



SIGN REGULATION



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Overview

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



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Signs as Speech

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

"Congress shall make no law ... abridging the freedom of speech..."



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Types of Speech

- Commercial speech relates to the economic interests of a speaker and audience
- Non-commercial speech is expression not defined as commercial (i.e., personal, political or religious)



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Speech Protection

Commercial	Noncommercial
<ul style="list-style-type: none"> • Protected by 1st Amendment if not misleading, inaccurate or relating to unlawful activity <ul style="list-style-type: none"> ◦ Time, place, manner • Less protected • Commercial Speech Test 	<ul style="list-style-type: none"> • Protected by 1st Amendment <ul style="list-style-type: none"> ◦ Time, place, manner • Most protected • Searching Court Review (i.e., Strict Scrutiny)

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NONCOMMERCIAL SIGNS

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Content-Neutral Regulations Intermediate Scrutiny

Regulations are constitutional if they:

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

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Content-Based Restrictions Strict Scrutiny

Constitutional only if they:

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

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Content-Neutrality

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



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Temporary Signs

Whitton v. City of Gladstone:

- Local law restricted “political signs within zones”
- Imposed time limits when signs can be posted before & after election
- Provisions were deemed content-based and unconstitutional



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Too Restrictive of Free Speech

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

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Ample Alternative Channels

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

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Narrowly Tailored Local Law



- Use Less Restrictive Approaches:
 - Regulate design and condition
 - Prevent sign posted too close to street
 - Limit sign duration

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Content-Neutrality

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



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COMMERCIAL SIGNS

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Commercial Speech Test



Central Hudson Test

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

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Strict Regulation of Color and Design

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



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Off-Premises Advertising

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

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

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Non-Traditional Commercial Signs

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



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State Regulation of Signs

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



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Regulation by NYS DOT

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

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

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Commercial vs. Non-Commercial Signs

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

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

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IMPLICATIONS OF REED V. TOWN OF GILBERT

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Reed v. Town of Gilbert, Arizona

Town of Gilbert Sign Regulations

- Several categories based on information signs convey, subject to different restrictions
 - Outdoor signs prohibited without permit
 - 23 sign categories exempted from permit



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3 Categories of Signs Exempt From Permit



<p>Ideological:</p> <ul style="list-style-type: none"> Message or idea for noncommercial purposes <p>Display Rules:</p> <ul style="list-style-type: none"> All zoning districts Up to 20 square feet No time limit Without permit Most favored 	<p>Political:</p> <ul style="list-style-type: none"> Temporary sign designed to influence election outcome <p>Display Rules:</p> <ul style="list-style-type: none"> Depends on location Residential property: up to 16 sq ft; Nonresidential property, undeveloped municipal property and rights of ways: up to 32 sq ft 60 days before primary election; up to 15 days following general election Less favored than Ideological signs 	<p>Directional:</p> <ul style="list-style-type: none"> Intended to direct pedestrians, motorists, and other passersby to qualifying event <p>Display Rules:</p> <ul style="list-style-type: none"> On private property and in public right of way Limited to 4 signs per property No larger than 6 sq ft 12 hours before "qualifying event" and no more than 1 hour after Least Favored
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Distinctions

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





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Content-Based Discrimination

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




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Concurring Opinion: Munis May Adopt

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






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Concurring Opinion: Munis May Adopt

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






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Concurring Opinion: Munis May Adopt

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

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Concurring Opinion: Munis May Adopt

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



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City of Austin v. Reagan National Advertising

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



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City of Austin v. Reagan National Advertising

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

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On Appeal to the Supreme Court

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

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DRAFTING SIGN REGULATIONS

Drafting Sign Regulations

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

Keep needs of businesses in mind

- Identification
- Advertising
- Readability
- Cost




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Regulatory Options

- Without zoning:
 - Negotiate location in site plan review or site permit process
- Sign Permit – Like zoning for signs
- Restrict by signage structure and size
- Restrict location by property type (i.e., public rights-of-way)



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Regulatory Options

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

Sign matrix for each district & use indicates:

- Number, size & type of signs allowed
- Approvals necessary



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Typical Provisions

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

Specific provisions:

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

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Purpose Statements

Examples of purposes:

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

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

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Definitions & Standards

Definitions:

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

Portable Sign:

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

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

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DESIGN CONSIDERATIONS

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Types of Signs

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

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Other Design Considerations

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

Bureau of Land Management Recommended Size of Letters on Signs:

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

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Types of Signs



Freestanding – sandwich board

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Types of Signs



Canopy

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Types of Signs



Awning

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Types of Signs



Band sign

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Types of Signs



Wall

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Types of Signs



Window

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Types of Signs



Projecting

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Types of Signs



Monument

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Types of Signs



Pylon or pole-mounted

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Types of Signs



Marquee

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Lighting/Illumination

Neon



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Lighting/Illumination

Indirect/external



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Lighting/Illumination

Direct/internal

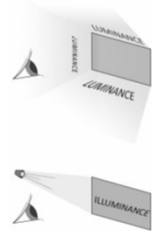


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Sign Brightness

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



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NONCONFORMING SIGNS AND ENFORCEMENT

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Enforcement

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

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Sign Maintenance

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

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Pre-Existing Nonconforming Signs

Protected status

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

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Elimination of Nonconforming Signs

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

Local Law Example:

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

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Elimination of Nonconforming Signs

Zoned industrial or manufacturing

- Municipality must compensate owner pursuant to Eminent Domain Procedure Law

NOT zoned industrial or manufacturing

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

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"Voluntary" Removal of Nonconforming Signs

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



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Summary

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



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Case Citations

- Clark v. Community for Creative Nonviolence, 468 U.S. 288, 293, 82 L.Ed.2d 221, 227, 104 S.Ct. 3065 (1984)
- Hobbs v. County of Westchester, 397 F.3d 133 (2d Cir. 2005)
- Whitton v. City of Gladstone, Missouri, 54 F. 3d 1400 (8th. Cir. 1995)
- Arlington County Republican Committee v. Arlington County, VA, 983 F.2d 587 (4th Cir.1993)
- City of Ladue v. Gilleo, 512 U.S. 43, 129 L.Ed.2d 36, 114 S. Ct. 2038 (1994)

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Case Citations

- Cleveland Area Bd. of Realtors v. City of Euclid, 88 F.3d 382 (6th Cir. 1996)
- Linmark Associates v. Township of Willingboro, 431 U.S. 85 (1977)
- Central Hudson Gas v. Public Service Commission, 447 U.S. 557, 65 L.Ed.2d 341, 100 S.Ct. 2343 (1980)
- Party City of Nanuet, Inc. v. Board of Appeals of the Town of Clarkstown, 212 A.D.2d 618, 622 N.Y.S.2d 331 (2d Dept. 1995)
- Suffolk Outdoor Advertising v. Hulse, 43 N.Y.2d 483 (1977)

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Case Citations

- People v. Target Advertising, 184 Misc.2d 903 (NY City Crim. Ct. 2000)
- Reed v. Town of Gilbert, Arizona, 576 U.S. 155 (2015)
- City of Austin v. Reagan National Advertising of Austin, LLC, 596 U.S. 61 (2022)

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Resources

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

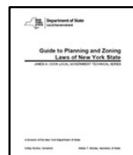
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Department of State
Local Government

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General Municipal Law §74-c.

Taking of billboards.

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

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

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

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

Notwithstanding any other law, rule or regulation, all amortization periods under such laws, ordinances or resolutions shall commence not earlier than January first, nineteen hundred ninety.

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