IMLA Sign Code – 6th Rough Draft

This document started as an effort to write a Model Sign Code, but as time passed it became clear that the term "model" might be a bit too ambitious and this draft evolved with comments, suggestions and ideas that can help drafters of their own codes. As time passes IMLA will review cases and efforts by others as we continue to update this document. For the reason that the law continues to be unsettled in many respects this continues to be a "rough draft".

This Sign Code proposes a content neutral code developed based on the decision of *Reed v. Town of Gilbert, ___U.S.___, 135 S. Ct. 2218, 192 L. Ed. 2d 236, 2015 U.S. LEXIS 4061, 83 U.S.L.W. 4444, 25 Fla. L. Weekly Fed. S 383 (U.S. 2015)*. The sign code recognizes that government signs are government speech intended to ensure public safety. These government signs include those described and regulated in the Manual on Uniform Traffic Control Devices and signs that are necessary to identify properties and to implement the laws of the state. The skeleton of this Sign Code derives from the Washington County, Oregon sign regulations which were found to be content neutral by the United States District Court for Oregon, Portland Division in *Icon Groupe, LLC v. Washington Cnty.,* 2015 U.S. Dist. LEXIS 67682 (D. Or. May 26, 2015). Because the skeleton finds its foundation in a County sign code, some provision may not be appropriate for cities or towns and because the drafters have included provisions from cities and towns, some provisions may not work for counties. For those reasons, persons using this document should tailor their product to their community's interests and needs.

This Sign Code accepts at face value the Supreme Court's unanimous view that governments may regulate signs. In *City of Ladue v. Gilleo*, 512 U.S. 43, 48, 114 S. Ct. 2038, 2041-2042, 129 L. Ed. 2d 36, 4243, (U.S. 1994) writing for a unanimous court Justice Stevens explained that "While signs are a form of expression protected by the Free Speech Clause, they pose distinctive problems that are subject to municipalities' police powers. Unlike oral speech, signs take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. It is common ground that governments may regulate the physical characteristics of signs -- just as they can, within reasonable bounds and absent censorial purpose, regulate audible expression in its capacity as noise. See, e. g., *Ward v. Rock Against Racism*, 491 U.S. 781, 105 L. Ed. 2d 661, 109 S. Ct. 2746 (1989); *Kovacs v. Cooper*, 336 U.S. 77, 93 L. Ed. 513, 69 S. Ct. 448 (1949)." In *Ladue,* the Court concluded that the City's regulation banning almost all residential signs went too far in restricting speech. At the same time the Court noted that its decision did not eliminate the city's ability to restrict some types of signs: "Nor do we hold that every kind of sign must be permitted in residential areas. Different considerations might well apply, for example, in the case of signs (whether political or otherwise) displayed by residents for a fee, or in the case of off-site commercial advertisements on

residential property. We also are not confronted here with mere regulations short of a ban." *City of Ladue v. Gilleo*, 512 U.S. 43, 58, 114 S. Ct. 2038, 2045, 129 L. Ed. 2d 36, 49, (U.S. 1994). Thus, *Ladue* teaches us that governments may impose limits on some signs and impose regulations short of a complete ban.

In *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507, 101 S. Ct. 2882, 2892, 69 L. Ed. 2d 800, 814815 (U.S. 1981) a majority of the Justices of the Supreme Court concluded that a government could distinguish between commercial and non-commercial speech when regulating signs:

> "Finally, in *Central Hudson Gas & Electric Corp. v. Public Service Comm'n*, 447 U.S. 557 (1980), we held: 'The Constitution . . . accords a lesser protection to commercial speech than to other constitutionally guaranteed expression. The protection available for a particular commercial expression turns on the nature both of the expression and of the governmental interests served by its regulation.' Id., at 562-563 (citation omitted). We then adopted a four-part test for determining the validity of government restrictions on commercial speech as distinguished from more fully protected speech. (1) The First Amendment protects commercial speech only if that speech concerns lawful activity and is not misleading. A restriction on otherwise protected commercial speech is valid only if it (2) seeks to implement a substantial governmental interest, (3) directly advances that interest, and (4) reaches no further than necessary to accomplish the given objective. Id., at 563-566.
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> "Appellants agree that the proper approach to be taken in determining the validity of the restrictions on commercial speech is that which was articulated in *Central Hudson*, but assert that the San Diego ordinance fails that test. We do not agree."

Despite concluding that San Diego's ordinance regulating billboard's survived the *Central Hudson* test, four members of the majority reached the conclusion that the city's ordinance was facially unconstitutional because it allowed commercial speech at certain locations where it prohibited noncommercial speech. "It does not follow, however, that San Diego's general ban on signs carrying noncommercial advertising is also valid under the First and Fourteenth Amendments. The fact that the city may value commercial messages relating to onsite goods and services more than it values commercial communications relating to offsite goods and services does not justify prohibiting an occupant from displaying its own ideas or those of others." *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 512-513, 101 S. Ct. 2882, 2895, 69 L. Ed. 2d 800, 818 (U.S. 1981)

In a decision following *Reed*, a federal District Court concluded that *Reed* did not extend to regulation of commercial speech and that the *Central Hudson* standard ought to apply to the City's regulations, albeit, regulations not involving signs:

> *"Reed* is inapplicable to the present case, for several reasons, including that it does not concern commercial speech. Restrictions on commercial speech are evaluated under *Central Hudson*, using a four-part test:
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> > (1) [I]f the communication is neither misleading nor related to unlawful activity, then it merits First Amendment scrutiny as a threshold matter; in order for the restriction to

withstand such scrutiny, (2) the State must assert a substantial interest to be achieved by restrictions on commercial speech; (3) the restriction must directly advance the state interest involved; and (4) it must not be more extensive than is necessary to serve that interest.

> *World Wide Rush v. World Wide Rush, LLC v. City of L.A.*, 606 F.3d 676, 684 (9th Cir. 2010) (citations and quotation marks omitted) (citing *Central Hudson*, 447 U.S. at 564-66)."

San Francisco Apt. Ass'n v. City & Cnty. of San Francisco, 2015 U.S. Dist. LEXIS 150630, *18 (N.D. Cal. Nov. 5, 2015)

Because *Metromedia* offers scant support for developing content based regulations of commercial signs, this Sign Code follows an approach designed to create content neutral regulations applicable to all signs, while distinguishing commercial signs from non-commercial signs by prohibiting commercial signs in some locations and regulating forms of commercial signs to limit their numbers while attempting not to stifle economic activity. Where commercial signs are allowed, *Metromedia* informs the conclusion that non-commercial signs must also be allowed.

On August 16, 2017 and amended October 23, 2017, the Ninth Circuit upheld San Francisco's ordinance that distinguishes between on-site and off-site advertising and that allows non-commercial speech wherever commercial speech is allowed, noting: "We therefore hold that the distinctions drawn in Article 6 between commercial and noncommercial speech directly advance Defendant's substantial interests. We find no constitutional infirmity in the ordinance's failure to regulate every sign that it might have reached, had Defendant (or its voters) instead enacted another law that exhausted the full breadth of its legal authority." *Contest Promotions, LLC v. City & Cty. of S.F., 867 F.3d 1171, 2017 U.S. App. LEXIS 15375 (9th Cir. Cal., Aug. 16, 2017)* Under the San Francisco ordinance general advertising signs, like traditional billboards, refer primarily to offsite activities, whereas business signs refer to the activities undertaken on the same premises as the sign. The Code provides that "[n]o new general advertising signs shall be permitted at any location within the City as of March 5, 2002." By contrast, business signs are permitted, subject to other limitations related to neighborhood and development type. Also, see *Lamar Central Outdoor, LLC v. City of Los Angeles,* 245 Cal. App. 4th 610 *; 199 Cal. Rptr. 3d 620 **; 2016 Cal. App. LEXIS 181 *** for a case upholding the distinction between on-site versus off-site signs. In another case allowing local regulators to distinguish between on-premise and off-premise signs, a federal district court concluded that Austin, TX sign code did so properly. *Reagan Nat'l Advert. of Austin, Inc. v. City of Austin*, No. 1:17-CV-673-RP, 2019 U.S. Dist. LEXIS 52009 (W.D. Tex. Mar. 27, 2019); and *Reagan Nat'l Advert. of Austin, Inc. v. City of Cedar Park*, 343 F. Supp. 3d 674 (W.D. Tex. 2018). A similar result obtained in Tennessee federal district court in *Roland Dig. Media, Inc. v. City of Livingston*, No. 2:17-cv-00069, 2018 U.S. Dist. LEXIS 216200 (M.D. Tenn. Dec. 26, 2018).

In *Clark v. City of Williamsburg*, No. 2:17-CV-02002-HLT, 2019 U.S. Dist. LEXIS 78385 (D. Kan. May 9, 2019), the court concluded that a regulation exempting political signs and regulating those signs separately was not content neutral and that the provision violated the First Amendment. However, the court concluded that the provision was severable and that the ordinance survived without the "political sign" provision. Adopters should include a severability provision when adopting their sign law.

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Where this Sign Code uses time limits or size limits, those should be considered as illustrative only and are not intended to form a part of the Sign Code except for illustrative purposes.

_____ ARTICLE . - SIGNS

DIVISION I. - GENERAL PROVISIONS

Findings, purpose and intent; interpretation.

(a) Signs obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. The purpose of this article is to regulate the size, color, illumination, movement, materials, location, height and condition of all signs placed on private property for exterior observation, thus ensuring the protection of property values, the character of the various neighborhoods, the creation of a convenient, attractive and harmonious community, protection against destruction of or encroachment on historic convenience to citizens and encouraging economic development. This article allows adequate communication through signage while encouraging aesthetic quality in the design, location, size and purpose of all signs. This article must be interpreted in a manner consistent with the First Amendment guarantee of free speech. If any provision of this article is found by a court of competent jurisdiction to be invalid, such finding must not affect the validity of other provisions of this article which can be given effect without the invalid provision.

(b) Signs not expressly permitted as being allowed by right or by special use permit under this article, by specific requirements in another portion of this chapter, or otherwise expressly allowed by the [governing body] or Board of [Adjustment, Appeals, Zoning Appeals].

Comment: *Adopters of sign laws should be careful to consider how special permits, conditional uses, variances and other limitations are applied to signs. First Amendment principles dealing with prior restraint of speech may come into play and would need to be addressed. As mentioned throughout the adopters of this Sign Code should review it carefully with their attorney to be sure that they have a sound legal basis for adoption.*

(c) A sign placed on land or on a building for the purpose of identification, protection or directing persons to a use conducted therein must be deemed to be an integral but accessory and subordinate part of the principal use of land or building. Therefore, the intent of this article is to establish limitations on signs in order to ensure they are appropriate to the land, building or use to which they are appurtenant and are adequate for their intended purpose while balancing the individual and community interests identified in subsection (a) of this section.

(d) These regulations are intended to promote signs that are compatible with the use of the property to which they are appurtenant, landscape and architecture of surrounding buildings, are legible and appropriate to the activity to which they pertain, are not distracting to motorists, and are constructed and maintained in a structurally sound and attractive condition.

(e) These regulations distinguish between portions of the City/County/Town designed for primarily vehicular access and portions of the City/County/Town designed for primarily pedestrian access.

(f) These regulations do not regulate every form and instance of visual communication that may be displayed anywhere within the jurisdictional limits of the City/County/Town. Rather, they are intended to regulate those forms and instances that are most likely to meaningfully affect one or more of the purposes set forth above.

(g) These regulations do not entirely eliminate all of the harms that may be created by the installation and display of signs. Rather, they strike an appropriate balance that preserves ample channels of communication by means of visual display while still reducing and mitigating the extent of the harms caused by signs.

Comment: The previous sections (a) through (g) were taken directly from the Local Government Association of Virginia's Model Sign Code with only minor revisions if any and one Comment. In SAMUEL SHAW vs. CITY OF BEDFORD, INDIANA, (USDC SDIN 7/6/2017) 2017 U.S. Dist. LEXIS 104120, the Court reviewed the legislative record that established both the aesthetic and public safety bases for the city's ordinance. IMLA stresses the need to make a legislative record substantiating the need for the law and specific provisions that are adopted based on the needs of each community.

(h) These regulations are not intended to and do not apply to signs erected, maintained or otherwise posted, owned or leased by this State, the federal government or this City/County/Town. The inclusion of "government" in describing some signs does not intend to subject the government to regulation, but instead helps illuminate the type of sign that falls within the immunities of the government from regulation.

Section 1. Definitions.

1.1 Sign. A name, identification, description, display or illustration, which is affixed to, painted or represented directly or indirectly upon a building, or other outdoor surface which directs attention to or is designed or intended to direct attention to the sign face or to an object, product, place, activity, person, institution, organization or business. Signs located completely within an enclosed building, and not exposed to view from a street, must not be considered a sign. Each display surface of a sign or sign face must be considered to be a sign.

1.1.1 Sign area:

1.1.1.1 the space enclosed within the extreme edges of the sign for each sign face, not including the supporting structure or

1.1.1.2 where attached directly to a building wall or surface, the space within the outline enclosing all the characters of the words, numbers or design.

1.1.2.3 Sign face: The entire display surface area of a sign upon, against or through which copy is placed.

1.1.3 Electric Sign. Any sign containing electric wiring. This does not include signs illuminated by an exterior floodlight source.

1.1.4 Flashing Sign. Any illumined sign on which the artificial light is not maintained stationary or constant in intensity and color at all times when such sign is in use. For the purpose of

this Code any moving illuminated sign, except digital billboards, must be considered a flashing sign.

1.1.5 Freestanding Sign. A sign erected and maintained on a freestanding frame, mast or pole not attached to any building, and not including ground mounted signs.

1.1.6 Government Sign. A government sign is a sign that is constructed, placed or maintained by the federal, state or local government or a sign that is required to be constructed, placed or maintained by the federal, state or local government either directly or to enforce a property owner's rights.

***Comment**: This Sign Code recognizes, as did the Supreme Court in Reed v. Town of Gilbert, ___U.S. ___, 135 S. Ct. 2218, 192 L. Ed. 2d 236, 2015 U.S. LEXIS 4061, 83 U.S.L.W. 4444 (U.S. 2015), that the government must speak and in doing so is not regulated as private individuals under the First Amendment. While the Government often speaks directly, its speech can often be found in requirements of law that demand members of a community, residents and property owners to post notices to protect the rights afforded by the government. This form of speech finds protection in this Sign Code in recognition of legal requirements that a property owner must post a property against trespassing, solicitors and others to enforce property rights and privacy; or where a property owner must warn of dangers on the property to protect public safety and limit liability such as warning of dangerous animals, high voltage, sinkholes, gun or weapon usage among other dangers. While these postings are sometimes voluntary, all are required by the government to be in a certain form and should constitute the government's speech (they would not be considered private speech under the axiom: actus me invito factus non est meus actus). However, even if considered private speech the majority in* Reed *recognized that these types of signs could well survive even the strict scrutiny standard. Compelled speech generally finds little support under First Amendment analysis and in the cases decided by the Supreme Court. Nevertheless, compelled commercial speech such as warning labels on cigarette packaging and requirements imposed by the SEC on business communications affecting investors have been sustained. Here the types of compelled speech that fall within this government speech definition are forms of speech required by law to warn of dangers or to assert rights protected by the law. A community attempting to rely on these forms of compelled speech as with the rest of this Sign Code should only do so after a full review and analysis by its attorney.*

1.1.7 Ground Mounted Sign. A sign which extends from the ground, or has support which places the bottom of the sign less than two (2) feet from the ground.

1.1.8 Highway Sign. A Freestanding sign, Integral Sign or Flat Wall Sign that is erected and maintained within the view of motorists who are driving on a highway.

Comment: In Peterson v. Village of Downers Grove, 2016 U.S. Dist. LEXIS 84638 (USDC NDIL June 29, 2016) (see Comment to 1.1.18 below)the court discussed Wall Signs and limitations on size. The case was complicated procedurally, but seems clear to uphold size limitations on wall signs.

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1.1.9 Integral Sign. A sign that is embedded, extruded or carved into the material of a building façade. A sign made of bronze, brushed stainless steel or aluminum, or similar material attached to the building façade.

1.1.10 Marquee Sign. A canopy or covering structure bearing a signboard or copy projecting from and attached to a building.

1.1.11 Minor Sign. A sign described in Section 1.3.2 and any sign not larger than [Insert dimension here such as six square feet] that can be removed by hand if abandoned.

1.1.12 Original Art Display. A hand-painted work of visual art that is either affixed to or painted directly on the exterior wall of a structure with the permission of the property owner. An original art display does not include: mechanically produced or computer generated prints or images, including but not limited to digitally printed vinyl; electrical or mechanical components; or changing image art display.

1.1.13 Outdoor Advertising Sign. A sign that advertises goods, products or services which are not sold, manufactured or distributed on or from the premises or facilities on which the sign is located.

Comment: *This definition is content based under the literal interpretation of Reed v. Town of Gilbert as it requires one to determine from reading or looking at the sign if a product is being advertised that is not sold, manufactured or distributed on or from the premises. However, based on the concurring opinion of Justice Alito and the opinions of Justice Kagan and Justice Breyer, to say that a majority of the Court would reach the conclusion that defining "outdoor advertising" or "off premise" amounts to a content based restriction seems a stretch.*

1.1.14 Portable Sign. Any structure without a permanent foundation or otherwise permanently attached to a fixed location, which can be carried, towed, hauled or driven and is primarily designed to be moved rather than be limited to a fixed location regardless of modifications that limit its movability.

1.1.15 Projecting Sign. A sign, other than a wall sign, which projects from and is supported by a wall of a building or structure.

1.1.16 Roof Sign. A sign located on or above the roof of any building, not including false mansard roof, canopy, or other fascia.

1.1.17 Temporary Sign. A banner, pennant, poster or advertising display constructed of paper, cloth, canvas, plastic sheet, cardboard, wallboard, plywood or other like materials and that appears to be intended or is determined by the code official to be displayed for a limited period of time (rather than permanently attached to the ground or a structure).

Comment: In SAMUEL SHAW vs. CITY OF BEDFORD, INDIANA, (USDC SDIN 7/6/2017) 2017 U.S. Dist. LEXIS 104120, the definition of "temporary sign" was "not permanently attached to the ground". The court noted that because these signs were not regulated temporarily, i.e., with any limitations as to how long they can be displayed, the ordinance allowed people to express their viewpoint for as long as they wished. Based on that decision the parenthetical has been added to the definition.

1.1.18 Flat Wall (Façade-Mounted) Sign. A sign affixed directly to or painted on or otherwise inscribed on an exterior wall and confined within the limits thereof of any building and which projects from that surface less than twelve (12) inches at all points.

Note: A regulation that prohibited signs painted on a wall was upheld in Peterson v. Vill. of Downers Grove*, 2015 U.S. Dist. LEXIS 167483 (N.D. Ill. Dec. 14, 2015)*

1.1.19 Digital Billboard. A sign that is static and changes messages by any electronic process or remote control.

1.1.20 *Vehicle Sign.* Any sign attached to or displayed on a vehicle.

1.1.21 *Code* unless otherwise specifically referenced means the Code of the City/County/Town of _____.

1.1.22 *Lessee* includes a person who rents property for residential purposes.

1.1.23 *Snipe sign* means any small sign, generally of a temporary nature, made of any material, when such sign is tacked, nailed, posted, pasted, glued or otherwise attached to trees, poles, stakes, fences, or other objects not erected, owned and maintained by the owner of the sign.

*Comment: In Act Now To Stop War & End Racism Coal. v. District of Columbia, 846 F.3d 391 *; 2017 U.S. App. LEXIS 1193 **; 96 Fed. R. Serv. 3d (Callaghan) 749; 2017 WL 344321, the Court concluded that regulation limiting the amount of time signs advertising events could be posted on city and utility poles in relationship to the events they advertised were not content based restrictions and survived constitutional review.*

1.1.24 *Graffiti* means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City/County/Town. Graffiti includes snipe signs.

1.1.25 *Graffiti implement* means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.

Comment: The definitions of Graffiti and Graffiti Implement are taken from the IMLA Model Graffiti Ordinance. IMLA believes that an adopting jurisdiction should consider adopting anti-graffiti measures as well as addressing signs.

1.1.26 Holiday lights or mini lights mean light fixtures that use bulbs that are sized C6, C7, or C9 or LED bulbs that are 8 mm or smaller.

1.1.26.1 Rope light means a light that has Holiday lights or mini lights inside of a PVC tube.

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1.1.26.2 String lights means a lighting fixture that is composed of electrical wiring encased in plastic with sockets for bulb placement.

1.1.27 Flag means a sign made of fabric, bunting, or similar material, attached along one side to a single pole that is either freestanding or attached to a building.

Comment: The definition of "flag" is taken from a decision upholding that definition and regulations involving flags SAMUEL SHAW vs. CITY OF BEDFORD, INDIANA, (USDC SDIN 7/6/2017) 2017 U.S. Dist. LEXIS 104120. In Willson vs. Bel Nor (8th Cir 5/20/2019), the court concluded that a definition that described flags as "any fabric or bunting containing distinctive colors, patterns or symbols used as a symbol of a government or institution" created a content based definition when taken in conjunction with the remainder of the sign ordinance.

1.2 Prohibited Signs.

Signs are prohibited in all Districts unless:

1.2.1 Constructed pursuant to a valid building permit when required under this Code; and

1.2.2 Authorized under this Code.

***COMMENT**: "This Code" is intended to mean the code of the city and is not intended to be limited to this Sign Code ordinance. If the adopting jurisdiction, intends a different meaning it should make clear in which body of regulations sign construction is regulated.*

1.2.3 A property owner may not accept a fee for posting or maintaining a sign allowed under Section
1.3.2 and any sign that is posted or maintained in violation of this provision is prohibited.

1.2.4 In residential zones or on property used for non-transient residential uses, commercial signs are prohibited.

***Comment.** This provision 1.2.4 may limit home occupations and transient residential uses, so should be considered carefully if adopted. An alternative might be to provide "except for those properties on which a home occupation or a transient residential use has been approved."*

1.3 Authorized Signs.

The following signs are authorized under Section 1.2.2 in every District:

1.3.1 Although these regulations do not apply to signs erected, maintained or posted by the State, federal or this government, these regulations clarify that Government signs which form the expression of that government are allowed in every zoning district and include the signs described and regulated in 1.3.1.1, 1.3.1.2 , 1.3.1.3 and 1.3.1 when erected and maintained pursuant to law.

1.3.1.1 Traffic control devices on private or public property must be erected and maintained to comply with the Manual on Uniform Traffic Control Devices adopted in this state and if not adopted by this state with the Manual on Uniform Traffic Control Devices adopted by the

Federal Highway Administration. Because these regulations do not apply to the State, federal or this government, a failure to comply with this provision by those governments does not constitute evidence of negligence or form the basis for a cause of action.

Comment: *The Federal Highway Administration has established uniform standards for signs that regulate traffic or that are erected and maintained within road rights of way or adjacent property. These uniform standards are intended to be used by the owners of private property that is open to the public to reduce confusion and limit the risk of accident. While these signs are content specific they serve an extraordinarily important public function.*

1.3.1.2 Each property owner must mark their property using numerals that identify the address of the property so that public safety departments can easily identify the address from the public street. Where required under this code or other law the identification must be on the curb and may be on the principal building on the property. The size and location of the identifying numerals and letters if any must be proportional to the size of the building and the distance from the street to the building and in no case larger than [***insert size limitation here***]. In cases where the building is not located within view of the public street, the identifier must be located on the mailbox or other suitable device such that it is visible from the street.

Comment: *The local government should establish a required dimensional limitation on identification signs based on the size of the structure and its distance from the public road if the structure is visible from the public road. The design and dimensions should conform to reasonable standards set to ensure that emergency responders can identify the property if necessary.*

1.3.1.3.1 Where a federal, state or local law requires a property owner to post a sign on the owner's property to warn of a danger or to prohibit access to the property either generally or specifically, the owner must comply with the federal, state or local law to exercise that authority by posting a sign on the property. If the federal, state or local regulation describes the form and dimensions of the sign, the property owner must comply with those requirements, otherwise, when not defined, the sign shall be no larger than two square feet and located in a place on the property to provide access to the notice that is required to be made. Signs posted under this Section are not snipe signs.

1.3.1.3.2 Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of official or directed duties; provided, that all such signs must be removed by the property owner no more than ten (10) days after their purpose has been accomplished or as otherwise required by law. Signs posted under this Section are not snipe signs.

Comment: *As noted in Reed v. Town of Gilbert some content based signs are necessary to protect the public and are likely to survive strict scrutiny. Signs prohibiting trespassing or solicitors; warning of the dangers of "high voltage" or other hidden dangers may be required for a person to assert property rights or to protect a property owner from liability. A local government should establish dimensional limitations, quantity limitations and other regulations designed to ensure the purpose of the sign is*

furthered while protecting the aesthetics of the community and protecting traffic and other public safety goals.

1.3.1.4 The signs described in Sections 1.3.1.1, 1.3.1.2 , and 1.3.1.3, are an important component of measures necessary to protect the public safety and serve the compelling governmental interest of protecting traffic safety, complying with legal requirements, serving the requirements of emergency response and protecting property rights or the rights of persons on property.

Comment: These signs as described in Section 1.3.1.4 are the types of signs discussed by Justice Thomas for the majority in Reed v. Town of Gilbert where he wrote: "A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses—well might survive strict scrutiny." In Reagan Nat'l Advert. of Austin, Inc. v. City of Cedar Park, 343 F. Supp. 3d 674 (W.D. Tex. 2018), the court concluded that traffic safety formed a compelling governmental interest. On the other hand, Willson vs. Bel Nor, (8th Circuit 5/20/2019) notes that traffic safety and aesthetics have never been held to be compelling governmental interests.

1.3.2 Temporary Signs, Generally.

1.3.2.1 Temporary signs allowed at any time:

a) A property owner may place one sign with a sign face no larger than [two (2) square feet] on the property at any time. This Section does not include snipe signs.

Comment: In SAMUEL SHAW vs. CITY OF BEDFORD, INDIANA, (USDC SDIN 7/6/2017) 2017 U.S. Dist. LEXIS 104120, the city's ordinance allowed a residential property owner to display temporary signs that in combination did not exceed 36 square feet and which individually did not exceed 6 square feet and "if "ground-mounted," (which the ordinance defines as any sign that "extends from the ground, or has support which places the bottom of the sign less than two (2) feet from the ground"), the top of the sign cannot exceed 4 feet above the ground and must be located at least 10 feet away from any City right-of-way." The Court in that case considered the restrictions lawful and constitutional. That regulation may be more easily defended that some of the ones that follow. In www.RicardoPacheco.com v. City of Baldwin Park, 2017 U.S. Dist. LEXIS 107256 (USDC CDCA July 10, 2017), the Court found size limitations in the city's ordinance constitutional while finding some other provisions could not survive strict scrutiny for "speaker preference" in the ordinance based on additional signage allowed based on events. The Court offered suggestions for rewriting those provisions.

b) A property owner may place a sign no larger than[8.5 inches by 11 inches][in one window on the property at any time.

1.3.2.2 One temporary sign per [0.25] acre of land may be located on the owner's property for a period of [thirty (30) days] prior to an election involving candidates for a federal, state or local office that represents the district in which the property is located [or an adjacent district] or involves an issue on the ballot of an election within the district where the property is located [or an adjacent district] per issue and per candidate Where the size of the property is smaller than [0.25] acres these signs may be posted on the property

for each principal building lawfully existing on the property. This Section does not authorize snipe signs.

Comment: *Political signs represent the highest degree of protected speech and an adopting jurisdiction should exercise extreme caution in limiting a person's right to express positions on issues or candidates. The time during which the signs may be authorized must not be so short as to prevent the message from being delivered. On the other hand, the government retains the right to regulate the time place and manner of expression and the right to protect property values and aesthetics. The balance weighs in favor of free expression. Nevertheless, reasonable time restrictions are consistent with the First Amendment and reasonable manner restrictions are consistent with the First Amendment. Taken together, a reasonable limit on the size, location and duration of this form of expression can be consistent with the First Amendment. Cases, prior to Reed v Town of Gilbert, generally recognize that 30 days is too little, but a time frame of 60 to 90 days may be sufficient. Some who commented on a draft of this Sign Code suggested an option for people who live next to another voting district who may wish to voice their support for issues or candidates in those districts and alternative language is shown. In www.RicardoPacheco.com v. City of Baldwin Park, 2017 U.S. Dist. LEXIS 107256 (USDC CDCA July 10, 2017), the Court concluded that a provision similar to the one above violated the constitution as a "speaker preference regulation". A federal court in Kansas concluded that regulating political signs differently from other signs was a content-based restriction. Clark v. City of Williamsburg, No. 2:17-CV-02002-HLT, 2019 U.S. Dist. LEXIS 78385 (D. Kan. May 9, 2019).*

1.3.2.3 One temporary sign that is not a snipe sign may be located on a property when:

a. the owner consents and that property is being offered for sale through a licensed real estate agent;

b. if not offered for sale through a real estate agent, when the sign is owned by the property owner and that property is offered for sale by the owner through advertising in a local newspaper of general circulation; and

c. for a period of [15 days] following the date on which a contract of sale has been executed by a person purchasing the property.

Comment: This Section offers an opportunity for signs for a person to put a "for sale" sign on the property in addition to the one temporary sign generally allowed and in addition to other signs that may be allowed. As the ordinance does not regulate content the signs authorized in this section could be used for other purposes. Should the community allow signs for other purposes? By allowing one temporary sign at all times, the community adopting this Sign Code does so. Thus, a person can post a notice of a birth, a special birthday, an anniversary, a wedding or other important event or choose to use the sign for other purposes entirely without any restriction being imposed on its content. The only restriction (aside from the size and location limitations generally applicable to temporary signs) placed on a sign erected under this section consists of the factual determinant of whether the property is being offered for sale.

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1.3.2.4 One temporary sign may be located on the owner's property on [the day prior to and on] a day when the property owner is opening the property to the public; provided, however, the owner may not use this type of sign in a Residential District on more than [two days in a year and the days must be consecutive] and may not use this type of sign in any [Commercial District] for more than [14 days in a year and the days must be consecutive]. For purposes of this Section 1.3.2.4 a year is counted from the first day on which the sign is erected counting backwards and from the last day on which the sign exists counting forward. This Section does not authorize snipe signs.

Comment: This Section offers an opportunity for signs for garage sales, yard sales and the like. Often the state regulates these types of activities by imposing time limits on how often they can be conducted. It might be possible to refer to those state laws to allow for the necessary signage, but without regulating content those signs could be used for other purposes as they may here. Should the community allow signs for other purposes? By allowing one temporary sign at all times, the community adopting this Sign Code does so. Thus, a person can post a notice of a birth, a special birthday, an anniversary, a wedding or other important event or choose to use the sign for other purposes entirely without any restriction being imposed on its content.

1.3.2.5 During the 40 day period December 1 to January 10, a property owner may place [insert number] temporary signs on the property and may use lights that do not exceed [ ] lumens as measured at the property line between the hours of 8AM and 10PM to decorate the property even if the lights might be arranged to form a sign. This Section does not authorize snipe signs.

Comment: If the jurisdiction adopting this language has regulations that address lighting, the language of this section should be amended to include a reference to those lighting regulations that makes the exercise of rights under this section subject to the lighting regulations. In www.RicardoPacheco.com v. City of Baldwin Park, 2017 U.S. Dist. LEXIS 107256 (USDC CDCA July 10, 2017), the Court found Event specific regulations to constitute "speaker preference regulation" violating the constitution without a substantial basis.

1.3.2.6 A property owner may place and maintain one temporary sign on the property on [July 4]. This Section does not authorize snipe signs.

1.3.2.7 A person exercising the right to place temporary signs on a property as described in this Section 1.3.2 must limit the number of signs on the property per[0.25 acre] at any one time to [2]plus a sign allowed in 1.3.2.1(b), or if the property is smaller than [0.25 acres] then no more than [2 signs] plus a sign allowed in 1.3.2.1(b) per principal building on the property.

Comment: *This restriction conflicts with the provisions in 1.3.2.2 which allows multiple signs based on the number of issues and candidates that are on a ballot. The law post Reed will likely help to describe how these two rules can be effected. An option might be to amend this Section 1.3.2.7 to read: It is the intent of this Code to limit the aesthetic impact of signs on properties to prevent clutter and protect streetscapes thereby preserving property values and protecting traffic safety, the accumulation of signs adversely affects these goals, property values and public safety, accordingly a person exercising the right to place temporary signs on a property as described in this Section 1.3.2 must limit the number of signs*

on the property per[0.25 acre] at any one time to [2]plus a sign allowed in 1.3.2.1(b), or if the property is smaller than [0.25 acres] then no more than [2 signs] plus a sign allowed in 1.3.2.1(b) per principal building on the property unless a court having jurisdiction determines that additional signs must be permitted and then the signage must be limited to the fewest signs and the smallest accumulated sign area permissible under the court's determination.

1.3.2.8 The sign face of any temporary sign, unless otherwise limited in this Section 1.3.2 must not be larger than [two (2) square feet].

Comment: Section 1.3.2 allows property owners to place temporary signs on their property during certain time periods and allows the property owner to select whatever message the owner chooses during those periods. This provision complies with both Reed v Town of Gilbert and City of Ladue v. Gilleo, 512 U.S. 43, 114 S. Ct. 2038, 129 L. Ed. 2d 36, 1994 U.S. LEXIS 4448, 62 U.S.L.W. 4477 (U.S. 1994) as it allows a property owner the ability to make use of the property for free expression but in a manner designed to reduce clutter and advance aesthetic interests of the community without any content based limitations.

1.3.3 For purposes of this Section (1.3) the Lessee of a property is considered the property owner as to the property the Lessee holds a right to use exclusive of others (or the sole right to occupy). The terms of a lease or other agreement under which the property is occupied controls in determining whether property is occupied exclusively by a Lessee. If there are multiple Lessees of a property then each Lessee must have the same rights and duties as the property owner as to the property the Lessee leases and has the sole right to occupy and the size of the property must be deemed to be the property that the Lessee has the sole right to occupy under the lease.

1.3.4 Signs not in an enclosed building and not exposed to view from a street or public right of way, public place or other property such as those not visible to a person from a public right of way, public place or other property.

1.3.5 Flags as follows:

1.3.5.1 Single-family Zoning Districts. In a single-family zoning district, [two flags and one flag pole] per premises. Each flag must be a maximum of [15] square feet in area. The flag pole must be a maximum of [25] feet in height or no higher than the highest point of the principal building's roof, whichever is lower.

[Flag poles must meet the minimum yard setback requirements for a principal building.]

1.3.5.2 Nonresidential Zoning Districts. In a non-residential zoning district, one flag per [25] feet of frontage on a right-of-way up to a maximum of [six flags and six flag poles] per premises. Each flag must be a maximum of [24] square feet in area. Flag poles must be a maximum of [50] feet in height but no higher than the highest point of the nearest principal building's roof on the premises. [Flag poles must meet the minimum yard setback requirements for a principal building or a minimum of ten feet whichever is more restrictive.]

Optional for Car lots:

1.3.5.3 Small flags at vehicle sales and service establishments. One small flag of no more than one square foot in area may be attached to vehicles on display for sale or rent at vehicle sales and service establishments. Such flag must be no higher than two feet above the height of the vehicle as if it were displayed at grade level.

1.3.6 Vehicle signs must be covered if the vehicle is parked on the same property for longer than [] hours so that the sign is not visible from a public way.

1.3.7 Signs within ballparks and athletic fields. Signs within ballparks and athletic fields as follows:

(1) Scoreboards facing inward to the audience; and

(2)Such other signs as may be affixed to the fence or scoreboard, facing inward to the field of play that are no larger than [32] square feet in area.

Comment: Administrators and adopters need to bear in mind that Section 1.3.4 exempts signs that cannot be seen from the public way or adjacent properties; thus, if constructed so as not to be seen from those areas described in 1.3.4 any sign is permitted.

1.4 Permit required.

1.4.1 *In general.* A sign permit is required prior to the display and erection of any sign except as provided in section 1.4.6 of this Article.

1.4.2 *Application for permit.*

(1) An application for a sign permit must be filed with the [Code Official/Zoning Administrator] on forms furnished by that department. The applicant must provide sufficient information to determine if the proposed sign is allowed under this code and other applicable laws, regulations, and ordinances. An application for a temporary sign must state the dates intended for the erection and removal of the sign. An application for any sign must state the date when the owner intends to erect it and provide a bond sufficient to allow the City/County/Town to remove it if it is not properly maintained or if it is abandoned.

(2) The Code Official/Zoning Administrator or designee must promptly process the sign permit application and approve the application, reject the application, or notify the applicant of deficiencies in the application [within ---days after receipt]. Any application that complies with all provisions of this code, the zoning ordinance, the building code, and other applicable laws, regulations, and ordinances must be approved.

3) If the application is rejected, the Code Official/Zoning Administrator must provide a list of the reasons for the rejection in writing. An application must be rejected for non-compliance with the terms of this code, the zoning ordinance, building code, or other applicable law, regulation, or ordinance.

1.4.3 *Permit fee.* A nonrefundable fee as set forth in the uncodified fee schedule adopted by the City/County/Town Council must accompany all sign permit applications.

1.4.4 *Bond*. The applicant for any sign except a minor sign must submit a bond in an amount and from an issuer approved by the Code Official to protect the City/County/Town from the cost of removing the sign should it no longer be allowed under the laws of the [county/city/town], state or federal government. If the permit is issued a condition of the permit must be that the bond is maintained and increased or decreased based upon the then current estimates of the costs of removal of the sign. If the sign is removed without cost to the City/County/Town the Code Official must release the bond but may execute upon it should the City/ County/Town be held responsible for or incur any cost in removing the sign.

1.4.5 *Duration and revocation of permit.* If a sign is not installed and a use permit issued within six months following the issuance of a sign permit (or within 30 days in the case of a temporary sign permit), the permit must be void. The permit for a temporary sign must state its duration, not to exceed 30 days unless another time is provided in this code or the zoning ordinance. The City/County/Town may revoke a sign permit under any of the following circumstances:

(1) The City/County/Town determines that information in the application was materially false or misleading;

(2) The sign as installed does not conform to the sign permit application;

(3) The sign violates this code, the zoning ordinance, building code, or other applicable law, regulation, or ordinance; or

(4) The Code Official/Zoning Administrator determines that the sign is not being properly maintained or has been abandoned.

1.4.6 *Permits not required.* A sign permit is not required for signs:

1. Described in Sections 1.3. with a total area of up to [thirty two (32) square feet and a maximum height of eight (8) feet];

Comment: *The decision as to which signs should require a permit ought to be carefully considered based on considerations of staffing, control and enforcement. The issue discussed above regarding the total number of signs applies here as well to the total area limitations and the potential conflict addressed.*

2. Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of official or directed duties; provided, that all such signs must be removed no more than ten (10) days after their purpose has been accomplished; or
3. Minor signs when no more than [two per parcel].

Note: Additional minor signs are permitted in certain districts with a permit.

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1.4.7 *Appeals.* If the Code Official/Zoning Administrator denies a permit the applicant may appeal under [insert here the cite to the provision for appeals from decisions of the Code Official].

Comment. *This draft does not address the issue of prior restraint that may be affected by a denial of a permit and the requirement of a speedy appeal. This issue is being left to future drafts.*

1.5 Specific Sign Regulations by District

The following sign regulations apply to all Use Districts as indicated.

1.5.1 Residential Districts

1.5.1.1 Scope:

This Section (1.5.1) applies to all Residential Districts.

1.5.1.2 Size:

A. When a sign is authorized on a property, the sign must not exceed [two (2) square feet in area]. Where attached dwellings exist on a property the total square footage of signs must not exceed [two square feet per dwelling unit and must not exceed a total of twelve (12) square feet in area per structure].

B. For Residential Developments (including subdivision identification) the maximum size and number of signs that the owner or owners of the residential development may erect and maintain at the entrances to the development must be controlled according to the following:

(1) Residential developments four (4) acres or less in area may have a sign or signs with a total area of no more than thirty-two (32) square feet.

(2) Residential developments over four (4) acres but less than forty (40) acres in area may have a sign or signs which have a total area of no more than forty-eight (48) square feet.

(3) Residential developments of forty (40) acres or more in area may have a sign or signs with a total area of no more than one hundred two (102) square feet.

1.5.1.3 Location:

Permitted signs may be anywhere on the premises, except in a required side yard or within [ten (10) feet] of a street right-of-way.

1.5.1.4 Height:

The following maximum heights must apply to signs:

A. If ground-mounted, the top must not be over [four (4) feet above the ground]; and

B. If building mounted, must be flush mounted and must not project above the roof line.

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Comment: A provision allowing for a variance if the property while adjacent to the public right of way but which is hidden by a natural or man-made barrier was considered but rejected due to both aesthetic considerations and concerns that allowing some signs but not all might negatively affect the validity of the provision.

1.5.1.6 Illumination:

Illumination if used must not be blinking, fluctuating or moving. Light rays must shine only upon the sign and upon the property within the premises.

1.5.1.7 The following signs are not allowed: Highway Signs, Portable Signs, Marquee Signs, Digital Billboard, Outdoor Advertising Sign, and Projecting Sign. Temporary signs that might fall within the definition of "highway sign" are not prohibited by this Section provided they comply with Section 1.3.

1.5.1.8 Commercial uses lawfully operating in a Residential District must comply with Sections 1.5.2.7 and 1.5.2.8.

1.5.2 Commercial and Institutional Districts

1.5.2.1 Scope:

This Section (1.5.2) applies to all [insert appropriate titles Commercial Districts and the Institutional District].

1.5.2.2 Number and Size:

For each lot or parcel a sign at the listed size may be authorized:

A. [insert name of district] signs must not exceed [thirty-five (35) square feet]. [For additional standards for the [insert name of district] District see Section [if additional standards apply insert here]].

B. [insert appropriate district titles here: Community Business District (CBD), General Commercial District (GC) and Rural Commercial District (R-COM)] signs must not exceed the following [area requirements based on the speed limit and number of traffic lanes of the adjacent public street:

Maximum Speed Limit	No. of traffic lanes	Max. Sq. Footage of sign
30 mph or less	3 or less	32 sq. ft.
35 mph or more	3 or less	50 sq. ft.
30 mph or less	4 or more	40 sq. ft.
35 mph or more	4 or more	72 sq. ft.

]

C. Two (2) or more lots or parcels having a combined linear frontage of [eighty-five (85) feet] may combine their sign areas allowed by Section 1.5.2.2 B. for the purpose of providing one common free-standing or ground-mounted sign. The sign must not exceed [one hundred fifty (150) square feet]. D. Corner Lots:

Where a lot fronts on more than one street, only the square footage computed for each street frontage must face that street frontage.

E. If not otherwise regulated as to maximum sign area in this code, signs are governed by the following:[

Maximum Sign Area	Street Frontage
20 sq. ft.	85 ft. or less
25 sq. ft.	86-90 ft.
30 sq. ft.	91-99 ft.
35 sq. ft.	100 ft. or more

]

F. Commercial Center:

Signs used for Commercial Centers must be allowed as follows:

(1) [Only one (1) sign of one hundred fifty (150) square feet must be permitted for centers less than five (5) acres and greater than one (1) acre].

(2) [A maximum of two (2) signs of four hundred (400) square feet must be permitted for complexes for five (5) to fifty (50) acres].

(3) [A maximum of three (3) signs of four hundred (400) square feet must be permitted for complexes of more than fifty (50) acres].

(4) Individual businesses are allowed a face building mounted sign pursuant to Section 1.5.2.2 A. and B.

Comment: To be clear, the limits that are included are from one county's sign law and should not be used by others without thoughtful consideration as to the specific needs and values of the community.

G. Highway Signs:

Highway signs, [except/including Digital Billboards and Outdoor Advertising Signs], must be permitted only in the [insert appropriate district here, for example: General Commercial (GC) District]. Such signs must not exceed three hundred (300) square feet per face, nor must the face exceed a length of twenty-five (25) feet or a height, excluding foundation and supports, of twelve (12) feet. In determining these limitations, the following must apply:

(1) Minimum spacing must be as follows:

Type of Highway	Minimum space from Interchange (in feet)	Minimum space between signs on same side of Highway (in feet)
Interstate Hwy	500	1000
Limited Access (Freeway)	500	1000

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Other Roads	None	500

(2) For the purpose of applying the spacing requirements of Section (1) above, the following must apply:

(a) Distances must be measured parallel to the centerline of the highway;

(b) Measurements for the spacing between signs must be based on when the construction of the sign:

i. Received final approval by the Code Official measuring from the first sign to have received that approval; or

ii. If the Code Official has not given final approval to a sign that will be limited by the spacing requirement once it is constructed, then

1)Measured from the first sign given a building permit that is not cancelled or void at the time of measurement; or

2)When no permit has been issued that is still valid, measured from the first fully complete application for a building permit received by the Code Official that has not been cancelled or which is void; and

(c) A back-to-back, multiple signs on one freestanding pole, double-faced or Vtype sign must be considered as one sign.

1.5.2.3 Location:

A. Flat Wall Signs may be located on any wall of the building.

B. Freestanding Signs must have a minimum clearance of eight (8) feet six (6) inches above a sidewalk and [fifteen (15)] feet above driveways or alleys.

C. One Freestanding or Ground-Mounted sign per lot or parcel except as provided in Section 1.5.1.2 B. and 1.5.2.2 F. may be located anywhere on the premises except as follows:

(1) A ground-mounted sign must not be located in a required side yard, rear yard or within five (5) feet of a street right-of-way.

(2) A freestanding sign must not be located in a required side or rear yard. A freestanding sign may project up to the street right-of-way provided there is a minimum ground clearance of [eight (8) feet six (6) inches] and provided the location complies with the Manual on Uniform Traffic Control Devices.

D. Marquee Signs or signs located on or attached to marquees must have a minimum clearance of not less than [eight (8) feet six (6) inches (8' 6")]. The maximum vertical dimension of signs must be determined as follows:

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Height above Grade	Vertical Dimension
8' 6" up to 10'	2' 6" high
10' up to 12'	3' high
12' up to 14'	3' 6" high
14' up to 16'	4' high
16' and over	4' 6" high

E. Wall signs must not extend above the top of a parapet wall or a roofline at the wall, whichever is higher.

F. Permitted highway signs, including digital billboards, may be allowed anywhere on the premises except in a required side yard, rear yard or within twenty (20) feet of a street right-ofway.

G. No portion of a digital billboard must be located within two hundred and fifty (250) linear feet of the property line of a parcel with a residential land use designation or residential use that fronts on the same street and within the line of sight of the billboard face.

1.5.2.4 Height:

A. Ground-mounted signs must not exceed four (4) feet in height from ground level.

B. Freestanding signs must not exceed twenty-eight (28) feet in height from ground level.

C. Highway signs, including digital billboards, must not exceed thirty-five (35) feet in height from ground level.

1.5.2.5 Content:

A. Any of the signs pursuant to this Section (1.5.2) may be changeable copy signs.

B. The primary identification sign as allowed under 1.3.1.2 for each firm must contain its street number. The street number must be clearly visible from the street right-of-way.

1.5.2.6 Illumination:

Must be as provided in Section 1.4.6.

1.5.2.7 Temporary signs if allowed under Section 1.3 and in addition where an establishment is licensed to serve food, the restaurant owner may display a menu that is used in the restaurant and that is no larger than [2 sq.ft.]:

(1) in the window of the restaurant; or

(2) attached to a wall on a portion of a building occupied by the restaurant:

a. if it is enclosed in a casing that is architecturally compatible with the building design and color; and

b. extend no more than three inches in depth away from the wall to which it is attached.

1.5.2.8 Window Signs: Window signs are allowed in all Commercial Districts, but must not exceed [10% of the gross glass area] including menus and:

(1) for public safety purposes where directed by the police must be located on areas of the window to protect the occupants or a police responder;

(2) as required by a licensing agency if the business is required to have a license to operate and the licensing agency restricts or requires window signs.

1.5.3 Industrial

1.5.3.1 Scope:

This Section applies to the Industrial District.

1.5.3.2 Number and Size:

A. One (1) sign for each street frontage, each with a maximum area of five (5) percent of the total square footage of the face of the building facing that street frontage must be permitted.

B. One freestanding or ground-mounted sign not exceeding fifty (50) square feet per lot or parcel.

C. The maximum size and number of signs that the owner or owners of an Industrial Park development may erect and maintain at the entrances to the development must be controlled according to the following:

(1) A maximum of two (2) signs of three hundred (300) square feet per face must be permitted for industrial parks or complexes of less than ten (10) acres;

(2) A maximum of three (3) signs of four hundred (400) square feet must be permitted for complexes of ten (10) acres or more. More than three (3) signs may be approved through [a Type I procedure], provided the total sign area does not exceed twelve hundred (1200) square feet.

1.5.3.3 Location:

Must be as provided in Section 1.5.2.3.

1.5.3.5 Illumination:

Must be as provided in Section 1.5.6.

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1.5.3.6 Commercial uses in an Industrial District must comply with Sections 1.5.2.7 and 1.5.2.8.

[1.5.4 Agriculture District

Comment: Many cities and towns will not have Agricultural or similar districts; some Counties may. The language in this Section 1.5.4 provides guidelines that might be considered where uses similar to those included in this type of district prevail.

[1.5.4.1 Scope:

This Section applies to the [insert appropriate language describing rural/agricultural and forestry areas] outside the [insert appropriate designation such as: Urban Growth Boundaries].

[1.5.4.2 Size:

a. Signs other than temporary signs and highway signs must have a maximum area that does not exceed thirty-two (32) square feet per sign.
b. Highway signs must comply with Section 1.5.2.G
c. Temporary Signs must comply with Section 1.3.2.

[1.5.4.3 Location:

a. Signs other than temporary signs and highway signs must be at least twenty-five (25) feet from a right-of-way, and must be at least twenty-five (25) feet from an adjacent lot.
b. Highway signs must be
    a. at least twenty-five feet from a right of way and must be
    b. at least 250 feet from a residence on an adjacent property; and
    c. comply with the distance and spacing requirements of Section 1.5.2 G.
c. Temporary Signs must comply with Section 1.3.2.

[1.5.4.4 Illumination:

As provided in Section 1.5.6.

[1.5.4.5 Maximum number of signs:

Acreage	No. of Signs
0 – 20	2
21 – 40	3
41 – 60	4
61 & over	5

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[1.5.4.6 Commercial uses in an Agricultural District must comply with Sections 1.5.2.7 and 1.5.2.8.] 1.5.5

Supplemental Criteria in all Districts

1.5.5.1 Temporary Signs:

Temporary signs are subject to the following standards:

A. Must not on one property exceed a total of [sixteen (16) square feet in area];

B. Must not be located within any public right-of-way whether dedicated or owned in fee simple or as an easement;

C. Must only be located on property that is owned by the person whose sign it is and must not be placed on any utility pole, street light, similar object, or on public property;

D. Must not be illuminated except as allowed in 1.5.1.6 or 1.5.6 based on the District in which the sign is located; and

E. Must be removed within [ten (10)] days after the election, sale, rental, lease or conclusion of event which is the basis for the sign under 1.3.2 or if a different standard is required in Section 1.3.2 must be removed within the time period required by that Section.

1.5.5.2 Bench Signs:

On street benches provided:

A. The benches must not be higher than four (4) feet above ground;

B. The sign must be limited to [fourteen (14)] square feet in area;

C. The benches are not located closer than five (5) feet to any street right-of-way line;

D. Benches are located in a manner not to obstruct vision;

E. Must be included as part of the total permitted sign area of the premise on which it is located unless located in the public right of way.

1.5.5.3 Integral Signs:

There are no restrictions on sign orientation. Integral sign must not exceed seventy-two (72) square feet per façade. Integral signs may be illuminated externally but must not be illuminated internally.

1.5.5.4 Private Traffic Direction:

Illumination of signs erected as required by the Manual on Uniform Traffic Control Devices must be in accordance with Section 1.5.6. Horizontal directional signs flush with paved areas are exempt from these standards.

1.5.5.5 Original Art Display

Original art displays are allowed provided that they meet the following requirements:

A. Located [designate where they are allowed such as: Urban Growth Boundary];

B. Must not be placed on a dwelling;

C. Must not extend more than six (6) inches from the plane of the wall upon which it is painted or to which it is affixed;

D. Must be no more than sixty-four (64) square feet in size, per lot or parcel;

E. The property owner must not be compensated for the display of the original art or the right to place the original art on site; and F. Must not be illuminated.

Comment: In a case arising from a required development plan submission, a federal court concluded that murals were treated differently from signs thus affecting the content neutral basis for the regulation and making them unconstitutional. Morris v. City of New Orleans, 350 F. Supp. 3d 544 (E.D. La. 2018).

1.5.6 Illumination

No sign can be erected or maintained without a permit or which, by use of lights or illumination, creates a distracting or hazardous condition to a motorist, pedestrian or the general public. In addition:

1.5.6.1 No exposed reflective type bulb, par spot or incandescent lamp, which exceeds[twenty-five (25) Watts,] must be exposed to direct view from a public street or highway, but may be used for indirect light illumination of the display surface of a sign.

1.5.6.2 When neon tubing is employed on the exterior or interior of a sign, the capacity of such tubing must not exceed [three hundred (300) milliamperes] rating for white tubing or [one hundred (100) milliamperes] rating for any colored tubing.

1.5.6.3 When fluorescent tubes are used for the interior illumination of a sign, such illumination must not exceed:

A. Within Residential districts:

Illumination equivalent to [four hundred twenty-five (425) milliamperes] rating tubing behind a Plexiglas face with tubes spaced at least [seven inches,] center to center. B. Within land use districts other than Residential:

Illumination equivalent to [eight hundred (800) milliampere] rating tubing behind a Plexiglas face spaced at least [nine (9) inches,] center to center.

1.5.6.4 Digital billboards allowed pursuant to Section 1.5.2.2 G must:

A. Display only static messages that remain constant in illumination intensity and do not have movement or the appearance or optical illusion of movement;

B. Not operate at an intensity level of more than [0.3 foot-candles] over ambient light as measured at a distance of [one hundred and fifty (150) feet];

C. Be equipped with a fully operational light sensor that automatically adjusts the intensity of the billboard according to the amount of ambient light;

D. Change from one message to another message no more frequently than once every [ten (10) seconds] and the actual change process is accomplished in [two (2) seconds] or less;

E. Be designed to either freeze the display in one static position, display a full black screen, or turn off in the event of a malfunction; and

F. Not be authorized until the Code Official is provided evidence that best industry practices for eliminating or reducing uplight and light trespass were considered and built into the digital billboard.

1.5.6.5 An applicant for a permit to illuminate a sign must submit a plan to the [Department of City/County/Town to which permits are submitted] showing the illumination plan including the effect of the illumination on any other property that might be affected by the light and how the illumination conforms aesthetically to the site and the neighborhood.

1.5.6.5.1 The application must be reviewed to determine the effect on other properties and the aesthetics of the site and the neighborhood.

1.5.6.5.2 The application must not be approved if the effect on other properties would create adverse results and must not be approved if the plan does not conform to the aesthetics of the neighborhood or the site.

1.5.6.6 In a Residential District the property owner may use string lights or rope lights to decorate the residence as well as natural objects without a permit if the lumens produced do not exceed the requirements in Section 1.3.2.5 and provided:

1.5.6.6.1 String and rope lights must be designed to meet GCFI standards and installed in accordance with the National Electric Code.

1.5.6.6.2 String light bulbs and rope lights must be of standard wattage and designed for outdoor use.

1.5.6.6.3 String and rope light bulbs may only be white or clear. Colored lights are not allowed.

1.5.6.6.4 String and rope lights must be securely hung from a sturdy fixture.

1.5.6.7 Outdoor lighting of eating or drinking establishments, such as restaurants, cafes, coffee houses, and bars must comply with Sections 1.5.6.6.1 through 1.5.6.6.4 and string lights and rope lights may only be used in outdoor patio areas. All string and rope lights must be turned off when the establishment is closed.

1.5.6.8 Automated teller machines. Where Automated Teller Machine (ATM) signs are allowed signs may be placed on the ATM subject to the following requirements:

1.5.6.8.1 The sign must be an integral part of the ATM;

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1.5.6.8.2 May not exceed two and one-half square feet in total size, including any border or background color.

1.5.7 Prohibited Signs

The following signs or lights are prohibited which:

1.5.7.1 Are of a size, location, movement, coloring, or manner of illumination which may be confused with or construed as a traffic control device or which hide from view any traffic or street sign or signal;

1.5.7.2 Contain or consist of banners, posters, pennants, ribbons, streamers, strings of light bulbs, spinners, or other similarly moving devices or signs which may move or swing as a result of wind pressure. These devices when not part of any sign are similarly prohibited, unless they are permitted specifically by other legislation;

Comment: In Palmer v. City of Missoula, 2017 U.S. Dist. LEXIS 51368 (USDC MT April 4 2017), the court construed an ordinance prohibiting "wind signs" concluding that the ordinance was not content based and survived constitutional review. The ordinance defined "wind signs" as: an "attention-getting device with or without copy ... fastened in such a manner as to move in the wind." The Court analyzed the complaint under Central Hudson.

1.5.7.3 Have blinking, flashing or fluttering lights or other illuminating devices which exhibit movement, except digital billboards as permitted pursuant to this Code;

1.5.7.4 Are roof signs except as allowed in Section 1.5.5.4;

1.5.7.5 Are visible from a limited access highway except as allowed as Highway signs;

1.5.7.6 Would be an Original Art Display but does not have the permission of the owner of the property on which it is located or is graffiti; or

1.5.7.6 Are portable signs that do not comply with the location, size or use restrictions of this Code.

1.5.7.7 Are Graffiti or Clutter signs.

1.5.8 Procedures

Applications for a sign permit must be processed through [insert appropriate permitting procedure here].

1.5.9 Nonconformity and Modification

1.5.9.1 Except as provided in Section 1.5.9.3 of this Chapter, signs lawfully in existence on the date the provisions of this Code were first advertised, which do not conform to the provisions of this Code, but which were in compliance with the applicable regulations at the time they were constructed, erected, affixed or maintained must be regarded as nonconforming. Provided,

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however, a sign constructed during the period of time following the day on which the Supreme Court released its opinion in *Reed v. Town of Gilbert, ___U.S. ___, 135 S. Ct. 2218, 192 L. Ed. 2d 236, 2015 U.S. LEXIS 4061, 83 U.S.L.W. 4444 (U.S. 2015)* and the date the provisions of this Code were first advertised for adoption must not be considered a non-conforming sign unless it conformed to the regulations in effect on the day immediately preceding the release of the Supreme Court's decision in *Reed v. Town of Gilbert, ___U.S.___, 135 S. Ct. 2218, 192 L. Ed. 2d 236, 2015 U.S. LEXIS 4061, 83 U.S.L.W. 4444 (U.S. 2015)*.

Comment: This section attempts to address two issues common to regulation. 1. The race to vest – often a person who sees a regulation being proposed attempts to establish a vested right before the regulation can take effect where notice and public hearing are required. This race to vest often leads to a flurry of activity that can be difficult to process and allows uses that are considered undesirable to flourish while the government attempts to limit them. Allowing an ordinance to apply to properties based on the date it is first advertised provides a more fair solution allowing the government to provide public notice and give thoughtful contemplation to the issues involved rather than engaging in a race to adopt a measure before its utility is thwarted by a rash of construction and that insures the limited effect on individual property owners and the community as whole that the public process embraces. 2. The effect of a regulated business enjoying a period where there is no regulation due to a court decision. Clearly, the Supreme Court did not aim to eliminate sign regulation; it only sought to eliminate content based sign regulation. Rather than allow the decision in Reed v. Gilbert to extend authority beyond its intent, the Sign Code limits the effect of an unregulated period by recognizing that signs constructed during that period do not deserve protection from the application of the law.

1.5.9.2 For the purpose of amortization, nonconforming signs described in Section 1.5.9. may be continued from the effective date of this Code for a period not to exceed the shorter of the period the signs were allowed under any prior Code or [ten (10) years whichever is less.

1.5.9.3 Signs which were unlawful under the prior Ordinance and which do not conform to this Code must be removed immediately.

1.5.9.3.1 Temporary signs, including snipe signs and graffiti that do not comply with this Code must be removed immediately.

1.5.10 Compliance

Any sign which is altered, relocated, replaced or must be brought immediately into compliance with all provisions of this Code.

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