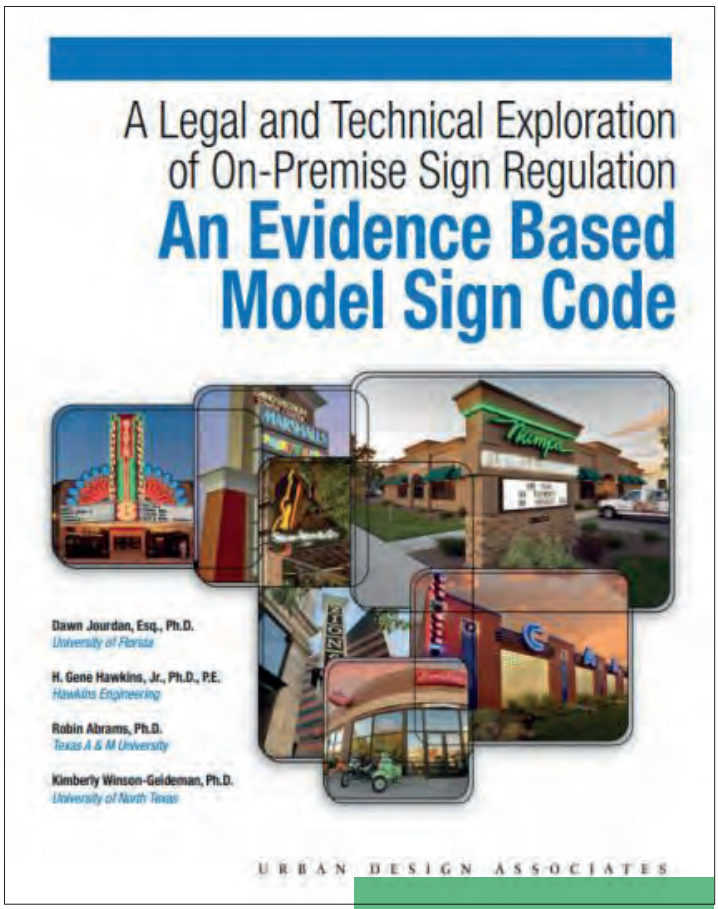


Figure 15: New studies and model codes focus on legal and safety issues related to signage. See links in the **Additional Reading** section.

ADMINISTRATION AND ENFORCEMENT

A majority of communities who responded to the online survey cited major issues with administration and enforcement of temporary-sign regulations. While the regulations establish the rules for temporary signs, many of the following best practices focus on departmental policies and actions outside of the regulations, so your jurisdiction could undertake them without necessarily amending any zoning or other ordinance text.

1 Use technology.

All of us have benefitted from technological advances. The same can be said about zoning administration and enforcement. There are a growing number of communities who are incorporating these types technology in their day-to-day zoning administration activities. The use of technology appears to vary greatly, based on available resources, but the following are a couple of options available to most communities:

- For smaller communities with minimal resources, basic software programs, such as digital-calendar applications or electronic files, can set reminders regarding deadlines for temporary signs. As permit applications come in, staff can establish a reminder that will automatically notify the appropriate enforcement officer of the expiration dates for the signs, especially those that require permit review.
- More communities are utilizing new, Permitting-software options to facilitate obtaining permits, as well as tracking expiration dates and compliance. For example, the City of North Liberty, Iowa, utilizes a web-based, self-permitting system. The system also allows the city to track sign permits and time limits so applicants cannot apply for excessive permits. **Figure 16** is a screen grab from the city's permitting website. Additionally, the city's enforcement officers have iPads with 4G internet access they can utilize while in the field to check compliance with the permitting application. Permit-software applications offer a range of pricing that makes this option available to most communities.

Temporary Sign Permit

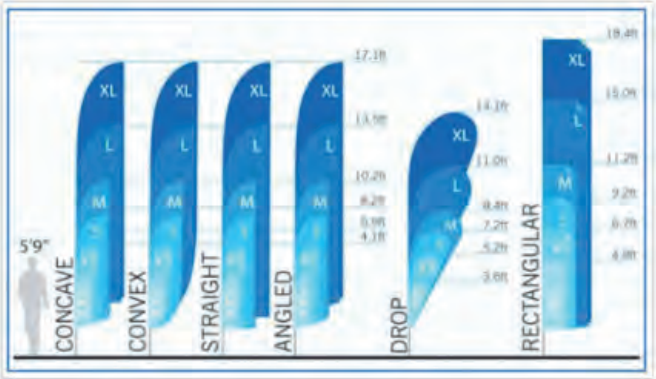
You are here: Home > Temporary Sign Permit

Type of signs permitted

Only the temporary advertising signs specified below are allowed. No other type of signage is allowed.

Permitting and enforcement

In order to expedite permitting for the signs, the City is implementing a web-based self-sign-up permit system for business owners at northlibertyiowa.org/signpermit. A PDF version of this page is available for download. Owners may simply enter information there for the desired sign(s) to self-permit. It is also a resource to track sign usage, and City staff will review the list to make sure all signs in use are on the list. If a business does not have access to the self-sign-up, they may contact Dean Wheatley, Planning Director, at 626-5747 for assistance, or stop by City Hall. Citations will be issued to businesses placing signs that are not permitted.



Cost of permit

At this time there is no fee for the permit.

When signs can be placed

The signs are allowed to be displayed for up to 10 days up to 5 times per 12-month period. Owners can track their usage with the online permitting system.

Where signs can be placed

Signs may only be displayed on private property. Generally, that means behind the sidewalk. Signs placed between the sidewalk and the street will be removed by City staff.

Sign condition

Signs are to be kept in good condition and replaced when damaged or faded.

Figure 16: Image from the North Liberty, Iowa, permitting website.

2 Be clear when a permit is required.

Many communities require sign permits, but also have some limited exceptions for smaller signs or certain sign types. Be clear as to when a sign permit is required. Also be clear that signs that don't need permits are still subject to applicable regulations, such as signs displaying a noncommercial message. Communities should focus on requiring permits for larger signs and exempt smaller signs. Paired with a good enforcement program, exempting certain signs should not create extensive issues and will streamline administration.

3 Constant and consistent enforcement is necessary.

Many communities have extensive regulations, yet they lack the resources for enforcement, so it tends to be random or complaint based. Inconsistent enforcement can lead to a proliferation of illegal temporary signs, as well as a damaging perception. First, always consider what your community can actually enforce when writing the sign regulations. If you only have one enforcement officer, do not write complex regulations that cannot be enforced by a single person. Here, technology can often help. Second, several survey respondents noted they had more successful enforcement when they identified other staff/employees of the jurisdiction who, with proper training, could be an authorized enforcement officer for signage and possibly expand the timeframe (e.g., weekends) when enforcement actions could take place.

Figure 17: Authorizing more than the zoning staff to enforce sign regulations can help minimize illegal temporary signs from popping up over weekends.

4 Consider a sign label program.

Several communities are starting the practice of issuing a sticker, stamp, tag, decal, or some other type of label in lieu of a paper certificate. The label is applied to the sign and includes basic information, such as the applicant's name, permitted sign location, and dates when the sign can be posted. Enforcement is as simple as checking a sign for compliance. Signs without a label, or an expired date, are immediately removed, or other appropriate enforcement actions are taken. The cost of the labels is typically covered by the jurisdiction because it helps simplify enforcement.

Figure 18: The above is an image of a temporary banner sign with a city-issued sticker posted in the corner.

5 Cooperation and education can go a long way.

Public involvement is a best practice when developing sign regulations, but public outreach should continue beyond drafting of regulations. Numerous survey respondents noted success in administering the sign regulations through educational efforts with local business groups and chambers of commerce. Planners proactively work with businesses to identify what types of signs are allowed, and the rules for the individual sign types, while also constantly listening to their feedback. Such efforts appear to reduce enforcement actions and violations. Consider working with your local county board of elections to educate potential candidates about any applicable sign laws at both the state and local level.

6 Maintenance regulations are important.

Temporary signs, logically, are often made with less-durable materials than those used for permanent signs. However, some temporary signs may have longevity due to lack of enforcement or by necessity, such as a sign advertising space for lease. While many owners are diligent about replacing or removing deteriorated signs, basic requirements for sign maintenance should be applied to both permanent and temporary signs.

ADDRESSING NEW SIGN TYPES

Communities often struggle with new temporary-sign types and/or technologies. Many regulations prohibit all unspecified sign types. A better practice is to consider any new sign type or technology in terms of "similar use" language, with a longer-term solution of amending sign regulations to accommodate the new sign.

1 Treat the new sign as a similar use.

"Similar use" provisions in zoning codes provide enforcement officers with some authority to evaluate a new use based on whether it is similar in nature to another use allowed in the zoning code. If the proposed use is similar in scale, intensity, and other characteristics, the enforcement officer can typically permit the new use in accordance with the rules that apply to the similar use. This same concept can be used with temporary signs. For example, the sign in Figure 19 is very similar to a banner, except it is temporarily attached to the wall with a special adhesive instead of the more traditional rope or hooks. It is considered a temporary sign because it can easily be removed when, in this example, all of the apartments are leased. A similar-use provision allows the flexibility to make this type of interpretation, and prevents the need for a text amendment in the short term. A longer-term solution is an amendment to the sign regulations to accommodate the new sign type.

Figure 19: A new type of temporary sign that is completely, yet temporarily, adhered to a brick wall.

2 Consider whether the new sign is a temporary sign or a temporary message.

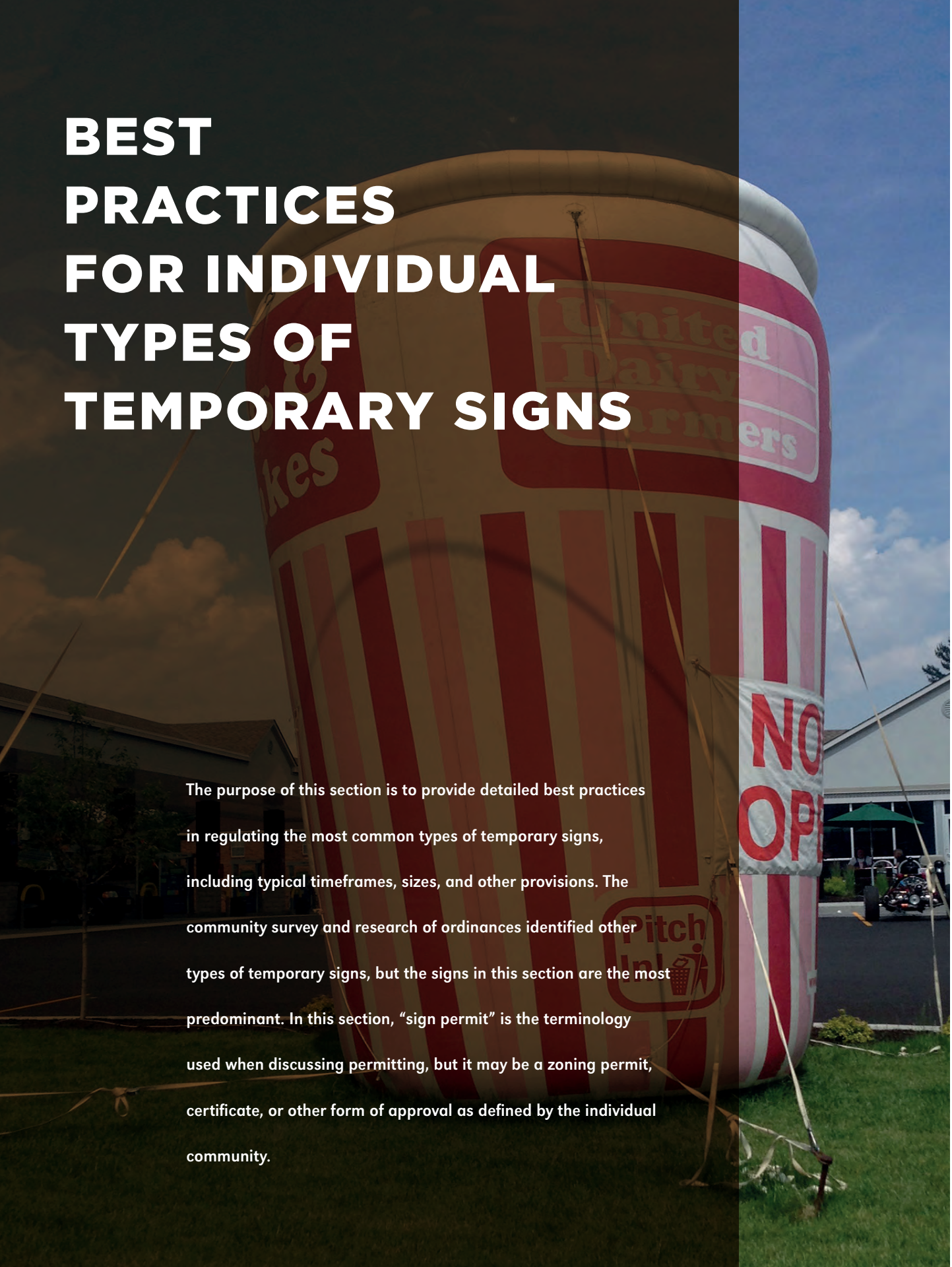
As discussed earlier, the distinction between temporary signs and temporary messages should be a part of any discussion related to addressing new sign types. If it is a permanent structure with a changeable message, the best course of action is to regulate the sign as a permanent sign.

Figure 20: A new type of permanent sign structure where the message, printed on a banner like material, can be changed. Such sign structures should be regulated as a permanent sign.

3 Collaboration offers the best approach to regulating new sign types.

Engaging all stakeholders is also a best practice when considering the regulation of new sign types. When considering a text amendment to address new signs, engage the various stakeholders to discuss the purpose of the sign, and any reasonable regulations necessary to address concerns about the sign.

BEST PRACTICES FOR INDIVIDUAL TYPES OF TEMPORARY SIGNS



The purpose of this section is to provide detailed best practices in regulating the most common types of temporary signs, including typical timeframes, sizes, and other provisions. The community survey and research of ordinances identified other types of temporary signs, but the signs in this section are the most predominant. In this section, "sign permit" is the terminology used when discussing permitting, but it may be a zoning permit, certificate, or other form of approval as defined by the individual community.

ADVERTISING MURALS

Advertising murals, building wraps, or super graphics are some of the largest forms of temporary signs. While some are permanent, such as murals painted on the sides of buildings, temporary versions of these signs are popping up nationwide. Most common in downtowns and high-density urban settings, these signs can be an alternative to a blank or unfinished wall.

- Require a sign permit for the installation of an advertising mural. Communities commonly require a board-level review of advertising murals if the sign is located in a historic or other special district.
- Consider allowing both on-premise and off-premise messages for ease of administration (e.g., to be an on-premise sign would the building in Figure 21 or ease of administration (e.g., to be an on-premise sign would the building in Figure 20 have to contain an Apple Store? What if a tenant sold iTunes cards?). Allowing off-premise messages also allows for advertisement of both business and community interests that still may include commercial speech.
- Consider limiting the location of the signs to unfinished facades or walls devoid of windows and doors.
- Prohibit the obstruction of architectural features, windows, doors, and other points of access.
- Prohibit advertising murals from being located on the building's primary façade.
- Some communities have restrictions that prohibit the location of such signs where they will face parks, historic sites, or other major points of attraction.
- Prohibit the use of changeable-copy, electronic message centers or video displays for temporary advertising murals. Some communities have allowed minimal external illumination, but the majority prohibits any illumination.
- Time limits should be avoided, but basic maintenance standards must include removal/replacement provisions if deterioration is evident with rips, failure of anchoring, fading or discoloration, etc. In light of the overall approach to regulating temporary signs outlined in this document (i.e., a certain amount of signage allowed all year), the size of these signs will likely exceed any sign allowance given for temporary signs. For this reason, if a community wants to allow for these types of signs, whether permanent or temporary, they might want to consider identifying them as a unique type of allowed sign, with applicable standards, outside of any temporary or permanent sign requirements.
- Require that installation and anchoring should be accomplished in a manner that will not pose a risk of harm to any architectural features.

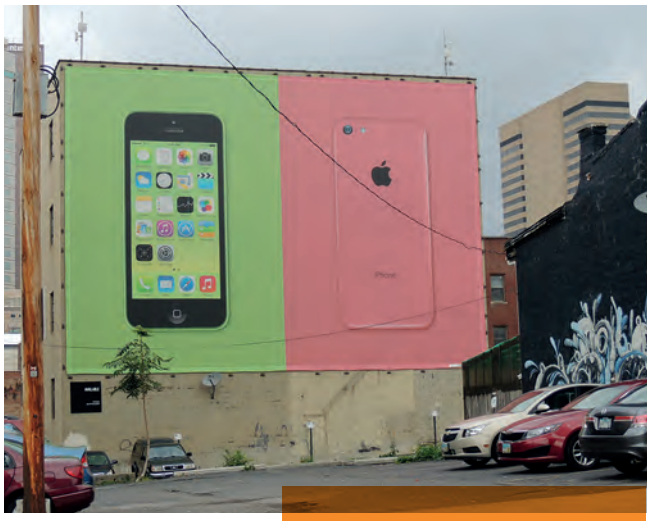


Figure 21: Example of a temporary advertising mural attached to a blank building façade.

BALLOON SIGNS & AIR-ACTIVATED GRAPHICS

Balloon signs or air-activated graphics are often used in conjunction with special events or activities and come in all shapes, sizes, and forms.

- Balloon signs and air-activated graphics are commonly restricted to on-premise signs.
- A sign permit is typically required for balloon signs and air-activated graphics, with the exception of any holiday or similar decorations.
- Require a setback that is equal to or greater than the height of the sign from all rights-of-way, lot lines, and overhead utility lines.
- For safety purposes, any balloon or air-activated graphic should be fastened to the ground or a structure so that it cannot shift more than three feet horizontally under any condition.
- Require compliance with applicable building codes because the signs often have an electrical component.
- Clarify if only balloons with no inherent movement are permitted (Figure 22), or whether there can be movement, such as an air-dancer sign as seen in Figure 23.
- Many communities do not have height limitations on these signs, but where they exist, it is typically between 20 and 35 feet.
- Balloon signs or air-activated graphics are not typically allowed year round and are often restricted to a certain number of days and occurrences per calendar year. The most common timing is for up to 14 days per occurrence, with a limit of one occurrence per calendar year.

Figure 22: A balloon sign that is tethered to the ground.

Figure 23: An air-activated graphic that includes motion.

BANNER SIGNS

Banner signs are one of the most common types of temporary signs allowed by the vast majority of communities. These signs may be mounted on a structure or even staked in the ground in a similar manner as a freestanding sign.

General Regulations

- Banner signs may be an on-premise or off-premise sign.
- A sign permit is often required for banner signs but many communities do not require a permit for smaller banner signs.
- If the banner sign is attached to a building, it should not be displayed above the roof line. Try to avoid limiting banner signs to certain locations on a building façade (e.g., minimum height or setback from edges) because this potentially prohibits logical locations, such as hanging banners from balconies or fencing around enclosed areas.
- Be clear as to where banner signs may be placed (e.g., on a structure, in landscaping, in a buffer yard, etc.).
- Banner signs can easily be attached to buildings, fences, structures, or mounted on stakes in the ground to be freestanding. In the latter case, communities may regulate a banner sign as a permitted freestanding temporary sign as discussed in later sections of this guide.
- Allow individual tenants to use a banner sign, rather than limiting the number of banner signs per property, especially if the banner signs are mounted to a structure. Otherwise, this creates difficulties for multi-tenant buildings.

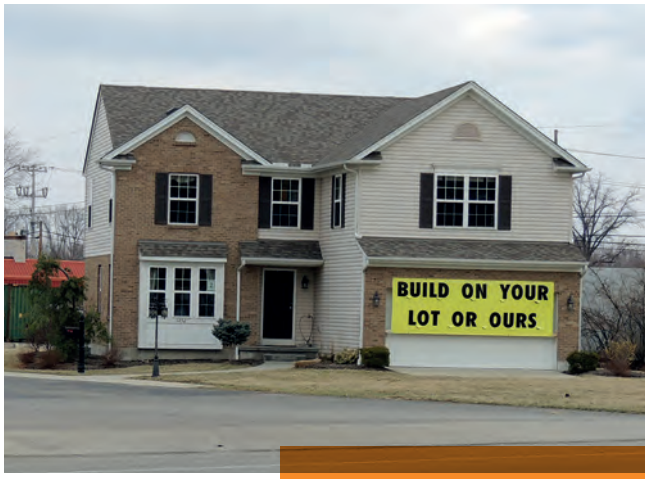


Figure 24: An example of a banner sign attached to a model home.

Figure 25: This banner is used as an interim sign and is designed to full cover the existing permanent sign.

Size

- If a banner sign is permitted as an interim-sign option, allow a banner that can be as large as the allowance for permanent wall signage, or the same size as existing signage, for the building or tenant space. This will allow the owner to cover permanent signage for a previous tenant and/or use signage of a similar size as the permanent sign that will replace the banner.

- Temporary banner signs are typically limited to a maximum area of 32 square feet. If ground mounted, a banner sign should not be mounted so as to be more than four to six feet tall.

- Some communities allow larger banners, equal to the total amount of permanent wall signage allowed for the same business, to keep the regulations simple. A height requirement is usually established for ground-mounted banners, but not for structure-mounted banners. This approach is most beneficial if your community has numerous large-scale developments with long setbacks.

Timing

- For an interim-sign option, allow a banner sign when a business is new, or there is a change in occupancy, and the permanent sign has not been installed. The banner sign should be allowed for at least 60 days or until the permanent signage is installed, whichever is less.

- Banner signs are often a type of temporary sign that might be allowed year-round. It is also a type that communities allow as additional signage but limited to a certain number of days and occurrences per calendar year. For the latter, banner signs are typically allowed for a maximum of 14 to 30 days per occurrence, up to four times per calendar year. With shorter time periods (e.g., 14 days), consider allowing at least two consecutive occurrences to accommodate longer-term needs.

Figure 26: An example of a temporary, ground-mounted banner.

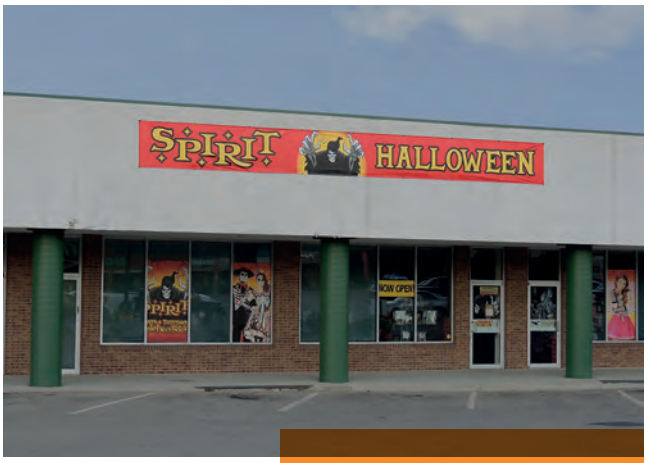


Figure 27: A banner sign is sometimes used in association with temporary uses that can exceed typical temporary-sign time limits.

BLADE SIGNS

Blade signs are a relatively new type of temporary sign. Available in numerous shapes, they are often named accordingly (e.g., feather sign, teardrop flag, rectangle flag, etc.).

General Provisions

- Blade signs are commonly restricted to on-premise signs.
- A sign permit is typically required for blade signs.
- Allow all shapes of blade signs, with a focus on the size standards discussed below.
- Most communities require these signs be set back from rights-of-way, lot lines, and overhead utilities, but there are a number of communities that allow these signs in tree lawns and rights-of-way. In all cases, the signs should be set back from intersections to protect clear visibility. A typical setback equals the height of the sign.
- The signs should be securely anchored into the ground or secured in a portable base designed for such function.
- Allow one sign per 50 feet of street frontage with a maximum of three or four signs per each frontage. This will allow for the reasonable use of such signs while preventing situations such as shown in Figure 28.

Figure 28: A typical, ground-mounted blade sign.

Figure 29: Negative reactions often occur when there is an excessive use of temporary signs, regardless of type.

Size

- Because of the variety of available shapes, blade signs are best regulated by a maximum height and width. The height should be measured from grade and include the full length of the supporting pole. This approach allows design flexibility and lessens the need to calculate sign area based on the actual sign shape.

- Allowing a sign up to 3.5 feet in width (at the widest point) and up to 18 feet in height will accommodate most medium to large-size blade/feather signs.

Timing

- There are two common approaches to allowing blade signs. Some communities treat them like sidewalk signs, where one sign is allowed only during business hours. Other communities treat blade signs like banner signs. In these cases, the signs are only allowed on a limited basis that is typically for 14 to 30 days per occurrence, up to four times per calendar year. With shorter time periods (e.g., 14 days), consider allowing at least two consecutive occurrences to accommodate longer-term needs.

FREESTANDING/YARD SIGNS

Freestanding signs or yard signs are the one type of temporary sign that is almost universally permitted in some form. These signs are used for all most every purpose including commercial and noncommercial speech. The following best practices apply to traditional yard signs, but not signs found on sidewalks, either public or private, which are discussed later in this section.

- Almost every community establishes some setbacks from the right-of-way for freestanding/yard temporary signs, but the setbacks vary tremendously depending on street capacity, street width, and other variables. The majority of required setbacks for these signs range from 5 to 25 feet. These signs also are typically prohibited in close proximity to intersections to maintain safe visibility. Keep in mind that the setbacks should be designed in context with the character of the neighborhood or zoning district, with shorter setbacks appropriate in higher-density neighborhoods.

- In nonresidential districts, many communities allow smaller, residential-scale temporary signs (e.g., maximum of eight square feet and 4 to 6 feet in height) in addition to the larger temporary signs, with a maximum of one additional small sign per business or tenant. This accommodates temporary signage for multi-tenant buildings, especially if your community restricts the number of large temporary signs per property.

- Typically, communities do not require a permit for a temporary sign that is less than 6 to 8 square feet in area, provided the sign complies with any stated requirements (e.g., setbacks, height, etc.).

Figure 30: Signs on larger properties need to be taller and have a larger sign area to allow for clear visibility and legibility.

- The maximum sign area (per face) and maximum height also vary by the intensity of the use and, often street frontage or, in a few communities, based on the street design.

1. In single-family residential districts, the maximum sign area is typically 8 square feet with a maximum height of 4 to 6 feet. Many communities limit temporary yard signs (commercial speech) to one or two signs per yard at any one time. This allows the occupant (or owner) to display signs containing such commonly-used messages as "for sale,", "garage sale," etc., or a message about a community event.

2. For all other zoning districts, one temporary commercial yard sign is allowed under the following size and height requirements:

2.1 For lots with less than 100 feet of frontage, the maximum sign area is typically between 16 and 20 square feet with a maximum height of 6 feet.

2.2 For lots with more than 100 feet of frontage, the maximum sign area is typically between 30 and 36 square feet and a maximum height of 8 feet.

2.3 For lots with more than 500 feet of frontage or with frontage along an interstate or limited-access highway, the maximum sign area is typically between 64 and 72 square feet with a maximum height of 10 feet. Some communities offer the option of utilizing two signs on this frontage, with a total allowance of 64 to 72 square feet.

Timing

Prior to the *Reed* case, many communities specified time limits based on specific, on-premise activities (e.g., special event, property for sale, project under constructions, etc.). The decision in the *Reed* case has made it difficult to make such exceptions and remain content-neutral. For communities that establish provisions for year-round, temporary signage, freestanding/yard signs are often a type of temporary sign that might be allowed year-round. It is also a type that communities allow as additional signage but limited to a certain number of days and occurrences per calendar year. For the freestanding/yard signs, signs are typically allowed for a maximum of 14 to 30 days per occurrence, up to four times per calendar year. With shorter time periods (e.g., 14 days), consider allowing at least two consecutive occurrences to accommodate longer-term needs.

Figure 31: The time limit typically applies to the sign structure rather than the message because sometimes temporary signs also have temporary messages.

Figure 32: Longer time limits should be allowed for signs associated with temporary uses, such as farm markets, that may operate for months.

Noncommercial Speech Signs

More and more communities treat any signage related to a campaign or election, or that contains noncommercial speech, with kid gloves, and generally maintain very limited regulations. The next section contains a discussion about the legal issues related to such signage, but the following are some best practices for communities that continue to regulate these types of signs.

- Most communities do not specify what types of temporary signs may be used, but where it is specified, the most common types allowed are freestanding/yard signs and banners.

- Consult with your local legal counsel on applicable state and case law to your jurisdiction. Your community may also want to consider the use of a substitution clause. Such clauses state that wherever a sign (with commercial speech) is allowed, the message on such sign may be replaced, or substituted, with a noncommercial message.

- Many states have rules and regulations that apply to what is commonly referred to as election signs. In some cases, those signs might be allowed in the right-of-way, regardless of local rules, or in other cases, may only be allowed for a certain number of days before and after the election. Where the state does have special rules, your local community should avoid duplicating those standards in their own ordinances, especially if they are content based, and leave any of the sign administration and enforcement to the state.

- Keep in mind that not all free-speech signs are related to an election, so there has to be protection of freedom of speech and expression year round (e.g., dealing with temporary signs that express opinions beyond the election issues or candidates). Many communities have basic standards for any temporary sign that does not contain a commercial message, which regulate setbacks and heights for visibility and other safety concerns, but are otherwise hands-off on the number and size of the sign.

- Commonly allowed sign areas are usually a maximum of 6 to 8 feet for residential properties and a maximum of 32 square feet for nonresidential properties. Several states have rules that exempt such signage and requirements from zoning and, as such, maximum sign-area requirements will not apply.

Figure 33: This sign has a message that expresses an opinion unrelated to an election and is a form of protected speech.

LIGHT POLE OR SUPPORT POLE BANNERS

Signs on light poles or other support poles are often treated as temporary signs, even though the pole is permanent and might include permanent posts or structural elements that hold a temporary banner or sign. Regardless, this type of signage is commonly used, but not necessarily addressed in most sign regulations. The following best practices are for such signs, regardless of whether your jurisdiction treats them as permanent or temporary signs.

- Require a sign permit for the initial installation of the permanent structure, but allow message changes without an additional permit.
- Prohibit the attachment of any other temporary signs to the structure.
- Allow for a maximum of two temporary banners on each pole.
- Communities often allow anywhere from 12 to 16 square feet of sign area for each pole. If there are two separate messages, that area would be split in two. Some communities also limit the total amount of temporary signs or messages allowed on such structures to prevent signs on all light or support poles.
- Prohibit the posting of any temporary sign or message above the height of the structure.
- If the permanent structure is designed to accommodate a temporary sign or message, allow for the temporary message to be posted year round without limitations on how often the message is changed.
- Prohibit the use of electronic message centers, changeable-copy signs, and internal lighting.

Figure 34: Permanent light pole with temporary sign components.

PEOPLE SIGNS

People signs, an increasingly popular form of signage, may also be referred to as human signs, sign spinners, or mascot signs. Communities are struggling to establish the best way to regulate people signs because some are concerned about encroaching on First Amendment rights, while others still feel it is signage. Even more legal issues arise when the person is dressed in costume and may or may not be holding a sign. These are all part of the legal discussion that needs to take place when considering regulations for these types of signs.

- As with all political/noncommercial speech issues, it is best to work with legal counsel when considering regulations.
- Where people signs are allowed, most of the communities maintain minimal regulations including:
  - Prohibiting the person from obstructing sidewalks or standing in the right-of-way;
  - Requiring that the signage be related to a business or activity that is on the same premises as where the person is located; and
  - Where there is a sign-area calculation, the sign area is typically measured by the actual message or sign the person is holding (e.g., would not apply to someone that is dressed in costume). Most communities allow for a maximum sign area equal to a small banner or freestanding sign.
- Some communities require a permit while others do not, as long as they meet all the established requirements.
- Numerous communities are establishing a maximum number of one person sign per property.
- Communities typically limit the timing for person signs to the same timing allowed for temporary banners or large freestanding signs. As listed in previous discussions, this time limit is usually a maximum of 14 to 30 days per occurrence, up to four times per calendar year, with the ability to use at least two of the occurrences consecutively.
- Prohibit the use of animations or any type of lighting, as well as the use of bullhorns or amplified sounds.
- Prohibit the use of mannequins to display a sign.

People signs are likely to be something that will be challenged in court more often in the near future because there has not been any clear determination about whether or not they are a sign. There are already a number of court decisions across the U.S. that have involved what is defined in this report as a people sign, with varied results.

Figure 35: People signs, or sign spinners, are becoming a more prevalent form of temporary signage.

PORTABLE MESSAGE CENTER **SIGNS**

Portable message centers are temporary sign structures that historically have had manual changeable copy. Modern versions of this sign now contain electronic message centers, which are essentially the same as permanent electronic message centers, but are attached to a trailer or vehicle.

- These signs traditionally require a sign permit.
- Some communities require a portable message center sign to be an on-premise sign, but, at the same time, they are often used in advertising for off-premise events and activities. As such, it is important to be cautious with prohibiting off-premise signs if it would be acceptable to use a portable signage for community events, etc.
- These signs traditionally have some type of changeable copy, whether manual or electronic. Electronic versions are often used by businesses to test out a digital sign before installing a permanent electronic message center. They are also commonly used for festivals, fairs, concerts, sporting events, and other large events.
- Any electronic message center should comply with your local regulations related to electronic messages, including message hold times, transition times, and brightness. The most common message hold time is 8 seconds (with many communities below that time), with transition times being less than one second, and night-time brightness levels at 0.3 footcandles above ambient lighting.
- The sign may be attached to a trailer chassis or other vehicle or may simply be portable, as shown in Figure 36. In all cases, the sign must be anchored securely to the ground.
- A maximum sign area of 32 square feet will accommodate a typical portable message center sign with changeable copy. Some communities are allowing as much as 48 square feet if there is a digital signage component. The maximum height should be six feet.
- Only one sign is usually allowed on an individual property at any one time, typically for a maximum of oft 14 to 30 days, one time per calendar year.

Figure 36: Examples of portable message centers.

Image Credit: Daktronics.

Figure 37: Various examples of digital, portable message centers that are mounted on a chassis in a truck bed.

PROJECTED-IMAGE SIGNS

Laser light or projected-image signs are another new sign type that is increasingly used in advertising. These signs use technology to project an image, logo, or other graphic on buildings, structures, sidewalks, or other surfaces. The image itself has no physical structure but it still can be considered a sign.

- A sign permit is typically required for projected-image signs with the exception of any holiday or similar decorations.
- Setbacks are not necessary for this type of sign because the sign requires the existence of another structure where the image will be projected. Any setbacks should be applied to the structure where the sign will be visible. It may be necessary to establish a setback for the projector system if located near a right-of-way (e.g., prohibition in any visibility triangles near intersections).
- Require compliance with applicable building codes as the signs will have an electrical component.
- It is possible to project multiple images that can change in a manner similar to an electronic message center. As such, the sign should comply with your local regulations related to electronic messages, including message hold times, transition times, and brightness. The most common message hold time is 8 seconds, with transition times being less than one second.

Image Credit: This image was originally posted to Flickr by **Eric Ishii Eckhardt** at http://flickr.com/photos/48986833@N00/68900990 (licensed under the terms of the cc-by-2.0).

Figure 38: Projected signage at the Walker Art Center in Minneapolis, MN.

- Prohibit the projection of images onto any buildings that contain a residential use or otherwise project light into dwelling spaces.

- The maximum sign area should be calculated based on the projected-image size. Consider allowing a projected-image sign to be the same size as allowed for temporary banner signs or permanent wall signs in the applicable district.

- Require that the projector be located in a manner where it will not obstruct pedestrian movement. Some communities require that the projector be screened from view either by locating it against another structure or within a landscaping area. In these cases, the image may be visible, but the source of the image is not.

- If the projector is to be mounted in a manner that will project an image on the sidewalk or ground, require that the projector be securely mounted to a structure and that it comply with any applicable building or safety ordinances. The projector should also be mounted with at least eight feet of clearance between the ground and the projector so pedestrians may walk under the projector.

- This type of sign is becoming increasingly popular for use as temporary advertising and is often used by bars, restaurants, and entertainment venues on weekends. As such, it is important to consider enforcement capabilities when allowing such signs.

Figure 39: Projected-image signage in the façade of a building.

SIDEWALK SIGNS

Sidewalk signs take multiple forms, including sandwich or A-frame signs, or even a freestanding sign that is secured to some form of portable base (sometimes referred to as a T-frame sign). For a long time, these types of signs were prohibited due to a commonly found prohibition of all signs in the right-of-way, but a growing number of communities now allow them in both public rights-of-way or on private sidewalks (i.e., walkways along buildings). The following are best practices relevant to any form of sidewalk sign.

- Allow for both A-frame and T-frame signs. Both cover roughly the same ground space, and the T-frame can be more stable, depending on the construction.

- While sidewalk signs are typically regulated as temporary signs, they are usually seen as a component of the permanent sign package because they are typically allowed to be displayed during business hours, 365 days a year. The best approach is to require the signs be stored when the business is closed, and avoid any limitations on the number of days the sign is allowed per year.

- Allow for sidewalk signs in any right-of-way provided that the sign is placed on the sidewalk pavement and that there remains sufficient clearance, of at least four feet, to allow for clear passage of pedestrians. Keep in mind that you might have to clarify your right-of-way rules for the allowance of sidewalk signs.

- Allow one sign per business or tenant. Requiring the sign to be situated directly outside the individual business space, or within 5 to 10 feet of the entrance, will prevent the stacking of signs, such as those illustrated in Figure 41.

- Prohibit sidewalks signs from being located in any landscaping or streetscape areas.

- Be clear on whether illumination is allowed. Most communities prohibit any external or internal illumination, which should not be an issue if the sign is to be removed when the business is closed.

Figure 40: An A-frame or sandwich board sign.

Figure 41: A T-frame sign.

- Many of these sign types are utilized in historic or other special districts that require some level of board or special administrative review (e.g., certificate of appropriateness), but for other areas, many communities allow these types of signs in certain areas without a permit, provided they comply with all the standards.

- The most prevalent size regulation for a sidewalk sign is a maximum of 6 square feet per sign face (two feet wide by three feet high) regardless of the type of sidewalk sign. Some communities allow as much as 8 or 12 square feet, provided the sign does not exceed three feet in width.

- For safety reasons, sidewalks signs should be located so as to not obstruct pedestrian movement and maintain a minimum width of four feet of clearance (standard width of a residential sidewalk). Some communities require more clearance, depending on local and state rules.

- Sidewalk signs should also not obstruct pedestrian or handicap accessibility to buildings, emergency exits, transit stops, or parking spaces.

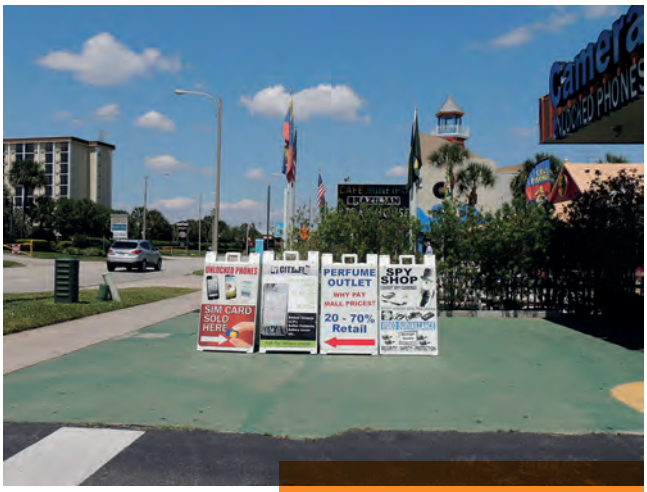


Figure 42: The stacking of multiple sidewalk signs can be avoided without taking away the benefit of additional signage.

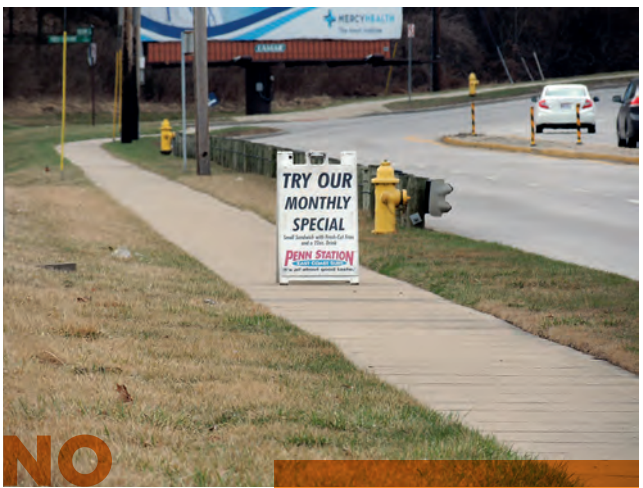


Figure 43: Improper placement of a sidewalk sign.

Figure 44: Proper placement of a sidewalk sign.

VEHICLE SIGNS & WRAPS

Vehicle wraps have made it easier for businesses to advertise with company cars and vehicles. This has spawned new questions and enforcement issues as it relates to vehicle signs. While not always treated as temporary signs, communities are starting to address them in sign regulations, where the focus of standards is on the parking or location of the subject rather than the size of the sign.

- Avoid requiring a permit for this type of sign. It only creates problems with administration in situations where a business expands its fleets, changes signs, or switches out vehicles.

- Avoid establishing different standards for vehicles that have different amounts of sign area on the car. Again, this increases the number of administrative and enforcement problems. For example, avoid requiring that vehicles with "x" amount of signage, park in designated areas or be set back from certain roads.

- Consider exempting the following types of vehicles with signs to address a number of situations where vehicle signage is appropriate:

  - Legal, mobile food trucks or mobile businesses that do not have a brick and mortar store or office;

  - Vehicles associated with a contractor or service provider where, during non-business hours, the vehicle is either parked in an industrial zoning district or in designated parking areas of the main store or office;

  - Signs on vehicles that are for sale or lease and are parked legally in a parking space;

  - Signs on vehicles that are regularly used for businesses (e.g., delivery vehicles) unless used in a manner otherwise prohibited in the vehicle-sign regulations;

  - Signs that are actively used for business and/or personal transportation; or

  - Any signage on a vehicle that is required by state or federal law.

Figure 45: Example of a sign wrap on a delivery truck used regularly during the operation of a business.

- Prohibit the parking of vehicles with signs under the following situations where the vehicles are being used for the sole purpose of creating additional signage for the business:
  - The vehicle is not mobile (See Figure 46) and remains on site for more than one day.
  - The vehicle is parked on a vacant property (land or structure) for more than six hours.
  - The vehicle is parked for more than eight hours on the property so as to be visible in a similar manner (e.g., location, setback, etc.) as any permanent sign and is not regularly used for business activities.
- Keep in mind that if the subject vehicle is parked or stored illegally to begin with, regardless of the presence of a sign, the enforcement should be about the vehicle and not the sign.

Figure 46: An empty semi-trailer is being used as signage for a construction-debris dump. The vehicle is being illegally uses as a buffer.

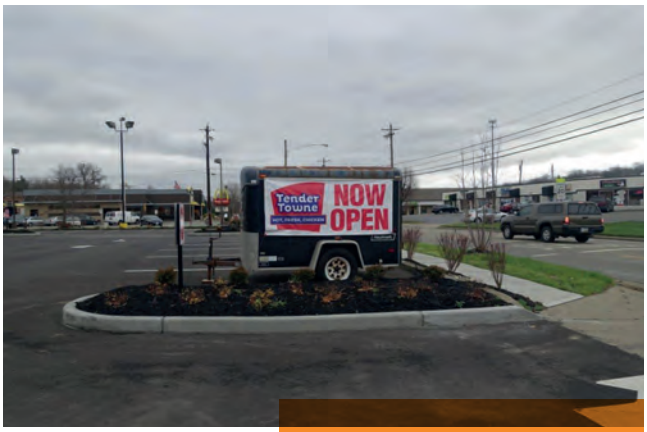


Figure 47: An example of a vehicle sign used primarily as a stationary identification or advertisement sign.

WINDOW SIGNS

Window signs can be considered permanent or temporary, depending on application. For example, many restaurants use temporary peel-and-stick signs in their windows to advertise new products or sales. These signs are easy to remove and replace, whereas a permanent window sign is typically painted directly on the window or is a sign that is permanently mounted to be visible through the window. Reasonable regulations of these signs include

- Prohibit window signs on residential windows.
- Most communities do not require a permit for any type of window signage, provided it complies with any established requirements. Exceptions include window signs in historic districts or a district with special design requirements.
- When establishing regulations for window signs, discuss whether the concern is about the amount of the window that is covered, the number of signs visible, or if the message is permanent or temporary. Some communities distinguish between permanent and temporary window signs, but if the overall concern is the total coverage, such distinctions are irrelevant.
- If your local police or fire departments are concerned about visibility in the event of an emergency, you can require temporary window signs to be mounted on the outside of the window with tabs or similar methods for quick removal. This typically only applies in areas where 100% window coverage is possible (e.g., restaurants).
- While some communities place a maximum square footage on window signs, a better practice is to allow a range of 50% to 75% of any single window area to be covered by signage. This will allow for reasonable visibility into the building, something often desired and/or required by police and fire departments. At the same time, it provides some flexibility in advertising for businesses by using window space to promote goods and sales.
- Limiting the number of signs within each window space to as many as two or three signs may prevent the placement of numerous signs as illustrated in **Figure 48**. This may be a necessary requirement if your community allows a higher percentage of window coverage.
- For historic or special districts, it is common to restrict window signs to permanent to maintain the character of the area. If temporary window signs are allowed, the percentage of window coverage is typically reduced to between 20% and 25%

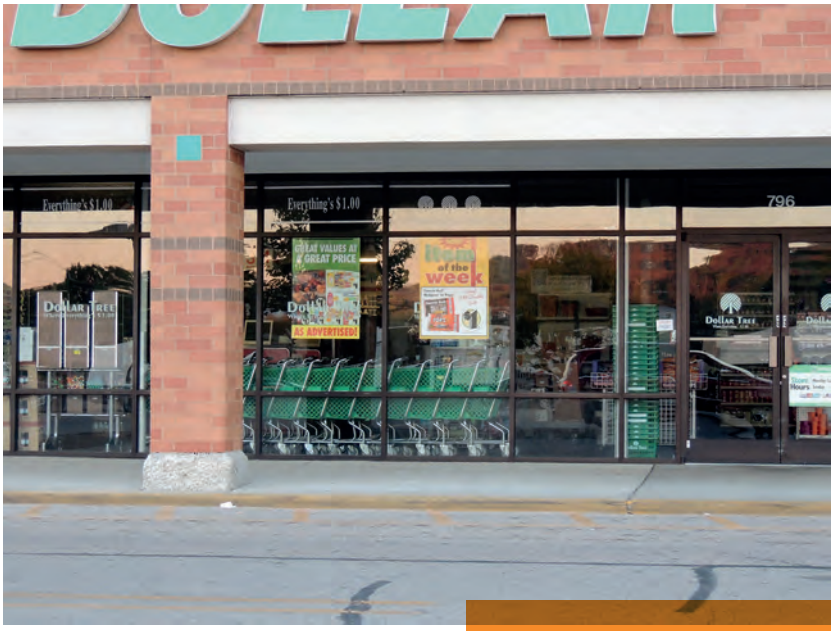


Figure 48: This is an example of temporary window signs that cover less than 50% of the windows.

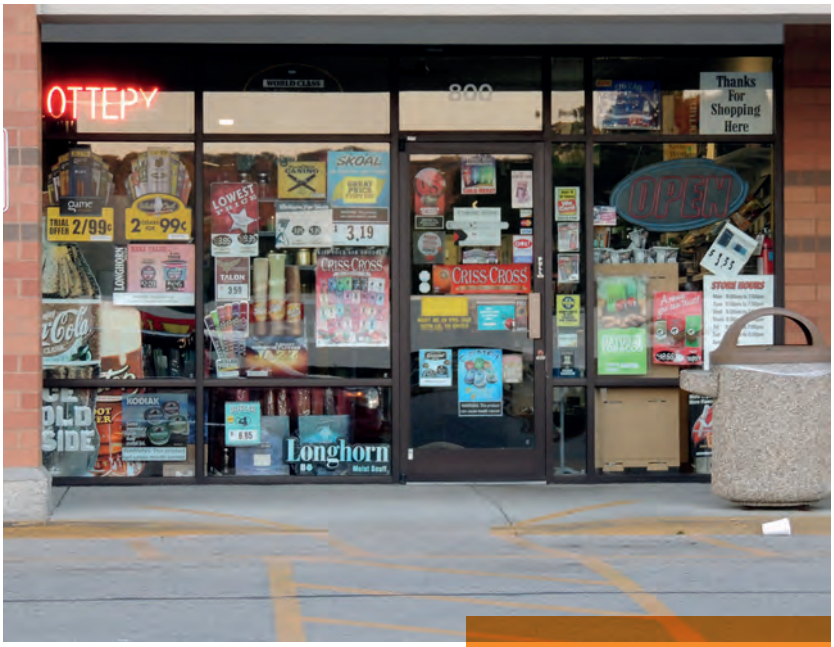
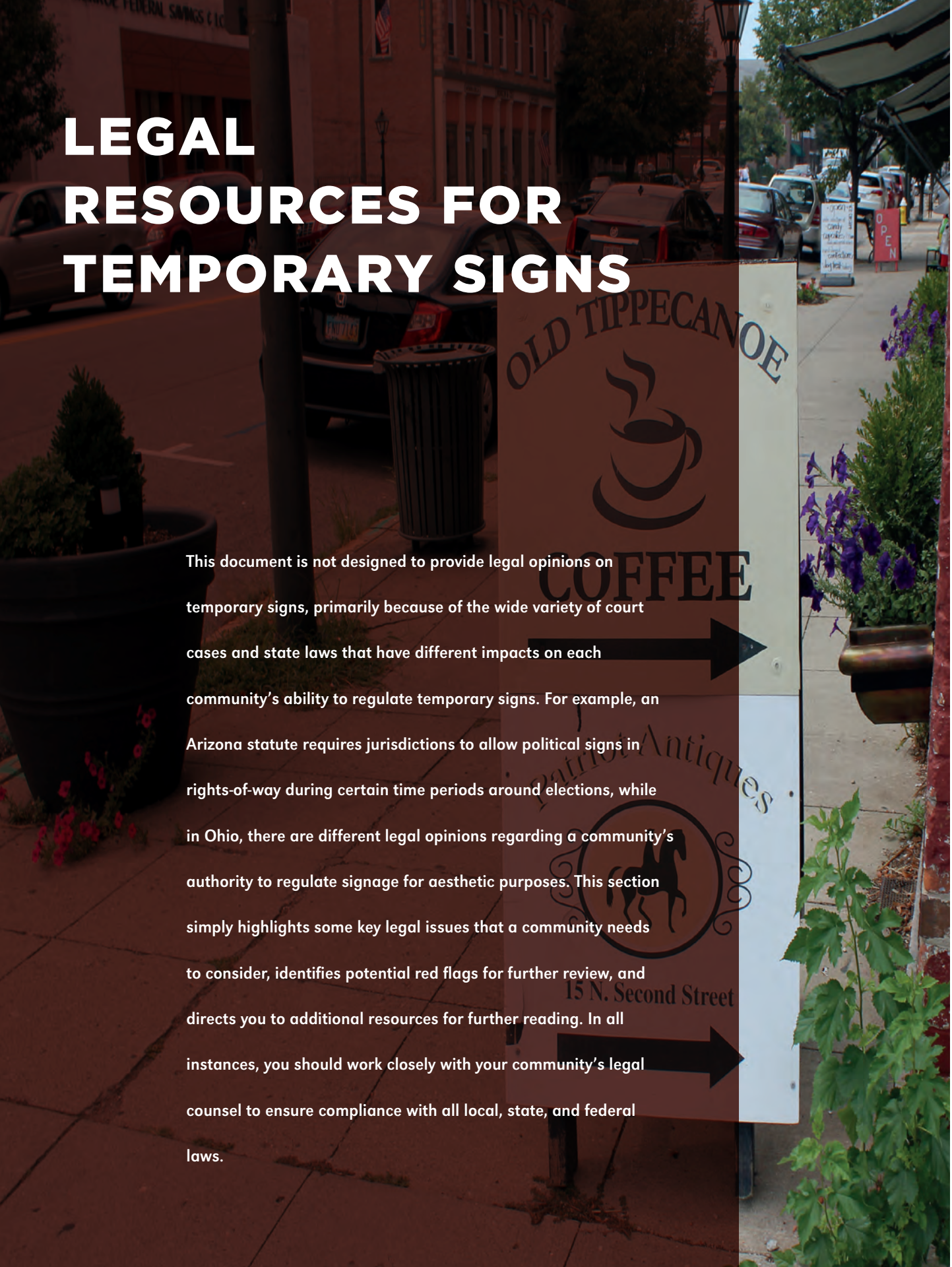


Figure 49: This is an example of temporary window signage that most communities want to prohibit.

LEGAL RESOURCES FOR TEMPORARY SIGNS



This document is not designed to provide legal opinions on temporary signs, primarily because of the wide variety of court cases and state laws that have different impacts on each community's ability to regulate temporary signs. For example, an Arizona statute requires jurisdictions to allow political signs in rights-of-way during certain time periods around elections, while in Ohio, there are different legal opinions regarding a community's authority to regulate signage for aesthetic purposes. This section simply highlights some key legal issues that a community needs to consider, identifies potential red flags for further review, and directs you to additional resources for further reading. In all instances, you should work closely with your community's legal counsel to ensure compliance with all local, state, and federal laws.

Content-Neutrality.

Content-neutrality impacts regulation of all signs, not just temporary signs, and quite often it becomes a question of interpretation. Just over 55% of the survey participants believe they have content-neutral regulations. Among those who said "no," some did recognize they regulate real-estate and political signs differently than other types of temporary signs. Like many legal issues, it is not as straight forward as one would think, and much of the question is related to interpretation of case law that applies to individual jurisdictions.

The U.S. Supreme Court, in its 2015 ruling in *Reed v. Town of Gilbert*, Arizona, made it clear that for a sign regulation to be considered content-neutral, you should not have to read the sign to determine what type of sign it is, or how to regulate the sign. Because of *Reed*, real-estate, political and construction signs, etc. are now considered content-based signs because you define them by their content. Content-neutral sign regulations define signs based on their size, height, structure, placement, material, shape, or other characteristics, not content. This document focuses on the content-neutral, sign type definitions, such as banner signs, blade signs, sidewalk signs, etc. While it is true that before *Reed* a few court cases allowed the regulation of a limited number of content-based signs, such as real estate or political signs, but those decisions have now been effectively overturned by the *Reed* decision and should no longer be considered good law. The best approach for any jurisdiction, in light of the *Reed* decision, is to eliminate all content-based language from your sign regulations, with the only exceptions being signs that must be defined by content in order to achieve a compelling governmental interest.

Figure 50: This sign would be classified as a real estate or construction sign in content-based regulations. A content-neutral approach would be to classify it as a temporary yard sign.

On-Premise versus Off-Premise Signs.

The *Reed* decision has left uncertain the legality of regulations that consider the content of signs to determine if the sign is an on-premise sign or an off-premise sign. This has always been important for permanent signage because of a general concern about allowing billboard signs, which are traditionally off-premise signs. With temporary signs, this distinction may be less important, as discussed earlier, and may only be applicable when addressing larger temporary signs, such as balloon signs.

The Substitution Clause

As mentioned in the introduction, there is still a question of whether communities have the ability to regulate signs based on whether they contain commercial or noncommercial speech. Regardless of this question, communities should always consider including a substitution clause in their sign regulations that would allow for a sign owner to replace any commercial message on a sign, with a noncommercial message.

Figure 51: These two temporary signs advertise a local community event (sign on left) and a public service announcement (sign on right) unrelated to the property and would typically be considered off-premise signs.

ADDITIONAL READING

The following is a list of additional reading and resources that provide discussions about legal issues related to signage, as well as other best practices for regulating signage as outlined in this guide.

Context-Sensitive Signage Design (Chapter 6 – Legal Issues in the Regulation of On-Premise Signs)

Marya Morris, Mark L. Hinshaw, Douglas Mace, and Alan Weinstein. Context Sensitive Signage Design. (American Planning Association, 2001)

https://www.planning.org/research/signs/pdf/chapter6.pdf

An Evidence Based Model Sign Code

Dawn Jourdan, Esq., Ph.D., H. Gene Hawkins, Jr. Ph.D., P.E., Robin Abrams, Ph.D., and Kimberly Winson-Geideman, Ph.D. An Evidence Based Model Sign Code. (Urban Design Associates, 2009)

http://www.dcp.ufl.edu/files/8c71fa03-9cbf-4af2-9.pdf

A Framework for On-Premise Sign Regulations

Alan Weinstein and David Hartt. A Framework for On-Premise Sign Regulations. (Sign Research Foundation, 2009)

http://www.signresearch.org/wp-content/uploads/A-Framework-for-On-Premise-Sign-Regulation.pdf

The Signage Sourcebook: A Signage Handbook

U.S. Small Business Administration. The Signage Sourcebook: A Signage Handbook. (U.S. Small Business Administration, 2003)

Not available online but available for purchase at various outlets.

Street Graphics and the Law

Daniel R. Mandelker, John M. Baker, and Richard Crawford. Street Graphics and the Law. (APA Planning Advisory Service, 2015)

Not available online but available for purchase at www.planning.org and other outlets.

United States Sign Council On-Premise Sign Code

Andres D. Bertucci and Richard B. Crawford, Esq. United States Sign Council Model On-Premise Sign Code. (United States Sign Council, 2011)

http://www.usscfoundation.org/USSCModelOn-PremiseSignCode.pdf

In addition to the above documents, the **International Sign Association** has produced a series of videos on issues related to sign area, sign height calculations, and sign visibility. These videos can be found online at **http://www.signs.org/Resources/ISAVideos.aspx**.

GLOSSARY

An important part of any sign regulations is a solid set of definitions for the various sign types and terms used in the regulations. This is especially true when the regulations prohibit all types of signs unless specifically listed and/or defined. In those instances, the definitions are the primary method of determining what types of signs are allowed or prohibited. The following is a glossary of terms commonly used in the regulation of temporary signs.

Advertising Mural

A large-scale temporary or permanent sign that covers all or a major portion of a multi-story blank or unfinished wall, building, or structure.

A-Frame Sign (a.k.a., Sandwich Board Sign or Sidewalk Sign)

A freestanding sign which is ordinarily in the shape of an "A" or some variation thereof, which is readily moveable, and is not permanently attached to the ground or any structure. See also the definition of T-frame signs.

Air-Activated Graphic

A sign, all or any part of, which is designed to be moved by action of forced air so as to make the sign appear to be animated or otherwise have motion.

Balloon Sign (a.k.a., Inflatable Device)

A sign that is an air inflated object, which may be of various shapes, made of flexible fabric, resting on the ground or a structure, and equipped with a portable blower motor that provides a constant flow of air into the device. Balloon signs are restrained, attached or held in place by a cord, rope, cable, or similar method. See also the definition for air-activated graphics.

Banner Sign

A temporary sign composed of cloth, canvas, plastic, fabric or similar lightweight, non-rigid material that can be mounted to a structure with cord, rope, cable, or a similar method or that may be supported by stakes in the ground.

Blade Sign (a.k.a., Feather Sign, Teardrop Sign, and Flag Sign)

A temporary sign that is constructed of cloth, canvas, plastic fabric or similar lightweight, non-rigid material and that is supported by a single vertical pole mounted into the ground or on a portable structure.

Commercial Message

Any sign wording, logo or other representation that, directly or indirectly, names, advertises or calls attention to a business, product, service or other commercial activity.

Freestanding/Yard Sign

Any permanent or temporary sign placed on the ground or attached to a supporting structure, posts, or poles, that is not attached to any building.

Light Pole Banner (a.k.a., Support Pole Banner)

A temporary banner or sign that is designed to be attached to a permanent light pole or other pole structure, and where the temporary sign element can be changed without modifying the permanent structure.

Noncommercial Message

Any sign wording, logo, or other representation that is not defined as a commercial message.

On-Premise Sign

A sign that advertises or otherwise directs attention to a product sold, service provided, or activity that occurs on the same parcel where the sign is located.

Off-Premise Sign

A sign that advertises or otherwise directs attention to a product sold, service provided, or an activity that occurs on a different parcel than where the sign is located.

Pennant

A triangular or irregular piece of fabric or other material, whether or not containing a message of any kind, commonly attached in strings or strands, or supported on small poles intended to flap in the wind.

People Sign (a.k.a., Human Mascot, Sign Spinner, and Human Sign)

A person attired or decorated with commercial insignia, images, costumes, masks, or other symbols that display commercial messages with the purpose of drawing attention to or advertising for an on-premise activity. Such person may or may not be holding a sign.

Portable Message Center Sign

A sign not permanently affixed to the ground, building, or other structure, which may be moved from place to place, including, but not limited to, signs designed to be transported by means of wheels. Such signs may include changeable copy.

Projected-Image Sign

A sign which involves an image projected on the face of a wall, structure, sidewalk, or other surface, from a distant electronic device, such that the image does not originate from the plane of the wall, structure, sidewalk, or other surface.

Sign

Any object, device, display or structure or part thereof situated outdoors or adjacent to the interior of a window or doorway, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means including words, letters, pictures, logos, figures, designs, symbols, fixtures, colors, illumination or projected images.

Snipe Sign

A temporary sign illegally tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, fences, or other objects.

Temporary Sign

Portable signs or any sign not permanently embedded in the ground, or not permanently affixed to a building or sign structure, which is permanently embedded in the ground, are considered temporary signs.

T-Frame Sign

A freestanding sign which is ordinarily in the shape of an upside down “T” or some variation thereof, which is readily moveable, and is not permanently attached to the ground or any structure. See also the definition for A-frame signs.

Vehicle Sign

Any sign permanently or temporarily attached to or placed on a vehicle or trailer in any manner so that the sign is used primarily as a stationary identification or advertisement sign.

Window Sign

Any sign viewable through and/or affixed in any manner to a window or exterior glass door such that it is intended to be viewable from the exterior including, but not limited to, window paintings and signs located inside a building but visible primarily from the outside of the building.

ACKNOWLEDGEMENTS

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Chairman of the Signage Foundation, Inc.

Jason Myers
FASTSIGNS International

Kenneth Peskin
International Sign Association

David Williamson
The Law Office of David L. Williamson

Graphic Designer

Thiago Eichner
Creative Designer

Post-*Reed* Legal Commentary and Review Provided by:

Professor Alan C. Weinstein,
Director Master of Legal Studies Program and Law & Public Policy Program Cleveland-Marshall College of Law and Maxine Goodman Levin College of Urban Affairs Cleveland State University

About the Author

Wendy E. Moeller, AICP, is a principal and owner of Compass Point Planning, a planning and development firm based in Cincinnati, Ohio. She has worked in the planning field since graduating from the University of Cincinnati with a Bachelor of Urban Planning in 1996. Ms. Moeller is a certified planner with the American Institute of Certified Planners (AICP) and has a certificate of completion in form-based codes from the Form Based Codes Institute (FBCI).

Ms. Moeller has served as a project manager and planner for numerous planning, regulatory, and development projects throughout her career, including her primary work on comprehensive plans and land-use regulations. She is a past president of the Ohio Chapter of the American Planning Association and is a Board Member of the Sign Research Foundation.

All images provided by Wendy Moeller unless otherwise noted.

SIGNAGE FOUNDATION 2016 ANALYSIS

THE STATE OF SIGN CODES AFTER *REED V. TOWN OF GILBERT*

Professor Alan Weinstein *holds a joint faculty appointment at Cleveland State University's Cleveland-Marshall College of Law and Maxine Goodman Levin College of Urban Affairs and also serves as Director of the Colleges' Law & Public Policy Program. Professor Weinstein is a nationally-recognized expert on planning law who lectures frequently at planning and law conferences and has over eighty publications, including books, book-chapters, treatise revisions and law journal articles.*

sfi signage foundation, inc.

THE *REED* CASE

THE U.S. SUPREME COURT'S JUNE 2015 DECISION in *Reed v. Town of Gilbert* was, undoubtedly, the most definitive and far-reaching statement that the Court has ever made regarding day-to-day regulation of signs. But the *Reed* case, while very clear about the rules that must be applied to the regulation of temporary non-commercial signs, provided only scant guidance about how courts should treat sign regulations that apply to commercial business signs or that differentiate between on-site and off-site signs. In the nine months since the *Reed* ruling, lower court decisions have begun to provide additional guidance on these questions while some questions remain unanswered.

CONTENT-BASED REGULATION OF SIGNS IS UNCONSTITUTIONAL

The rules that Justice Thomas announced in *Reed* are straight-forward for non-commercial signs: a regulation that "on its face" requires consideration of the content of a sign is "content-based" and will be subjected to strict scrutiny.

Further, a regulation that is facially content-neutral could still be considered content-based if its purpose is related to the message on a sign. For example, a code provision that allowed more lawn signs for election season would be facially content-neutral but might be challenged as being justified by or have a purpose related to allowing "election campaign" messages.

A sign regulation is content-based and subject to "strict scrutiny" even if the government (i.e. local officials) did not intend to restrict speech or to favor some category of speech for benign reasons. Justice Thomas wrote: "In other words, an innocuous justification cannot transform a facially content-based law into one that is content-neutral."

Justice Thomas specified that a content-based sign regulation (including a regulation that is facially content-neutral but justified in relation to content) is presumed to be unconstitutional and will be invalidated unless government can prove that the regulation is narrowly tailored to serve a compelling governmental interest. This is known as the "strict scrutiny" test, and few, if any, regulations survive strict scrutiny. We don't know what, if any, content-based regulations might survive strict scrutiny.

NEARLY EVERY SIGN CODE IS AFFECTED BY *REED*

Justice Thomas's opinion calls into question almost every sign code in this country:

Temporary Signs: Few, if any, codes have no content-based provisions under the rules announced in *Reed*. For example, almost all codes contain content-based exemptions from permit requirements (real estate signs, political and/or election signs, "holiday displays," etc.), and almost all codes also categorize temporary signs by content, and then regulate them differently. For example, a "real estate" sign can be bigger and remain longer than a "garage sale" sign. *Reed* failed to provide an answer to how we provide for the public's desire for more signage during election campaigns in a wholly content-neutral manner.

Permanent Signs: Many sign codes also have content-based provisions for permanent signs. Because the *Reed* rules consider "speaker-based" provisions to be content-based, differing treatment of signs for "educational uses" vs. "institutional uses" vs. "religious institutions" would be subject to strict scrutiny. The strict scrutiny test could also apply for differing treatment of signs for "gas stations" vs. "banks" vs. "movie theaters."

"TIME, PLACE OR MANNER" REGULATIONS ARE CONTENT-NEUTRAL, SUBJECT TO INTERMEDIATE SCRUTINY

Reed does not, however, cast doubt on the content-neutral "time, place or manner" regulations that are the mainstay of almost all sign codes, provided they are not justified by or have a purpose related to the message on the sign.

Justice Thomas acknowledged that point, noting that the code at issue in *Reed* "regulates many aspects of signs that have nothing to do with a sign's message: size, building materials, lighting, moving parts and portability."

Justice Alito's concurring opinion, joined by Justices Kennedy and Sotomayor, went further. While disclaiming he was providing "anything like a comprehensive list," Justice Alito noted "some rules that would not be content-based." These included rules regulating the size and location of signs, including distinguishing between building and free-standing signs; "distinguishing between lighted and unlighted signs;" "distinguishing between signs with fixed messages and electronic signs with messages that change;" distinguishing "between the placement of signs on private and public property" and "between the placement of signs on commercial and residential property;" and rules "restricting the total number of signs allowed per mile of roadway."

But Justice Alito also approved of two rules that seem at odds with Justice Thomas's "on its face" language. Alito claimed that rules "distinguishing between on-premises and off-premises signs" and rules "imposing time restrictions on signs advertising a one-time event" would be content-neutral. But rules regarding "signs advertising a one-time event" clearly are facially content-based, as Justice Kagan noted in her opinion concurring in the judgment, and the same claim could be made regarding the on-site vs. off-site distinction.

Keep in mind, however, that even content-neutral "time, place or manner" sign regulations are subject to intermediate judicial scrutiny rather than the deferential "rational basis" scrutiny applied to regulations that do not implicate constitutional rights such as freedom of expression or religion. Intermediate scrutiny requires that government demonstrate that a sign regulation is narrowly tailored to serve a substantial government interest and leave "ample alternative avenues of communication." Because intermediate scrutiny requires only a "substantial," rather than a "compelling," government interest, courts are more likely to find that aesthetics and traffic safety meet that standard. That said, courts have struck down a number of content-neutral sign code provisions because the regulations were not "narrowly tailored" to achieve their claimed aesthetic or safety goals.

BEYOND *REED*

As noted previously, the Supreme Court ruling of *Reed v. Town of Gilbert* provided scant guidance about how courts should treat sign regulations that apply to commercial business signs or that differentiate between on-site and off-site signs. These issues are now being addressed in the lower federal courts, clarifying how these types of signs might be content-based and subject to strict scrutiny.

Commercial signs: To date, the federal courts have ruled unanimously that *Reed* should not be applied to regulations that affect commercial signs. The following quote from *Lamar Cent. Outdoor, LLC v. City of Los Angeles*, 2016 WL 911406, (Cal. Ct. App. Mar. 10, 2016) is typical: "*Reed* is of no help to plaintiff either..., it does not purport to eliminate the distinction between commercial and noncommercial speech. It does not

involve commercial speech, and does not even mention *Central Hudson*." The *Central Hudson* reference is to the 1980 Supreme Court ruling establishing that regulation of commercial speech should be subject to a form of intermediate scrutiny rather than strict scrutiny.

On-site vs. off-site signs: Treatment of the on-site vs. off-site distinction remains uncertain. Most courts that have addressed the issue have cited Justice Alioto's concurrence as the basis for dismissing the idea that *Reed* should apply to the on-site vs. off-site distinction. But one federal district court has vigorously disagreed. In *Thomas v. Schroer*, 2015 WL 5231911 (W.D. Tenn. Sept. 8, 2015), the judge noted: "Not only is the concurrence not binding precedent, but the concurrence fails to provide any analytical background as to why an on-premise exemption would be content-neutral. The concurrence's unsupported conclusions ring hollow in light of the majority opinion's clear instruction that 'a speech regulation targeted at specific subject matter is content-based even if it does not discriminate among viewpoints within that subject matter,' citing *Reed*. Clearly, this issue remains unresolved.

Content-based exemptions: Sign regulations that contain content-based exemptions have not fared well under *Reed*. *Central Radio Co. Inc. v. City of Norfolk, Va.*, 811 F.3d 625 (4th Cir. 2016), is a good example. There, in a challenge first decided before *Reed*, the Court of Appeals had concluded that a sign regulation exempting flags, emblems and works of art was content-neutral and, applying intermediate scrutiny, held that the regulation was a constitutional exercise of the city's regulatory authority. But when the challenge was renewed after *Reed*, the Court of Appeals reversed its decision and agreed with the plaintiffs that, under *Reed*, the regulation was a content-based restriction that cannot withstand strict scrutiny. Similarly, in *Marin v. Town of Southeast*, 2015 WL 5732061 (S.D.N.Y. Sept. 30, 2015), a federal district court ruled that a regulation that exempted certain signs, but not political signs, from restrictions placed on temporary signage, was a content-based restriction that did not withstand strict scrutiny.

Content-neutral prohibitions: In contrast, courts that have ruled on challenges to content-neutral "time, place or manner" regulations after *Reed* have had little difficulty upholding the regulations. For example, in *Peterson v. Vill. of Downers Grove*, 2015 WL 8780560 (N.D. Ill. Dec. 14, 2015), the court upheld a content-neutral ban on all painted wall signs, and in *Vosse v. The City of New York*, 2015 WL 7280226 (S.D.N.Y. Nov. 18, 2015), the court upheld a content-neutral prohibition on signs extending more than 40 feet above curb level as a reasonable "time, place or manner" restriction on speech.

WHAT NOW?

HOW CAN CITIES RESPOND TO THESE RULINGS?

Some cities are enacting moratoria on sign regulation while they try to figure that out. A court would likely view with disfavor a total moratorium on issuing any sign permits (or, worse yet, displaying any new signs) as an unconstitutional prior restraint on speech. In contrast, a moratorium of short duration – certainly no more than 30 days – targeted at permits issued under code provisions that are questionable after *Reed* is far more likely to be upheld. Cities are also well-advised to suspend enforcement of code provisions – particularly regulation of temporary signs – that are questionable after *Reed*. Obviously, however, *all* sign code structural provisions directly related to public safety should continue to be enforced.

As we all know, drafting a fair and effective sign code that balances a community's interests is no easy task. Trying to do that during a short moratorium is even harder, but it is certainly not impossible.

TIPS FOR COMPLYING WITH *REED*

Until the courts provide more guidance on the uncertainties surrounding the *Reed* ruling, arguably the best course of action is to err on the side of allowing for less restrictive, rather than more restrictive, sign regulations.

1 **Remove from the sign code all references to the content of a sign other than the few examples directly related to public safety noted in Justice Thomas's opinion.** Most of these content-based provisions likely will relate to temporary signs. Rather than referring to "real estate" or "political" or "garage sale" signs, your code should treat these all as "yard" signs or "residential district" signs. You then regulate their number, size, location, construction and amount of time they may be displayed, keeping in mind how your residents want to use such signs. You would use the same approach for temporary signs in business districts: replace references to "Grand Opening" or "Special Sale" signs with "temporary business sign" and regulate their number, size, location, construction and amount of time they may be displayed based on business needs for such signs.

2 **All the provisions in your code that refer to number, area, structure, location and lighting of permanent signs are content-neutral and unaffected by *Reed*.** If your code has any content-based provisions for permanent signs, either by specifying content that must (or must not) be on a sign or because you distinguish among uses (e.g., "gas-station signs"), those provisions will be subject to strict scrutiny if challenged. None of these content-based provisions should be retained unless public safety would be so threatened by removal that the provision would survive strict scrutiny. Permanent signs should be regulated in a content-neutral manner with regulations distinguished not by type of use (because that would be "speaker-based") but by either zoning districts or "character" districts or by reference to street characteristics such as number of lanes or speed-limit. The International Sign Association has a number of resources that can help your community revise your sign code based on the latest research, sign industry expertise and sign-user perspectives.

3 **If your sign code does not have a severability clause and a substitution clause they should be added.** A severability clause provides that if any specific language or provision in the code is found to be unconstitutional, it is the intent of the city council that the rest of the code remain valid. For example: "If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word in this code is declared invalid, such invalidity shall not affect the validity or enforceability of the remaining portions of the code." A substitution clause allows a non-commercial message to be displayed on any sign. While *Reed* did not discuss the commercial/non-commercial distinction, prior U.S. Supreme Court cases established that commercial speech should not be favored over non-commercial speech. A substitution clause thus can safeguard you against liability that could result from mistakenly doing just that by prohibiting the display of a non-commercial message or citing it as a code violation. For example: "Signs containing non-commercial speech are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs."

IS YOUR COMMUNITY EXPLORING SIGN CODE CHANGES?

CONTACT **SIGNHELP@SIGNS.ORG**
FOR COMPLIMENTARY ANSWERS.

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WWW.THESIGNAGEFOUNDATION.ORG

Anderson, Ryann E. - CPD City Planner Associate

From: jeff Koskinen <jeffkosk@gmail.com>
Sent: Friday, March 26, 2021 12:53 PM
To: Anderson, Ryann E. - CPD City Planner Associate
Subject: [EXTERNAL] New restrictive zoning

Ryann

With regard to Item #1

Item #1:
Revise “zone lot, nonconforming” zone lot to clarify that a zone lot is nonconforming if it fails to meet the minimum zone lot area/size or width standards of all building form standards allowed in the subject zone lot. (excerpted from amendment summary)

Please do not go in the opposite direction as many parts of the country in preventing neighborhoods from becoming more diverse.

The case for making a 49 foot lot single family only on the most minor technicality is totally against best land practices in trying to diversify housing types within neighborhoods.

Sincerely

Jeff Koskinen

Anderson, Ryann E. - CPD City Planner Associate

From: Joe Simmons <jsimmons@blueskystudio.com>
Sent: Thursday, March 25, 2021 12:49 PM
To: Anderson, Ryann E. - CPD City Planner Associate
Subject: [EXTERNAL] A comment regarding the currently proposed text amendments

Ryan-

I Have reviewed the text amendments, and appreciate all the effort that has gone into the clarifying language that has sometimes proved vexing.

I have one comment as an architect engaged with energy conscious / energy conserving design. There is new language about sun screens that has now become too limiting. Sunscreens can take many forms. They can be horizontal on south-facing facades, but greater latitude is needed for western exposures where vertical screens become effective.

Additionally, extensions of roof and floor structures have historically been used for these purposes.

As our world becomes greener, I strongly advocate for fewer restrictions for dealing with light. Not more.

Thanks

Joe

Joseph E. Simmons AIA
BlueSky Studio
99 S. Logan St.
Denver, CO 80209
303-601-8956

Anderson, Ryann E. - CPD City Planner Associate

From: Jon Hindlemann <harchitecture.jon@gmail.com>
Sent: Monday, March 15, 2021 10:33 AM
To: Anderson, Ryann E. - CPD City Planner Associate
Subject: [EXTERNAL] Zoning Code Amendments
Attachments: Clarification on Primary Structures.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Ryann and a happy snow day to you!
Hey I was just a touch bored (not really) and started reading the Summary I received.
It might be my dizziness from shoveling but isn't the text I highlighted, backwards?

Have a good day!

Jon

--
Hindlemann Architecture LLC
1501 Wazee Street Suite 1-C
Denver, Colorado 80202
Office Phone: 303.623.1010
Email: jon@harchitecture.net

Anderson, Ryann E. - CPD City Planner Associate

From: Jordan Connett <jordan@connettre.com>
Sent: Friday, March 26, 2021 10:08 AM
To: Anderson, Ryann E. - CPD City Planner Associate
Subject: [EXTERNAL] Zoning Change - Public comment

Ryann,
I am a resident, owner and developer in Denver and I'm writing to voice my concern over a zoning revision that is up for revision. The excerpt is as follows:

Revise "zone lot, nonconforming" zone lot to clarify that a zone lot is nonconforming if it fails to meet the minimum zone lot area/size or width standards of all building form standards allowed in the subject zone lot.

My concern is that this change in a TU zone district will reduce density, reduce affordable housing, and devalue many properties simply because they are not the exact size the city wants. A lot that is 40' wide can still accommodate a very comfortable and desirable duplex and this change is too much of a "knee-jerk" reaction and will have rippling consequences on many of the residents lots for years to come.

I am not in support of this change.

Sincerely,
Jordan Connett

Anderson, Ryann E. - CPD City Planner Associate

From: Fry, Logan M. - CC YA2245 City Council Aide
Sent: Friday, February 26, 2021 2:13 PM
To: Anderson, Ryann E. - CPD City Planner Associate
Subject: 2021 Text Amendment Bundle

Good afternoon Ryann,

I hope you and your family are staying healthy. We were perusing the text amendment bundle and came across the new general provision prohibiting obscene content.

Could you please pass along the exact language that is being proposed for this part of the text amendments?

Sincerely,
Logan Fry

Logan Fry • Senior Council Aide
Councilwoman Amanda Sawyer • District 5
Phone 720-337-5555
Denvergov.org/CouncilDistrict5

Anderson, Ryann E. - CPD City Planner Associate

From: Axelrad, Tina R. - CPD CPD Zoning Administrator
Sent: Monday, April 12, 2021 9:50 AM
To: Anderson, Ryann E. - CPD City Planner Associate
Subject: FW: Text Bundle items for discussion

Ryann – email from Council District #1 with questions (answered during one-on-one meeting with Tina on 4/8/21) and remaining comments.

From: Grunditz, Naomi R. - CC City Council Aide District 1 <Naomi.Grunditz@denvergov.org>
Sent: Friday, April 9, 2021 9:03 AM
To: Axelrad, Tina R. - CPD CPD Zoning Administrator <Tina.Axelrad@denvergov.org>; Sandoval, Amanda P. - CC Member District 1 Denver City Council <Amanda.Sandoval@denvergov.org>
Subject: Re: Text Bundle items for discussion

Good morning, Tina,

Thanks again for the discussion yesterday! Here are the items I had notes on for you:

1. Barrier-free access structures - Tina will look at C0-6 and reach out to Brad if needed
2. Revised porch exception standard: will this inadvertently discourage side porches on corner lots? D1 is specifically concerned how applies to Two Unit uses on corners - Tina will take this back for feedback from team
3. Entertainment Venues in 11.4.2.1 - Tina will look into why this didn't make the cut and what the path forward is

Best,
Naomi

Naomi Grunditz | District 1 Planner
Office of Councilwoman Amanda P. Sandoval
1437 Bannock Street, Room 451 | Denver 80202
naomi.grunditz@denvergov.org
p: (720) 337.7704
c: (720) 656.7281

From: "Grunditz, Naomi R. - CC City Council Aide District 1" <Naomi.Grunditz@denvergov.org>
Date: Thursday, April 8, 2021 at 12:53 PM
To: "Axelrad, Tina R. - CPD CPD Zoning Administrator" <Tina.Axelrad@denvergov.org>, "Sandoval, Amanda P. - CC Member District 1 Denver City Council" <Amanda.Sandoval@denvergov.org>
Subject: Text Bundle items for discussion

Anderson, Ryann E. - CPD City Planner Associate

From: Axelrad, Tina R. - CPD CPD Zoning Administrator
Sent: Wednesday, April 21, 2021 1:18 PM
To: Grunditz, Naomi R. - CC City Council Aide District 1; Sandoval, Amanda P. - CC Member District 1 Denver City Council
Cc: Abu-Jaber, Amir M. - CPD Associate Architect; Barge, Abe M. - CPD City Planner Principal; Anderson, Ryann E. - CPD City Planner Associate
Subject: RE: Text Bundle items for discussion

Naomi:

Here are CPD's answers to your specific follow-up questions on the pending 2021 bundle of DZC text amendments:

1. **Revised porch exception standard: will this inadvertently discourage side porches on corner lots? D1 is specifically concerned how applies to Two Unit uses on corners. Reply from Amir Abu-Jaber – architect on our Residential Review team:**

NOTE: The comments (Naomi's comments below) related to side porches with respect to building coverage should be added for consideration to a future bundle list (Tina: done).

In summary, the proposed amendments that are part of this bundle do not change the zoning analysis for building coverage as it relates to porches. In other words, there is no exception to the building coverage requirements for side porches in either the current adopted code language or the proposed amendments.

More specifically the current adopted code language in, for example, 2010 DZC Section 5.3.7.5.B.2 states *"Area on a zone lot occupied by a Front Porch may be excluded from the calculation of building coverage, up to a maximum of 400 square feet for each dwelling unit"*. 2010 DZC Section 13.3 defines "Porch, Front", in part, as *". . . unenclosed on the primary street-facing façade of the primary building"*. Since the side porch is not on the primary street-facing façade of the primary building, the footprint of the side porch is included in the total building coverage calculation.

In the proposed bundle, the definitions of "Porch, Front" and "Porch" are collapsed into the new more generic definition "Porch, Unenclosed" of *"A structure attached to a building providing access to the uses within the building. An Unenclosed Porch may be covered and must be at least 50% open on each side, except for sides abutting a Façade or required fire wall."* This requires more specific language in the exception to maintain the same zoning analysis for the building coverage exception for a Front Porch as previously defined. The proposed text in, for example, Section 5.3.7.5.B.2 specifies that the exception applies to *". . . portions of an Unenclosed Porch . . . if the portions of the Unenclosed Porch are located between the Primary Street zone lot line and the Primary-Street facing façade(s) of the Primary Structure"*. This reflects current practice that porches that are not on the primary street-facing façade of the primary building must be included in the total building coverage calculation. Thank you!

2. **Barrier-free access structures - Tina will look at C0-6 and reach out to Brad if needed.**

From Brad Johnson, project manager for the recently adopted CO-6 Zone District: "This provision of CO-6 endeavors to provide more flexibility for access ramps in response to pushback received on the overlay's requirement that the upper surface of the floor of the street level be a minimum of 12" above front base plane. We heard concerns that the 12" minimum creates accessibility challenges, so we were trying to counteract that." Given the uniqueness of the CO-6 minimum first floor elevation requirement, at this time it's not on

CPD's radar to consider expanding the general setback encroachment that limits application to existing buildings only.

3. Entertainment Venues in 11.4.2.1

This proposed change – to reconsider how "capacity" is measured for indoor arts/recreation venues like the Yates Theater in neighborhood commercial (MX/MS-2 and 2x) zones – is in fact on CPD's master list of future text amendments to consider. It simply did not make the cut for the 2021 bundle scope, which tilted heavily toward making high-priority residential changes and other items that ranked higher in priority/ demand than the Yates Theater issue and also ranked higher in terms of the level of effort required to make the revision versus the degree of impact the change would have in daily zoning administration and on development in general. The proposed change will remain on the master list, and will be evaluated for inclusion in future bundle or related text changes.

Please let me know if you have any additional questions or concerns.

Best,
Tina

From: "Grunditz, Naomi R. - CC City Council Aide District 1" <Naomi.Grunditz@denvergov.org>
Date: Thursday, April 8, 2021 at 12:53 PM
To: "Axelrad, Tina R. - CPD CPD Zoning Administrator" <Tina.Axelrad@denvergov.org>, "Sandoval, Amanda P. - CC Member District 1 Denver City Council" <Amanda.Sandoval@denvergov.org>
Subject: Text Bundle items for discussion

Hello Tina!

Looking forward to meeting shortly. As a bit of a heads up, here is the list of 16 items we would like to review.

Best,
Naomi

1. Building Form Determination
    a. 1.4.1.3: What are the changes in building form determination meant to accomplish?
    b. Page 1.4-1 - 1.4.1.3A - Assignment of Building Form to Existing Structure - How often has an "Applicant" selected or assigned a building form? This seems like a task best left to CPD to avoid conflicts of interest. Although later in the section it is noted under "D" that the Zoning Administrator (ZA) may make the initial assignment, the preceding passage is disturbing. Please explain
2. Flag Lots 1.2.3.3.
    a. Discuss, what are changes meant to accomplish? How many such lots exist?
3. Uses per zone lot
    a. Primary Use Table: SU and TU listed twice?
    b. Elaborate on changes and removal of definition of Carriage Houses
4. MX and MS
    a. Discussion: "Street Level Active Uses in the E, U, G, C, Zone Districts: correct applicability to apply the standards to the Town House building form as well as the Shopfront form."
5. Tandem House, in general
    a. Concern that this form is very difficult to build. How will these standards impact feasibility?
6. "Live-work Dwelling" use in Townhouse and Apartment Forms

7. Detached Accessory Dwelling Unit
    a. Community concerns about removing southernmost setback line requirement
        i. Any other way to encourage most appropriate siting to preserve light access to neighboring back yards?
        ii. "***Reviewed after meeting call. Request detailed explanation from CPD of what "desired design outcomes" means. There are context where site condition will produce severe shadow impacts on north adjoining properties - regardless of bulk plane. In these instances, and given that siting is use-by-right with no advice notice to the adjoining neighbor, there is no mechanism to prevent the Applicant's design from moving forward and no mechanism for recourse within the Denver planning process).***"
8. Architectural elements that are intended to control light (previously referred to as "shading devices)
    a. Inadvertently prohibit side shading devices or fins, such as on the County Courthouse?
9. Exception for barrier-free access structures
    a. Compared to CO-6 Harkness Heights?
    b. Why not allowed to encroach into setbacks on new builds?
10. Setback exception for retaining structures for window wells and other below-grade areas
    a. How is a window well or below-grade area determined to be meeting DBC requirements?
11. Revise porch exception to align with intent: only unenclosed porches located between the Primary Street zone lot line and the Primary Street-facing façade of the structure can take the exception, and only if the porch provides access to the primary use in the structure.
    a. Inadvertently discourage side porches on corner lots? How applies to Two Unit use on corner lots?
12. Vehicle Access from Alley–Exceptions:
    a. Great! Must put access in alley if demolish primary structure
    b. "This section" references Sec. 5 again
13. Alternative minimum parking ratio for projects containing affordable housing
    a. How "much" affordable housing is required to get alternative minimum?
14. Alleys
    a. "Clarify that if a public alley is 13 feet or less in width, a new carport (in addition to garage doors) must have its open side (vehicle access side) setback at least 18 feet from the farthest alley ROW boundary line."
    b. Implications for D1 since we have lots of narrow alleys
15. Typo?
    a. Sec 3(#).3.7.6: Typo?? Refers to sec. 5
16. Further changes, how will this work be addressed?
    a. "Seat" limitations on occupancy for Yates Theater issue
        i. We are wondering why the clarification regarding Entertainment Venues has not been addressed in recent 2021 bundled text amendments: Section 11.4.2.1 Seating Capacity shall be limited to no more than 100 persons.

Naomi Grunditz | District 1 Planner
Office of Councilwoman Amanda P. Sandoval
1437 Bannock Street, Room 451 | Denver 80202
naomi.grunditz@denvergov.org
p: (720) 337.7704
c: (720) 656.7281

Sign up for the District 1 Newsletter

Anderson, Ryann E. - CPD City Planner Associate

From: Axelrad, Tina R. - CPD CPD Zoning Administrator
Sent: Wednesday, April 7, 2021 4:57 PM
To: Anderson, Ryann E. - CPD City Planner Associate; Barge, Abe M. - CPD City Planner Principal
Subject: FW: [EXTERNAL] RNO Position Statement - Proposed Denver Code Text Amendments

Follow Up Flag: Follow up
Flag Status: Flagged

Ryann - would you enter the email below into the public comment tracking sheet for the Bundle (the first sentence is about the Bundle).
Abe, would you like to respond to this one?

Thank you,
Tina

-----Original Message-----
From: Johnson, Kristofer - CPD City Planner Principal <Kristofer.Johnson@denvergov.org>
Sent: Wednesday, April 7, 2021 2:59 PM
To: Barge, Abe M. - CPD City Planner Principal <Abe.Barge@denvergov.org>; Axelrad, Tina R. - CPD CPD Zoning Administrator <Tina.Axelrad@denvergov.org>
Subject: FW: [EXTERNAL] RNO Position Statement - Proposed Denver Code Text Amendments

FYI, just passing this on as I think the first statement is in reference to the Bundle.

kj

Kristofer Johnson, AICP, PLA | Principal City Planner – Urban Design Community Planning and Development | City and County of Denver Pronouns | He/Him/His
phone: (720) 865-3091 | kristofer.johnson@denvergov.org
311 | pocketgov.com | denvergov.org/CPD | Take Our Survey | Facebook | Twitter | Instagram

Community Planning and Development is doing our part to support social distancing recommendations. Please help us in this effort by doing business with us online instead of in person: www.denvergov.org/cpd.

-----Original Message-----
From: Rezoning - CPD <Rezoning@denvergov.org>
Sent: Wednesday, April 7, 2021 2:52 PM
To: Johnson, Kristofer - CPD City Planner Principal <Kristofer.Johnson@denvergov.org>
Subject: FW: [EXTERNAL] RNO Position Statement - Proposed Denver Code Text Amendments

-----Original Message-----
From: PAB Stiefler <pstiefler@msn.com>
Sent: Wednesday, April 7, 2021 1:13 PM
To: Rezoning - CPD <Rezoning@denvergov.org>

Cc: St. Peter, Teresa A. - CC Senior City Council Aide District 10 <Teresa.St.Peter@denvergov.org>; Zukowski, Liz S. - CC Senior City Council Aide District 10 <liz.Zukowski@denvergov.org>
Subject: [EXTERNAL] RNO Position Statement - Proposed Denver Code Text Amendments

Morgan's Historic District RNO urges that this proposal be put on hold until COVID is more under control so there can be more traditional community engagement through meetings. With about 160 items to review we do not understand the rush to make these changes, even if most are minor in nature.

We do understand the impact of the Golden Triangle development. 38% of our group responded to my query about the new 325'-tall Point Towers and 80% of them opposed the new height limits. We strongly support protecting Cheeseman Park's View Plane.

PAB Stiefler
Morgan's Historic District RNO, Secretary
855 York Street
303-399-9814

April 12, 2021

Ryann Anderson
Associate City Planner
Denver Zoning Administration
201 W Colfax Ave., #205
Denver, CO 80202

VIA EMAIL ONLY: Ryann.Anderson@denvergov.org

Re: Support for Denver Zoning Code 2021 Bundle of Text Amendments; Section 1.2.3.3 Flag Zone Lots

Dear Ms. Anderson:

I'm writing to express my support for the changes to Section 1.2.3.3 of the Denver Zoning Code which have been proposed through the 2021 Bundle of Text Amendments. In particular, the clarification regarding the inclusion of road square footage within the measurement of the overall flag zone lot square footage is a much-needed clarification that will allow both property owners and city planners to avoid the expenditure of needless time and expense that is currently being incurred to implement what all concerned believe to be the intent (but apparently not currently the technical language) of the Zoning Code as it relates to flag zone lots.

Your efforts to ultimately obtain Denver City Council approval of the changes to Section 1.2.3.3 of the Denver Zoning Code are appreciated. If there is more that I can do to provide support for these changes, please let me know.

Sincerely,

Pat Broe

Anderson, Ryann E. - CPD City Planner Associate

From: Renee Martinez Stone <rmarti@denverhousing.org>
Sent: Friday, April 9, 2021 3:31 PM
To: Anderson, Ryann E. - CPD City Planner Associate
Cc: Penafiel Vial, Maria F. - CPD City Planner Associate; Howard, Eugene D. D. - CPD Senior City Planner; Mara Owen
Subject: [EXTERNAL] 2021 Bundle of Text Amendments - question

Follow Up Flag: Follow up
Flag Status: Flagged

Ryann: hello.

I received an email that you were handling the text bundle. WDRC is leading the ADU Pilot Program, so we were happy to submit several recomms regarding ADUs in the recent past. I have two questions:

- Are you receiving pushback on any of the ADU related changes in the bundle in community comments? I have signed on to letters supporting other proposed changes (parking reqs for affordable housin), but am not sure that we need to write letters of support for the proposed ADU changes. What do you think?
- Do we need clarification on the owner requirements for ADUs in SU? In converstions over the past couple of months at the East Colfax ADU rezoning town hall, preparing for a West Denver ADU forum last night, and talking with Dist 3 today in preparation for a proposed rezoning …there is some confusion around the SU ADU homeowner requirements:
    - Homeowners must live on site to build an ADU
    - Homeowners can only rent the ADU or primary home if they are onsite
    - If the Homeowner moves offsite, the structure can no longer be used as an ADU….what does this mean exactly…the kitchen (stove) has to be removed so it can only be used as an accessory structure not an accessory dwelling structure?
    - And this from someone in a neighborhood worried about absentee landlords building ADUs and renting both home and ADU….does the City check on the properties with ADUs?

One comment, I would like to propose for the bundle is that the minimum lot size for detached ADUs be removed. The average lot size for a neighborhood leaves half of the homeowners out of eligibility when the setbacks and massing standards (and ADU wall maxs) limit the size of the ADU anyway.

Renee

……..
Renee Martinez-Stone
Director, West Denver Renaissance Collaborative
P.O. Box 40305, Denver, CO 80203-0305
720.413.2229 MOBILE/REMOTE OFFICE
Rmarti@denverhousing.org
https://www.mywdrc.org/

Anderson, Ryann E. - CPD City Planner Associate

From: Laura Rossbert <laura@shopworksarc.com>
Sent: Monday, April 12, 2021 4:32 PM
To: Anderson, Ryann E. - CPD City Planner Associate; Axelrad, Tina R. - CPD CPD Zoning Administrator; Hock, Analiese M. - CPD City Planner Principal
Cc: Chad Holtzinger; Hasstedt, Kinsey; Yonke, Megan B. - HOST CV2310 Fiscal Administrator I
Subject: [EXTERNAL] Letter of Support for 2021 Text Amendment Bundle
Attachments: 21 0412 CPD Letter Supporting Shifts to Parking Inconsistencies.pdf

Tina, Analiese, and Ryann,

Attached please find a letter from 69 non-profits and businesses supporting the fix to the inconsistencies in parking in affordable housing found in the 2021 Text Amendment Bundle.

Please let me know if you have any questions about this matter – many of those who signed the letter plan to attend the Planning Board meeting next week. I understand that this email will ensure this letter is included in the packet for Planning Board members, but please let me know if there's anything else you need from me to make that happen.

Thank you kindly,
Laura

Laura Rossbert
shopworks architecture
301 W. 45th Ave Denver, CO 80216
M: 303.941.9382
O: 303.433.4094
D: 720.681.6420

April 12, 2021

VIA ELECTRONIC MAIL
One letter that will go to two different audiences:

Re: 2021 CPD Text Amendment Bundle – Eliminating Inconsistencies in Affordable Housing Parking Requirements

Dear Members of the Planning Board:

We are sixty-nine non-profits and businesses (see signatures below) writing in support of the section of the 2021 Text Amendment Bundle from Community Planning & Development that **equalizes all zone districts for affordable housing to a set ratio of 0.1 parking spots required per unit for buildings below 60% AMI**.

We represent a diverse coalition from various industries who work in affordable housing. We are non-profits, foundations, developers, architects, and others who develop or support the development of affordable housing. We see first-hand the barrier that the current zoning parking requirements put on projects, and the inconsistencies across the city of those requirements. Unnecessarily high requirements cause many affordable housing projects to not leave the initial concept phase due to land considerations for parking lots, and the cost of building those parking spaces exceeding the tight project budgets.

We are committed to ensuring the needs of the residents in affordable housing are met, including providing enough parking for residents and staff. However, the current zoning requirements are simply too high and inconsistent across zone districts. For instance, those on the Colfax corridor require .25 cars per unit, while many in the Downtown Core require 0 parking spots per unit, and those elsewhere in Denver can require up to 1.25 parking spots per unit. These inconsistencies no longer make sense for the way the city has evolved, including the public transit system that the vast majority of those who live in affordable housing utilize.

The code's parking requirements for affordable housing is demonstrably higher than the actual parking demand in our buildings. A December 2020 RTD study found that market-rate properties provide approximately 40% more parking than residents use, and income-restricted properties provide approximately 50% more parking the residents use.[1] An additional study by Fox Tuttle and Shopworks Architecture from February 2021 found an excess of parking associated with affordable housing developments in Denver, compared to the Text Amendment's recommendation of 0.1 parking spots per unit:[2]

- Across all levels of affordable housing (0-99% AMI), there are 0.29 vehicles per unit, equating to less than one vehicle per 6 units;

[1] https://www.rtd-denver.com/sites/default/files/files/2021-01/RTD-Residential-TOD-Parking-Study_Final-R_0.pdf
[2] www.shopworksarc.com/parking/

- Across one-bedroom supportive housing (0-30% AMI), there are 0.053 vehicles per unit, equating to less than one vehicle per 18 units;
- Across 19 projects built in the metro Denver area (including suburbs) in the past six years, over $9.2 million was spent on unutilized parking that could have created an additional 40-unit affordable housing building in Denver.

Additionally, many cities across the country are making similar changes – lowering parking requirements in affordable housing (or all multi-family developments), with some reducing these parking requirements to zero. Cities who have eliminated or deeply reduced these parking requirements include Buffalo (NY), Hartford (CT), Minneapolis (MN), New York (NY), Portland (OR), Santa Monica (CA), Seattle (WA), and Spokane (WA).

We urge the Planning Board and City Council to approve this text amendment that eliminates inconsistencies in parking for affordable housing in Denver and ensures that the city's parking requirements better mirror the demand for parking utilized by those who will live and work in these buildings.

We thank you for considering this matter and are available to speak about any questions you might have for us.

Sincerely,

Organization	Representative & Role
Abaco LLC	Charlie Knight, President
Access Housing	Ashley Danzell, Executive Director
Agape Christian Church/Charity's House	Senior Pastor Robert E. Woolfolk & Eddie Woolfolk
All in Denver	Brad Segal and Jami Duffy, Co-Founders
Archdiocesan Housing	Justin Raddatz, Executive Director
Archway Housing	Sebastian Corradino, Executive Director
BeauxSimone Consulting	Katie Symons & Zoe LeBeau, Owners
BlueLine Development	Nate Richmond, President & C.E.O.
Brain Injury Alliance of CO	Gavin Attwood, C.E.O.
Brothers Redevelopment, Inc.	Jeff Martinez, President & C.E.O.
Burgwyn Company	Henry K. Burgwyn, Owner
Center for Housing & Homelessness Research at DU	Daniel Brisson, Executive Director
Colorado Coalition for the Homeless	Cathy Alderman, Chief Communications & Public Policy Officer
Colorado Housing Affordability Project	Brian J. Connolly, Board Member
Colorado Village Collaborative	Cole Chandler, Executive Director
Columbia Ventures	Diana Stoian, Development Manager
Community Builders Realty Services	Rodger A. Hara, Principal
The Delores Project	Stephanie Miller, C.E.O.

Delwest	Warren Craig Fitchett, Director of Acquisitions & Business Development
Denver Streets Partnership	Jill Locantore, ED
Don Burnes	Homeless Researcher/Advocate
EarthLinks, Inc.	Kathleen M. Cronan, Executive Director
East Colfax Community Collective	Brendan Greene, Executive Director
Element Properties	Kevin Knapp, Principal - Community Development
Elevation Community Land Trust	Tiana Patterson, Public Partnerships & Legal Director
The Empowerment Program	Julie Kiehl, Executive Director
Energy Outreach CO	Jennifer Gremmert, Executive Director
Enterprise Community Partners - Colorado	Jennie Rodgers, Vice President - Denver Market Leader
Flow Design Collaborative	Christopher Hoy, Principal
Globeville Elyria Swansea Coalition	Nola Miguel, GES Coalition Director
Group14 Engineering	Susan Reilly, Principal & Co-Founder
Habitat for Humanity	María Sepulveda, VP Community & Governmentt Partnerships
Harm Reduction Action Center	Lisa Raville, Executive Director
Hope Communities	Sharon A. Knight, President & C.E.O.
Housing Colorado	Rachel Massman, Interim Executive Director
I-Kota Construction	Riley McLaughlin, C.E.O.
The Interfaith Alliance of Colorado	Rev. Tamara Boynton, Interim Executive Director
James Real Estate Services	Bill James, President
Lucero Development Services	John R. Lucero, President
Maiker Housing Partners	Peter LiFari, Executive Director
Mental Health Center of Denver	Dr. Carl Clark MD, President & C.E.O.
Mercy Housing	Ismael Guerrero, President & C.E.O.
Metro Denver Homeless Initiative (MDHI)	Matt Meyer, PhD, Executive Director
Mile High Development	George Thorn, C.E.O.
Mile High Ministries	Jeff Johnsen, Executive Director
Mothers Advocating for Affordable Housing	Susan Powers, Co-Founder
Neighborhood Development Collaborative	Jonathan Cappelli, Founder
Otten Johnson Robinson Neff + Ragonetti, P.C.	Kimberly Martin, Managing Director/Shareholder
Project Moxie	Jenn Lopez, Owner
Radian	Dee Dee DeVuyst, Interim Executive Director
RaiseHomes LLC	Ray Stranske, President
Rivet Development Partners	Shannon Cox-Baker, Managing Partner
Rocky Mountain Communities	Dontae Latson, President & C.E.O.
Second Chance Center	Hassan Latif, Executive Director

Shanahan Development	Jeff Shanahan, Owner
Shopworks Architecture	Chad H. Holtzinger, AIA, President & Rev. Laura Rossbert, COO
St. Francis Center	Tom Luehrs, Executive Director
Taylor Kohrs Construction	Brian J. Cohen, Vice President
TGTHR (Formerly Attention Homes)	Chris Nelson, C.E.O.
Transportation Solutions Foundation	Stuart Anderson, Executive Director
Tribe Recovery Homes	Thomas Hernandez, President & CEO
Urban Peak	Christina Carlson, C.E.O.
Urban Ventures, LLC	Susan Powers, President
Volunteers of America - Colorado Branch	Dave Schunk, President & C.E.O.
Volunteers of America - National	Doug Snyder, Vice President - Regional Real Estate Development
Warren Village	Ethan Hemming, President & C.E.O.
West Denver Renaissance Collaborative	Renee Martinez-Stone, Initiative Director
Westwood Unidos	Paul C. Casey, Executive Director

From: Planningboard - CPD
To: Axelrad, Tina R. - CPD CPD Zoning Administrator
Subject: FW: Denver"s Planning Board Comment Form #13729538
Date: Tuesday, April 13, 2021 8:26:02 AM

From: noreply@fs7.formsite.com <noreply@fs7.formsite.com>
Sent: Monday, April 12, 2021 6:30 PM
To: Planningboard - CPD <planningboard2@denvergov.org>
Subject: Denver's Planning Board Comment Form #13729538

Thank you for submitting a comment to the Denver Planning Board. Your input will be forwarded to all board members as well as the project manager. For information about the board and upcoming agenda items, visit www.DenverGov.org/planningboard.

Name	Chad Holtzinger
Address	4103 W 30th Ave
City	Denver
State	Colorado
ZIP code	80212
Email	chad@shopworksarc.com
Agenda item you are commenting on:	Text Amendment

Name of Project	Zoning Text Amendment Bundle
Would you like to express support for or opposition to the project?	Strong support
Your comment:	I am the owner of Shopworks Architecture, that designs affordable housing across Denver and Colorado. I support the changes within this text amendment bundle. ADUs are a vitally important part of the housing diversification in our city that can easily be developed in existing infrastructure and add needed housing without challenging the established fabric. We also support the changes on parking included within the bundle. As designers who look at land across Denver these parking requirements are inconsistent in how much parking we are required to design depending on the neighborhood. Additionally, some neighborhoods have high parking requirements that don't meet the demand in the buildings for the residents we are designing for, especially those recently existing homelessness. This bundle fixes those inconsistencies and ensures that our zoning code reflects the value of our city.

COLFAX AVE

Support for Parking Requirement Consistency in Denver

April 14, 2021

Re: 2021 CPD Text Amendment Bundle – Eliminating Inconsistencies in Affordable Housing Parking Requirements

Dear Members of the Planning Board and City Council:

We are writing in support of the section of the 2021 Text Amendment Bundle from Community Planning & Development that equalizes all zone districts for affordable housing to a set ratio of 0.1 parking spots required per unit for buildings below 60% AMI.

We see first-hand the barrier that the current zoning parking requirements put on projects, and the inconsistencies across the city of those requirements. Unnecessarily high requirements cause many projects — for affordable housing or market rate housing — to not leave the initial concept phase due to land considerations for parking lots, and the cost of building those parking spaces exceeding the tight project budgets.

We would support the parking minimum requirements being reduced across the board. Certainly, as the recent research study has shown, parking is in ample supply and going unused, especially in affordable housing developments. **Our priority is that Colfax is a welcoming place for everyone, regardless of their income level**. We are committed to ensuring the needs of the residents in affordable housing are met, including providing enough parking for residents and staff. However, the current zoning requirements are simply too high and inconsistent across zone districts. For instance, those on the Colfax corridor require .25 cars per unit, while many in the Downtown Core require 0 parking spots per unit, and those elsewhere in Denver can require up to 1.25 parking spots per unit. These inconsistencies no longer make sense for the way the city has evolved, including the public transit system that the vast majority of those who live in affordable housing utilize.

The code's parking requirements for affordable housing is demonstrably higher than the actual parking demand in our buildings. A December 2020 RTD study found that market-rate properties provide approximately 40% more parking than residents use, and income-restricted properties provide approximately 50% more parking the residents use. An additional study by Fox Tuttle and Shopworks Architecture from February 2021 found an excess of parking associated

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with affordable housing developments in Denver, compared to the Text Amendment's recommendation of 0.1 parking spots per unit:

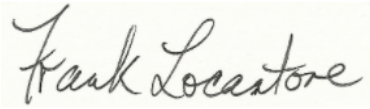
- Across all levels of affordable housing (0-99% AMI), there are 0.29 vehicles per unit, equating to less than one vehicle per 6 units;
- Across one-bedroom supportive housing (0-30% AMI), there are 0.053 vehicles per unit, equating to less than one vehicle per 18 units;
- Across 19 projects built in the metro Denver area (including suburbs) in the past six years, over $9.2 million was spent on unutilized parking that could have created an additional 40-unit affordable housing building in Denver.

Additionally, many cities across the country are making similar changes — lowering parking requirements in affordable housing (or all multi-family developments), with some reducing these parking requirements to zero. Cities who have eliminated or deeply reduced these parking requirements include Buffalo (NY), Hartford (CT), Minneapolis (MN), New York (NY), Portland (OR), Santa Monica (CA), Seattle (WA), and Spokane (WA).

We urge the Planning Board and City Council to approve this text amendment that eliminates inconsistencies in parking for affordable housing in Denver and ensures that the city's parking requirements better mirror the demand for parking utilized by those who will live and work in these buildings.

We thank you for considering this matter.

Sincerely,



Frank Locantore
Executive Director
Colfax Ave Business Improvement District

From: Renee Martinez Stone
To: Anderson, Ryann E. - CPD City Planner Associate
Subject: [EXTERNAL] 2021 Bundle of Text Amendments - letter for PB & CC
Date: Thursday, April 15, 2021 3:55:12 PM
Attachments: image001.png
image002.jpg
image004.jpg
2021_0415_text amendment bundle_letter from WDRC_submitted.pdf

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Ryann: good afternoon. I have attached a letter for the Planning Board day of meeting handout.

Hopefully some of the clarifications can be addressed at the meeting and some of the recommendations will be considered. We talk to hundreds of ADU interested residents a week, so have a decent understanding of where there is confusion, overly complex regulations or need for clarification.

Thank you for your work on this effort.
Renee

……..

Renee Martinez-Stone
Director, West Denver Renaissance Collaborative
P.O. Box 40305, Denver, CO 80203-0305
720.413.2229 MOBILE/REMOTE OFFICE
Rmarti@denverhousing.org
https://www.mywdrc.org/

wdrc logo.png

15 April 2021

VIA ELECTRONIC MAIL

Dear Members of the Planning Board:

Thank you for your service and for your review and deliberations on the 2021 DZC Text Amendment "Bundle". My comments primarily focus on the Attached and Detached ADU topics.

WDRC advocates for housing policies and solutions that help minimize displacement and put tools in the hands of residents in west Denver. We are leading the ADU Pilot Program to explore the possibility of affordable ADUs, create a pathway for homeowners to more easily build them, and to better understand obstacles preventing AUDs from taking off in Denver.

We support the following ADU minor corrections, clarifications and minor changes.

- Attached/Interior ADUs - Corrects accidental and significant restriction of attached/interior ADUs to only 300 square feet. We agree: This removes a barrier to this most-affordable way of creating an ADU without building a new structure.

- Detached Accessory Dwelling Units (ADUs):
  - Deletes the redundant requirement for taller detached ADU forms to be pushed to the southernmost setback line - the bulk plane requirement address this;
  - side interior setbacks the same as the primary structure setbacks on smaller lots;
  - Removal of the unnecessary maximum "Habitable Space" standard for detached ADUs.

We ask that CPD, Planning Board and City Council consider adding the following changes to this text amendment bundle

- **A DADU standard that creates significant restriction, creates rezonings to different A/B/C/D subcategories, and prevents ADUs from being built—** Consider removing the minimum lot sizes identifying parcels within an ADU zone district that cannot build an ADU. Lot sizes in neighborhoods vary and the size category (A/B/C etc.) was determined by average lot size in an area so will not fit all lots. If a primary home can be constructed on a lot, then an ADU should be allowed when there is ADU zoning. A small lot is not prohibited from building a garage (an accessory structure) in the code. A small lot will have significant restrictions on the ADU that can be built due to lot coverage limits that apply per zone category. As well, the Building Footprint standard, Overall Structure Length

standard, and the Article 11 limitations on the gross floor area of an ADU will govern the size and scale of the ADU building form and use.

- **In the SU zoning district, an owner is required to live on the premises to build an ADU.** Clarification is needed regarding what happens when life doesn't allow someone to live onsite years after they have built and used the ADU due to a marriage, job relocation, or other life event….when the owner and the ADU are suddenly in noncompliance. This requirement and lack of clarity has resulted in ADUs not being built due to future potential situations. What are homeowner options? If this rule is intended to prevent absentee landlords, should it be more clearly stated that the ADU cannot be short term rented or long term rented separate from the primary home?

<u>We feel the following need clarification</u>

- A**ccessory Use Limitations –** Short-Term Rentals (STR) – bullet 3 in summary: *"Clarify that a STR cannot be operated by a person(s) maintaining their "primary residence" in an Accessory Dwelling Unit located on the property."* ---**does this mean a tenant living in an ADU cannot get a STR license? Or does this mean the property owner who lives in their own ADU cannot STR their primary home or ADU?**

  If this refers to the property Owner, they are on the property per STR requirements and should not be restricted from operating a STR because they are choosing to live in their ADU which could be bigger than their home and is likely newer or accessible to them.

We urge the Planning Board and City Council to approve this text amendment and consider the two additional updates we propose to eliminate overlapping regulations and overly complex ADU standards in the Denver Zoning Code.

Sincerely,

Renee Martinez-Stone, WDRC Director

From: Will Martin
To: Anderson, Ryann E. - CPD City Planner Associate
Subject: [EXTERNAL] 2021 Bundle of Text Amendments
Date: Thursday, April 15, 2021 4:13:44 PM

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15 April 2021

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We urge the Planning Board and City Council to approve this text amendment and consider the two additional updates we propose to eliminate overlapping regulations and overly complex ADU standards in the Denver Zoning Code.

Sincerely,

Will Martin

Founding Principal
will@studiobvio.com
303-921-5558
studiobvio.com