

CITY OF DOVER

DOVER PLANNING BOARD – AGENDA

Meeting Type: Regular Meeting
Meeting Location: McConnell Center Room 306, 61 Locust St. Dover, NH 03820
Meeting Date: **Tuesday, July 26, 2016**
Meeting Time: **7:00 pm**

1. CITIZENS' FORUM

2. APPROVAL OF THE PRIOR MINUTES

- June 28, 2016 Regular Meeting Minutes

3. OLD BUSINESS

4. NEW BUSINESS

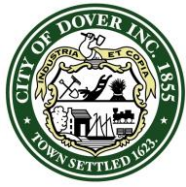
- A. Consideration and acceptance of a Lot Line Adjustment for Jason Taylor (Owner: Patti Ferri, Trustee/L & S Carter Family Revocable Trust), Assessor's Map D, Lots 8L & 8T, zoned R-12, located at 20 Maplewood Avenue and 22 Maplewood Avenue. *(P16-19)
- B. Discussion on potential updates for Chapter 170-32 (Signs), to be in compliance with Reed V. Town of Gilbert
- C. Presentation of proposed Transportation Master Plan Chapter – Robin Bousa of VHB, Dan Toland - Steering Committee Chair and Dave Carpenter – Community Development Planner.

5. STAFF COMMENTS

6. MEMBER COMMENTS

7. ADJOURNMENT

*Indicates that if the application is accepted for discussion, the public hearing will be held the same evening. Note that some hearings will be continued from one meeting to another and some may be postponed. Since this is only a partial description of the proposal and may change, persons with questions or wishing to see the plans are invited to visit the Planning Office, Monday through Thursday from 8:30 am to 5:30 pm and Friday 8:30 am to 4:00 pm or email Dover-Planning@dover.nh.gov. You may also view materials at www.dover.nh.gov. Follow us on Twitter @DoverNHPlanning and find us on Facebook at <https://www.facebook.com/DoverNHPlanning>.



CITY OF DOVER

DOVER PLANNING BOARD – MINUTES

Meeting Type: Regular Meeting
Meeting Location: McConnell Center Room 306, 61 Locust Street
Meeting Date: **Tuesday, June 28, 2016**
Meeting Time: **7:00 pm**

Members Present: Frank Torr (Chair), Dennis Ciotti (Councilor), Tom Clark, Dave White, Lee Skinner, Gina Cruikshank, Catherine Plante, David Landry

Members Not Present: Kirt Schuman (Vice Chair)

Staff Present: Christopher Parker (Assistant City Manager), Tracy Smith (Recording Secretary)

The Chair called the meeting to order at 7:01 p.m. The Chair recognized L.Skinner to sit in for K.Schuman.

1. CITIZENS' FORUM

Citizens Forum Open. Nobody Spoke. Citizens Forum Closed

2. APPROVAL OF THE PRIOR MINUTES

- June 14, 2016 Regular Meeting Minutes

Motion: L.Skinner made a motion to approve the June 14, 2016 Regular Meeting Minutes. Seconded by G.Cruikshank. Vote U/A

3. OLD BUSINESS

4. NEW BUSINESS

- A. Consideration and acceptance of a Conditional Use Permit for Peter & Anne Strachan, Assessor's Map L, Lot 29, zoned R-20, located at 125 Spur Road. (Proposal is for the replacement of existing house and construction of new garage with Accessory Dwelling Unit, with temporary impacts of 2,454 sq. ft. and 1,433 sq. ft. of permanent impacts to Bellamy River Conservation District). *(P16-16)

C.Parker gave an overview of the application.

Steve Riker, Ambit Engineering represented the application, displayed plans for viewing, and explained the proposed plan. Peter and Anne Strachan, and Anne Whitney, architect, also were present.

A.Whitney explained the architecture of the house and the reasons for renovation and repair. She clarified the reason for building in the conservation district.

Motion: D.White made a motion to accept the application. Seconded by L.Skinner. Vote U/A

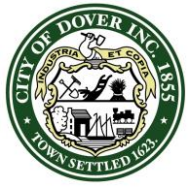
Public hearing opened. Nobody spoke. Public hearing closed.

STAFF RECOMMENDATION:

The Planning Department recommends the Planning Board approve the Conditional Use Permit with the following condition:

Conditions to Be Met Prior to the Issuance of the Conditional Use Permit:

1. NH DES Wetlands Permit is granted and a copy of the permit submitted to the City.



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C.Parker clarified for D.Ciotti that the demolition permit would be part of the building permit process for reconstruction.

Motion: D.Ciotti made a motion to approve the Conditional Use Permit subject to staff recommended conditions. Seconded by G.Cruikshank. Vote U/A

- B. Consideration and acceptance of a Conditional Use Permit per Chapter 170-20-B(1) for David Pratt, Assessor's Map 31, Lot 90, zoned CBD-Residential, located at 43 Fifth Street (Proposed conversion of existing duplex to a single family, with installation of new foundation to support 2nd & 3rd floor deck closer than 8 feet). *(P16-18)

C.Parker gave an overview of the application.

David Pratt presented a power point display for viewing, and explained the proposed plan for his application.

Motion: C.Plante made a motion to accept the application. Seconded by G.Cruikshank. Vote U/A.

Public Hearing opened. Nobody spoke. Public hearing closed.

STAFF RECOMMENDATION

The Planning Department recommends that the Board approve the Conditional Use Permit with the following conditions:

Conditions to Be Met Prior to Signing of Plans:

1. The owner's signature shall be added to the final plan.
2. The applicant shall provide a digital version of the final plan to the Planning Department.
3. The applicant shall be subject to a formal agreement between the Planning Board and the applicant. Said agreement shall be recorded at the Strafford County Registry of Deeds per Chapter 170-20-B(3).

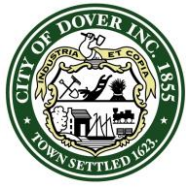
C.Parker clarified the agreement for T.Clark.

Motion: G.Cruikshank made a motion to approve the Conditional Use Permit subject to staff recommended conditions. Seconded by L.Skinner. Vote U/A

- C. Discussion on citywide rezoning opportunities with the Dover Business and Industrial Development Authority and discussion on a proposed amendment to rezone a 16 acre parcel, known as Assessor's Map D, Lot 12, located at 447 Sixth Street and Production Drive from Rural Residential (R-40) to Assembly and Office (I-4).

C.Parker stated the reason for the discussion regarding the rezoning projects and the City Council goals for rezoning.

Dan Barufaldi, Economic Development Director of Dover Business and Industrial Development Authority (DBIDA), presented the reasons for the rezoning recommendations. He presented a video for viewing, and referred to the Strategic Intentions packet provided to the Board members. The following DBIDA members were also present: Tim Dargan, Scott Johnson, Sam Haddadin, and Karen Weston, Mayor.



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C.Parker requested input from the Board to provide a report containing information to properly evaluate the rezoning projects at future meetings.

Discussion ensued regarding the reasons for rezoning, consideration to create new zones, evaluating land for commercial use rather than residential, temporary zones to stop subdivisions on parcels until the area is rezoned, consideration of the residents when evaluating rezoning areas, and clarification with the material provided in the packet.

Discussion continued regarding clarification of the process as parcels are identified, the need to educate the citizens regarding rezoning, and that information will be provided in the report regarding what could be placed on the parcels if not rezoned.

C.Parker read his suggestions for the report, and requested feedback from the Board. He stated a template would be created to provide a model template for developers.

Discussion ensued regarding the scoring process regarding the parcels, recommended estimated evaluation of what the City would look like when the projects were completed, evaluation of locations of developable land and wetlands, the need to encourage manufacturing for job creation versus retail and entertainment, and possible State participation in the development process.

D.Barufaldi clarified for D.Landry there is one piece of property remaining at Enterprise Park. He also explained the wetlands on the property.

Discussion ensued regarding addressing space between properties with existing conservation easements.

C.Parker stated he will work with D.Barufaldi and F.Torr regarding a renote for Production Drive, Sixth Street, and Quail Drive to reopen the public hearing.

5. STAFF COMMENTS

C.Parker reminded the Board there will be only one meeting in July and August, and stated there would be further review of the tabled sign amendment. He further stated the Board members will receive site, subdivision, and zoning code papers at the next meeting.

6. MEMBER COMMENTS

7. ADJOURNMENT

Motion: L.Skinner made a motion to adjourn at 8:30 p.m. Seconded by G.Cruikshank. Vote U/A



CITY OF DOVER

PLANNING BOARD - STAFF MEMO FILE #P16-19

Application Type: Minor Lot Line Adjustment
Applicant(s): Jason Taylor
Owner(s): Patti Ferri, Trustee/L & S Carter Family Revocable Trust
Location: 20 Maplewood Ave & 22 Maplewood Ave (Assessor's Map D, Lots 8L& 8T)
Meeting Date: July 26 2016

INTENT: To adjust the lot lines between two existing lots at 20 and 22 Maplewood Avenue. Lot D/8L will go from 12,000 sq. ft. to 76,117 sq.ft and lot D/8T will go from 97,346 sq.ft. to 33,320 sq. ft. The frontages are legal non-conforming and therefore do not need relief.

LOTS/UNITS PROPOSED: No change in the number of lots

AGENDA ITEM #: 4-A

ACREAGE 2.51 acres total

ZONING DISTRICT: Medium Density Residential District (R-12)

EXISTING LAND USE: Residential

PROPOSED LAND USE: Residential

SURROUNDING LAND USE: Residential and city owned property

ZBA ACTION: None

ATTACHMENTS: Lot line adjustment plan and application

APPLICATION IS COMPLETE: Yes

NOTICES SENT: Abutter notices were sent by certified mail to all abutters

PERMITS REQUIRED: None

WAIVERS REQUESTED: None

Summary of Request and Background

The applicant wants to reconfigure the lot lines between two existing lots. There is no change in the number of lots. The proposed lot line adjustment changes the lots to have them adjacent to one another rather than lot D-8T wrapping around lot D-8L.

There was a previous lot line adjustment approved in May 1998 (P98-17) which created the lots as they are today so this new lot line adjustment would restore the lots to how they were before the 1998 lot line adjustment.

Consistency with Land Use Regulations

Chapter 155-18 of the Land Subdivision Regulations of the City Code provides for the adjustment of existing lot lines between two or more lots. This plan is consistent with those regulations.

Section 155-18 states the requirements for Minor Lot Line Adjustment and Boundary Agreements, this lot line adjustment meets the regulations.

Again, the frontages are legal non-conforming and therefore do not need relief.

STAFF RECOMMENDATION:

The Planning Department recommends that the Planning Board accept the application, hold the public hearing, and approve the lot line adjustment plat with the following conditions:

Conditions to Be Met Prior to Signing of Plans:

1. The owners' signatures shall be added to the final plat submitted for signature.
2. The applicant shall provide the Planning Department with a digital version of the final plat.
3. The applicant shall add the surveyor's stamp and signature to the final plat.
4. The applicant shall revise the plat to include the Planning File number P16-19 to the title block.
5. The applicant shall revise the plat to remove the City of Dover Planning Board approval area since the Department has its own stamp.

20 and 22 Maplewood Avenue

**Property Information**

Property ID D0008-T00000
Location 20 MAPLEWOOD AV
Owner FERRI PATTI J SUCCESSOR TRUSTEE

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Dover, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.



City of Dover, New Hampshire

MINOR LOT LINE ADJUSTMENT APPLICATION

[Revision Date: February 12, 2013]

Office Use Only

Project #:

P16-19

Date Received:

JUL 05 2016

Amount Paid:

\$468.00

Time Received:

Dover, New Hampshire

ck #632

APPLICANT INFORMATION

Name of Applicant: JASON Taylor Telephone # 603-285-5976

Address of Applicant: 22 Maplewood Ave Dover NH 03820

taylor2227@gmail.com

FIRST PROPERTY OWNER AND PARCEL INFORMATION

Name of 1st Property Owner (if different from applicant): Telephone #

Address of 1st Property Owner:

Address of Property: 22 Maplewood Ave Dover NH 03820

Assessor's Map # D Lot(s) # 8L

Property Deed: Book 3682 Page: 390

Zoning District(s) R-12 Overlay District(s)

Size of Existing Parcel (sq. ft.): 12,000 Size of Proposed Parcel (sq. ft.): 76,117

SECOND PROPERTY OWNER AND PARCEL INFORMATION

Name of 2nd Property Owner (if different from applicant): L & S Carter Family Rev. Family Trust Patti Ferri Trust Telephone # 387-1987

Address of 2nd Property Owner: 732 Concord Stage Rd Lot 25, Weare NH 03281

Address of Property: 20 Maplewood Ave Dover NH 03820

Assessor's Map # D Lot(s) # 8T

Property Deed: Book 2776 Page: 439

Zoning District(s) R-12 Overlay District(s)

Size of Existing Parcel (sq. ft.): 97,346 Size of Proposed Parcel (sq. ft.): 33,230

[Use additional application form if more than two lots are being adjusted]

SURVEYOR INFORMATION

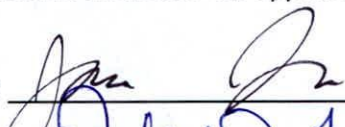
Name of Surveyor and Company (Licensed in N.H.) Adam R Fagg Atlantic Survey Company

Address 149 Mill Road Durham NH 03824 Telephone #: 603-659-8939

Professional License #: 891 E-mail address: atlanticsurvey@comcast.net

SIGNATURES

I/We hereby submit this application to the City of Dover Planning Board and attest that to the best of my knowledge all of the information on this application form and in the accompanying application materials and documentation is true and accurate. As applicant or as agent, I attest that I am duly authorized to act in this capacity.

Signature of First Property Owner:  Date: 6/27/16

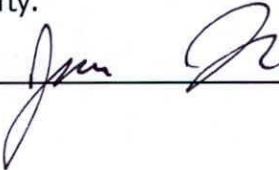
Signature of Second Property Owner:  Date: 6/27/16

Signature of Applicant (*if different from owner*): _____ Date: _____

Signature of Agent: _____ Date: _____

AUTHORIZATION TO ENTER SUBJECT PROPERTY

I hereby authorize members of the Dover Planning Board, Planning Department and other pertinent City Departments and boards to enter my property for the purpose of evaluating this application, including performing inspections during the application phase, post-approval phase, construction phase and occupancy phase. It is understood that these individuals must use all reasonable care, courtesy, and diligence when on the property.

Signature of Property Owner:  Date: 6/27/16

Property ID	Location	Owner 1	Owner 2	Owner Address 1	City	State	Zip
D0043-000000	17 MAPLEWOOD AV	CAMPANO TROY M &	CAMPANO DENISE L	17 MAPLEWOOD AV	DOVER	NH	03820
D0008-S00000	26 MAPLEWOOD AV	PELCZAR ALDEN R TRUSTEE	PELCZAR 2012 REVOCABLE TRUST	26 MAPLEWOOD AVENUE	DOVER	NH	03820
D0005-000000	SULLIVAN DR	CITY OF DOVER		288 CENTRAL AVE	DOVER	NH	03820
D0054-000000	19 MAPLEWOOD AV	CALLAGHAN PATRICK R A		19 MAPLEWOOD AV	DOVER	NH	03820-2007
D0008-T00000	20 MAPLEWOOD AV	FERRI PATTI J SUCCESSOR TRUSTEE	CARTER L AND S FAMILY REVOCABLE TRUST	732 CONCORD STAGE RD LOT 25	WEARE	NH	03281
D0008-M00000	24 MAPLEWOOD AV	MARSHALL LINDA M		24 MAPLEWOOD AVE	DOVER	NH	03820
D0049-000000	11 MAPLEWOOD AV	HERRON ROBERT A		11 MAPLEWOOD AVE	DOVER	NH	03820
D0008-J00000	12 CRANBROOK LN	LACHANCE LOUISE L		12 CRANBROOK LANE	DOVER	NH	03820
D0045-000000	16 MAPLEWOOD AV	LEARY MORTON B	LEARY BRENDA B	16 MAPLEWOOD AVENUE	DOVER	NH	03820
D0008-P00000	14 CRANBROOK LN	ROBINSON CHRISTOPHER D		14 CRANBROOK LN	DOVER	NH	03820
D0042-000000	15 MAPLEWOOD AV	KIDNEY LIVING TRUST OF MAY 9 2002	KIDNEY JAMES L AND HAZEL W TRUSTEES	15 MAPLEWOOD AVENUE	DOVER	NH	03820
D0008-R00000	28 MAPLEWOOD AV	ECKER ROBERT A JR &	ECKER JESSICA L	28 MAPLEWOOD AVE	DOVER	NH	03820
D0041-000000	13 MAPLEWOOD AV	LAMOUREAUX ROBERT B &	LAMOUREAUX JACQUELYN L	13 MAPLEWOOD AVE	DOVER	NH	03820
D0044-000000	18 MAPLEWOOD AV	CALABRO BRADLEY E		18 MAPLEWOOD AV	DOVER	NH	03820
D0048-000000	9 MAPLEWOOD AV	CHAMBERLAIN FAMILY LIV REV TRUST	CHAMBERLAIN CAROL M TRUSTEE	96 SCRUTON RD	FARMING	NH	03835
40031-000000	34 OLD ROCHESTER	PARO RONALD	PARO MAUREEN	34 OLD ROCHESTER ROAD	DOVER	NH	03820
D0008-N00000	16 CRANBROOK LN	HESSONG ANDREW D		16 CRANBROOK LN	DOVER	NH	03820
D0046-000000	14 MAPLEWOOD AV	GOUTIER BRUCE A JR &	GOUTIER JENNIFER L	14 MAPLEWOOD AV	DOVER	NH	03820-2008
D0008-L00000	22 MAPLEWOOD AV	TAYLOR JASON M &	TAYLOR SALLY ANN	22 MAPLEWOOD AV	DOVER	NH	03820

Abutters List: P16-19



LEGEND

- FOUND 5/8" IRON ROD w/D CAP STAMPED "ATLANTIC LLS 782"
- FOUND IRON PIPE OR ROD AS NOTED
- n/f NOW OR FORMERLY
- U UTILITY POLE
- - - PROPOSED PROPERTY LINE
- - - BUILDING SETBACK LINE

n/f
CITY OF DOVER
288 CENTRAL AVENUE
DOVER, NH 03820
TAX MAP D, LOT 5
BOOK 2257, PAGE 702

Existing Area of
Lot D-BL
12,000 Sq.Ft.
0.28 Acres
to be enlarged
total Lot D-BL

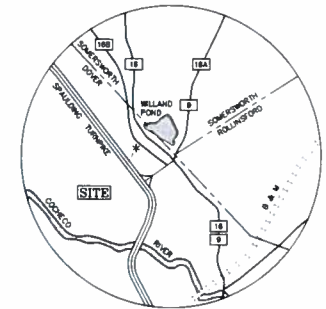
Total New Area
Lot D-BL
76,117 Sq.Ft.
1.75 Acres

Total New Area
Lot D-BT
33,230 Sq.Ft.
0.76 Acres

n/f
BRADLEY E. CALABRO
18 MAPLEWOOD AVENUE
DOVER, NH 03820
TAX MAP D, LOT 44
BOOK 4040, PAGE 505

n/f
JAMES L. & HAZEL W. KIDNEY LIVING TRUST
15 MAPLEWOOD AVENUE
DOVER, NH 03820
TAX MAP D, LOT 42
BOOK 2509, PAGE 044

n/f
ROBERT B. & JACQUELYN L. LAMOUREAUX
13 MAPLEWOOD AVENUE
DOVER, NH 03820
TAX MAP D, LOT 41
BOOK 2098, PAGE 670



LOCATION PLAN

RECEIVED
Planning Office

JUL 05 2016

Dover, New Hampshire

NOTES

- OWNERS OF RECORD:
PATTI J. FERRI, TRUSTEE OF
L&S CARTER FAMILY REVOCABLE TRUST OF 2003
732 CONCORD STAGE ROAD, WEARE, NH 03281
LOT ADDRESS: 20 MAPLEWOOD AVENUE, DOVER
TAX MAP D, LOT 8T
BK. 2776, PG. 439 S.C.R.D.
JASON M. & SALLY ANN TAYLOR
22 MAPLEWOOD AVENUE
DOVER, NH 03820
TAX MAP D, LOT 8L
BK. 3682, PG. 390 S.C.R.D.
- LOT AREAS:

	EXISTING	TOTAL PROPOSED
LOT D-BL	12,000 Sq.Ft. 0.28 Acres	76,117 Sq.Ft. 1.75 Acres
LOT D-BT	97,346 Sq.Ft. 2.23 Acres	33,230 Sq.Ft. 0.76 Acres
- RANDOM TRAVERSE ERROR OF CLOSURE IS LESS THAN 1 PART IN 10,000.
- REFERENCE PLANS:
 - a) "BOUNDARY LINE ADJUSTMENT PREPARED FOR LYNWOOD & SALLY CARTER LOCATED AT MAPLEWOOD AVENUE, DOVER, N.H." BY THIS OFFICE DATED APRIL 1, 1998 AND RECORDED IN STRAFFORD COUNTY REGISTRY OF DEEDS AS PLAN No. 53-21.
 - b) "FISCHER HOMES INC. PROPOSED DEVELOPMENT-CANTERBURY PARK-DOVE-NEW HAMPSHIRE" BY GRANT L. DAVIS DATED FEBRUARY 1955 AND RECORDED IN STRAFFORD COUNTY REGISTRY OF DEEDS AS PLAN No. 9 IN FOLDER 2, POCKET 8.
 - c) "CLAY HILL SUBDIVISION PREPARED FOR WHITE ENTERPRISES OFF OLD ROCHESTER ROAD-DOVER, NEW HAMPSHIRE" BY McNEANEY SURVEY ASSOCIATES, INC. DATED DECEMBER 16, 1994 AND RECORDED IN STRAFFORD COUNTY REGISTRY OF DEEDS AS PLAN No. 46-85.
- ZONING DIMENSIONAL AND DENSITY REQUIREMENTS ARE AS FOLLOWS:
 - a. ZONING DISTRICT R-12
 - b. MINIMUM LOT SIZE IS 12,000 Sq.Ft.
 - c. MINIMUM LOT FRONTAGE IS 100' Ft.
 - d. BUILDING SETBACKS:

FRONT:	30'
REAR:	15'
SIDE:	15'
- BOTH PARCELS SERVICED BY MUNICIPAL SEWER AND WATER.
- THE PURPOSE OF THIS PLAN IS TO ADJUST THE LOT LINE BETWEEN LOTS D-BL & D-BT IN ORDER TO EXPAND LOT D-BL BY 1.75 ACRES.

CITY of DOVER PLANNING BOARD APPROVAL

Boundary Line Adjustment

PREPARED FOR

Patti J. Ferri

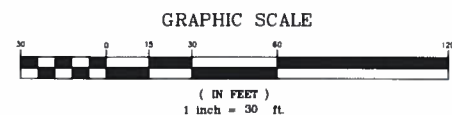
AND

Jason M. & Sally Ann Taylor

LOCATED AT

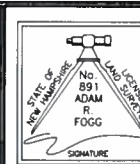
Maplewood Avenue, Dover, N.H.

ISSUE	DATE	DESCRIPTION	BY	CHKD	APP



ATLANTIC
SURVEY CO., LLC
149 Mill Road, Durham, New Hampshire 03824

PREPARED BY:
SURVEYORS
PLANNERS
SEPTIC DESIGNERS
603-659-8939



DATE: June, 2016
FIELDWORK BY: AF
DESIGNED BY: AF
CAD FILE: 16115
PROJECT No.: 16115
SHEET 1 OF 1

Amendments to Chapter 170-32, Sign Regulations

July 26, 2016

1 Current Sign Regulations

1.1 Why Do We Regulate Signs?

The City of Dover regulates permanent and temporary signs for many of the same reasons that we regulate structures—we are concerned with their relative size and density, quality, and safety. Signs are often designed and oriented to capture the attention of motorists and pedestrians, presenting safety concerns. Much like buildings, they can express great creativity and become landmarks in a community. Strict regulation of signs can maintain or encourage a specific character, but at the expense of frustrating flexibility and creativity in design and advertising. **Cities and towns are often known for their signage, or lack thereof, and sign owners tend to attribute their successes and failures to their ability to advertise freely.**

The current regulations state:

“The purpose of this Section is to create a legal framework for SIGNAGE regulations that is intended to facilitate a flexible and agreeable communication between people. Such an ordinance acknowledges the need to protect the safety and welfare of the public, the need for a well-maintained and attractive appearance throughout the City of Dover and the need for adequate business identification, advertising and communication. While this Section recognizes that aesthetics and design quality cannot be satisfactorily legislated, it does, however, operate on the premise that a large percent of that which is unattractive can be eliminated by sensible quality control through maintenance and inspection and by guidelines formulated to minimize clutter.”

1.2 How Sign Permitting and Enforcement Works Now

Dover regulates “permanent” and “temporary” signs separately. Permanent signs are permitted in all zoning districts, and overall sign area in a given zone is either a static number, a function of business frontage, or a function of business square footage. In the most urban districts, wall sign area may be increased with conformance to “Mill Motif” design principles. Permanent signs are broken down into freestanding, wall/awning, and projecting signs. To meet the purpose of each zoning district, these sign types are permitted, permitted with additional size limitations, or prohibited.

Temporary signs are not permitted in every zoning district. They are prohibited in all residential districts, in all industrial districts, and in some commercial and mixed-use districts. They are favored most in the most urban and commercial areas. Temporary signs have been generally divided into a-frame/freestanding signs, which are limited to three feet in height and six square feet in area, and banners. Banners are only permitted in two zones (B-3 and B-5) and are limited to 24 square feet for one-week periods, no more than four times per year. Where temporary signs are located on a sidewalk or otherwise in the public right of way in front of the subject property, the applicant is required sign a hold harmless agreement and provide proof of insurance in the amount of \$100,000. Off-site signs are prohibited everywhere, though prior to *Reed v. Town of Gilbert*, the Zoning Administrator was able to provide an administrative approval for “non-profit, public benefit, or municipality related” signs to be placed off-site. Traditionally, these were allowed at the Lower Square, Durham Road/Back River Road, Weeks Crossing, Sixth Street/Indian Brook Drive, and Knox Marsh Road/Littleworth Road.

With the written permission of the property owner, an applicant is expected to submit a sign (or temporary sign) permit application prior to installation and include information about the proposed design, size,

materials, location, and illumination. A fee of \$75 per permanent sign is assessed. Temporary signs incur a fee of \$50 and, if “permanently temporary,” are expected to obtain a permit renewal each summer.

In practice, many larger businesses and sign companies are proactive in reviewing sign regulations, seeking advice, and acquiring permits. Often, small businesses and organizations are not aware that signs require permits and, either as a result of complaints or staff’s awareness, they end up facing permitting and/or enforcement after the fact. Unfortunately, this sometimes comes after significant investment.

In 2010, the City began conducting temporary sign “sweeps” on a regular basis to enforce prohibitions on temporary signs. We have proactively published press releases to warn sign owners prior to the sweeps, and over time the number of signs collected in each sweep has decreased. Often these sweeps include “snipe signs,” or temporary signs attached to utility poles and trees and lining roadways. **In addition to being off-site signs, many snipe signs are placed by organizations who do not have a physical presence in Dover at all.**

1.3 How Sign Permitting and Enforcement Work Under Posted Amendments

The amendments to 170-32 that the Board posted April 12, 2016 are current law. Overall, little was changed from the sign ordinance that was adopted in July 2015 shortly after the *Reed v. Town of Gilbert* decision was announced. Neither permits nor informal approvals are being issued for off-site signs; however, staff has phased in enforcement and education given the drastic shift from the past practice of allowing off-site temporary signs for non-profit or “public benefit” organizations with the Zoning Administrator’s consent.

Attached is a map indicating the locations of Dover’s tax-exempt properties and whether they are allowed temporary signs on site in their zoning district.

2 The Challenge

2.1 U.S. Supreme Court Decision in *Reed v. Town of Gilbert*

Reed v. Town of Gilbert arose from Gilbert, Arizona’s enforcement actions against an itinerant church that placed temporary signs around town and in the public right of way, directing people to the changing locations of their services. The case reached the U.S. Supreme Court, where the Justices unanimously determined that Gilbert’s code, which distinguished between political signs, ideological signs, and “temporary directional signs relating to qualifying events,” was unconstitutional.

In delivering the Court’s opinion, Justice Thomas provided a succinct example to illustrate the danger of unequal protections for ideology, political advertising, and the right to assemble:

“The restrictions in [Gilbert’s] Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. If a sign informs its reader of the time and place a book club will discuss John Locke’s *Two Treatises of Government*, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke’s followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke’s theory of government. **More to the point, the Church’s signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas. On its face, the Sign Code is a content-based regulation of speech.**”

Although Dover's practices are almost opposite from what happened in Gilbert, Arizona—we have traditionally privileged church, school, and other nonprofit or community-based events rather than limiting their “speech”—they still represent a problematic content-based distinction when codified.

There is still some ambiguity, based on a concurring opinion written by Justice Alito, regarding whether the regulation of off-premise signs constitutes a content-based distinction. Interpretations and opinions vary, but according to the American Planning Association, only one federal district court has held that it does. Several other courts have rejected that claim.

2.2 Implications

If Dover's sign regulations are *prima facie* content-based, they are likely to fail any challenge in court. Especially where we have repeatedly acknowledged the need to become compliant post-*Reed*, we can't claim ignorance of the decision. **Any business in the City could challenge a prohibition on off-premise commercial speech.** In fact, one of the City's small business owners is currently preparing a variance application to request an off-premise temporary sign, where temporary signs are prohibited throughout the business' zoning district.

3 Guidance

Over the past year, staff has reviewed the Supreme Court's opinions, sought advice from the City Attorney and colleagues throughout the state, attended a webinar, and consulted several publications.

3.1 International Municipal Lawyers Association – Model Code, Sixth Draft

The IMLA has worked through a number of model code drafts and recommendations since *Reed v. Town of Gilbert*. The model code is based on the code of Washington County, Oregon, because it was found to be content-neutral by the United States District Court for Oregon, Portland Division in *Icon Group, LLC v. Washington Cnty.*

The model code is quite comprehensive and detailed. Sign quantity and area are a function of land area, street frontage, and/or street types and their speed limits. The model code also goes so far as to regulate signs in windows, marquee dimensions, bench signs, original art displays, flags and flagpoles, and holiday lights.

3.2 American Planning Association – Zoning Practice

The February 2016 issue of *Zoning Practice* is attached. It was authored by an independent planner who wrote *Best Practices in Regulating Temporary Signs* and a professor of law and urban studies, both of whom are based in Ohio. The issue provides a clear summary of the implications of *Reed v. Town of Gilbert* on municipalities across the country and makes concrete recommendations for both regulations and administrative best practices. The authors summarize the issue Dover faces, as it is not unique:

“Many localities prohibit all off-premise signs. These prohibitions are typically related to a desire to prohibit or at least limit billboard signs. The problem with such prohibitions is that temporary signs often contain off-premise content, such as the advertisement of community events or even certain directional signs. It should be clear at this point that regulating a sign by its content (e.g. real estate signs, directional signs, etc.) is problematic because of *Reed*, but...there is still a question of whether the ruling also prevents communities from making the distinction between on-premise and off-premise signs.

Consequently, communities are starting to consider whether it is worth the risk to make such a distinction. In order to be as content neutral as possible, some localities are focusing more on the type and size of sign to control where and how a billboard-style sign might be allowed. Ultimately, a community should consider how people are using temporary signs to make an on- versus off-premise distinction, especially related to temporary signs. As with any regulation, there is a balancing act of the risk of being challenged versus the benefit of the requirement.”

3.3 New Hampshire Municipal Association – *Do’s & Don’ts*

NHMA’s summary and recommendations are also attached. NHMA reviewed Justice Alito’s concurring opinion to outline some of the sign standards that the Court has suggested it would uphold. Their guidance is what initially encouraged us to “tie” permitted signage to a property’s use or condition.

4 Recommendations for the Board’s Consideration

4.1 #1 – Enact Posted Amendments

The amendments that the Board posted April 12, 2016 are the current, effective regulations. **Until revised amendments are posted, these are the law.** Off-premise signs have been prohibited in Dover for years, with a codified exception made for organizations whose speech was effectively deemed more worthy than the speech of others. We sought to do several things in presenting the posted amendments:

4.1.1 New and Improved Definitions

We added definitions to clarify the types of illumination we regulate and what we mean by “development identification sign.” We also revised the definition of “temporary sign” slightly.

4.1.2 Clearly Exempting Certain Signs from Permitting

In practice, several types of signs have not been required to obtain permits. We clarified this in the ordinance language to specifically exempt the following from the permitting process and overall square footage calculations: residential nameplates, government speech, driveway entrance and exit signs under four square feet in area, parking lot signs under two square feet, one sign under 32 square feet on a project under construction, one sign under four square feet per building entryway, and one sign under four square feet per property for sale or rent in a residential district.

4.1.3 Removing Content-Based Regulation

The previous ordinance contained numerous instances in which temporary signs were described as being specifically for businesses or special events. It also had specific provisions for political advertising, industrial park signs, real estate signs, yard sale signs, non-profit signs, public benefit signs, municipality-related signs, signs “advertising sale or lease of a premise,” signs for historical associations, and signs “identifying a project’s architect, owner, or contractor.” Further, each zone’s section repeated a mandate that “signs shall relate only to the premises upon which they are located, identifying the occupancy of such premises or advertising the articles or services available within said premises.”

Each of these ways in which the City regulated the content of a sign is unlawful. In keeping with guidance from the IMLA, APA, and NHMA, the posted amendments sought to instead link permitted

signage to a property's *condition*: for sale or rent, under construction, etc. We removed specific limits on political advertising and instead defer to state law (NH RSA 664:17).

4.1.4 *Overview of Current Sign Regulations Table*

Please see the attached table for a general overview of the current number, sizes, and types of signs permitted by zoning district. Dimensions and types have not been altered from previous regulations.

4.2 #2 – Limited, Content-Neutral Off-Premise Signage

If the Board has concerns with the posted April 12 amendments, staff recommends consideration of a plan to provide opportunities for off-premise temporary signs regardless of content or organization.

For example, we could utilize the traditional five locations within the public right of way, and permit a limited number of signs for a limited time period—say five signs per location, for one month at a time. Obtaining a permit for one of the five signs in a given month would be first-come, first-served, and possibly predicated on obtaining a special event permit from the City Council. However, it would have to be open to any applicant operating in the City—and any message.

4.3 #3 – More Permissive By Zone

Instead of permitting off-premise signs, the Board might consider being more permissive with temporary signage City-wide. Many of the organizations that have utilized City property for temporary signage are located in zones where temporary signs are not permitted on their property. Allowing temporary signs on-premise in all zoning districts would create an equal opportunity for advertisement. Although this is technically the fairest approach, it would do little to help businesses or organizations that have chosen locations on side streets and rural roads.

Overview of Current Sign Regulations

Chapter 170-32 Amendments Posted April 12, 2016

ZONE	NUMBER	AREA OF ALL PERMANENT SIGNS	AREA DETERMINANT	PERMANENT SIGNS			TEMPORARY SIGNS	
				Freestanding	Projecting	Wall	A-Frame	Banner
Residential								
R-40	1	16 sf max	Zone/Use	Y	Y	N	N	N
R-20	1	16 sf max	Zone/Use	Y	Y	N	N	N
R-12	1	16 sf max	Zone/Use	Y	Y	N	N	N
RM-SU	1	16 sf max	Zone/Use	Y	Y	N	N	N
RM-U	1	16 sf max	Zone/Use	Y	Y	N	N	N
HR	1	8 sf max	Zone/Use	Y	Y	N	N	N
Commercial								
B-1	1	1 sf per 3 ft. business frontage max	Business Frontage	Y, 12 sf max	Y, 8 sf max	Y, 16 sf max	N	N
B-3	2	2 sf per 1 ft. business frontage max	Business Frontage	Y, 1 sf per 1 ft. frontage max	Y, 60 sf max	Y, 1 sf per 1 ft. frontage max	Y, 32 sf max	Y, 32 sf max, one week 4x/year
B-4	2	1 sf per 1 ft. business frontage max	Business Frontage	Y, 60 sf max monument sign	N	Y	N	N
B-5	3	1 sf per 1 ft. business frontage max	Business Frontage	Y	Y, 8 sf max	Y, 1 sf per 1 ft. frontage max	Y, 32 sf max	Y, 32 sf max, one week 4x/year
Industrial								
I-1	2	1 sf per 100 sf of leased space max	Business Area	Y, 100 sf max	Y	Y	N	N
I-2	2	1 sf per 100 sf of leased space max	Business Area	Y, 100 sf max	Y	Y	N	N
I-4	2	1 sf per 1 ft. business frontage max	Business Frontage	Y, 100 sf max	Y	Y	N	N
ETP	1	1 sf per 1 ft. business frontage max	Business Frontage	Y, 60 sf max monument sign	N	Y	N	N
Mixed Use								
H	1	12 sf max	Zone/Use	Y	N	Y	N	N
LBW	1	1 sf per 3 ft. business frontage max	Business Frontage	Y, 12 sf max	Y, 8 sf max	Y, 16 sf max	N	N
O	1	12 sf max	Zone/Use	Y	N	Y	N	N
CBD	2	1 sf per 1 ft. of business frontage max	Business Frontage	N	Y, 24 sf max	Y, 40 sf max	Y, 6 sf max	N
			Design			May be doubled w/ Mill Motif		
CBD-MU	1	12 sf max	Zone/Use	N	N	Y	Y, 6 sf max	N
CBD-R	1	16 sf max	Zone/Use	N	Y, 24 sf max	Y	N	N
CBD-G	2	24 sf max	Zone/Use	Y, 4 sf max	Y, 24 sf max	Y	Y, 6 sf max	N
CBD-TOD	2	1 sf per 1 ft. of business frontage max	Business Frontage	N	Y, 24 sf max	Y, 40 sf max	Y, 6 sf max	N
			Design			May be doubled w/ Mill Motif		
CWD	2	1 sf per 1 ft. of business frontage max	Business Frontage	Y, 60 sf max	Y, 24 sf max	Y, 40 sf max	Y, 6 sf max	N
			Design			May be doubled w/ Mill Motif		

This table is intended to represent only a general overview of permitted sign area and permitted sign types. Other factors, such as location on a corner lot, may increase the amount of sign area permitted.

There are also limits on sign height, including the height of wall or projecting signs. Certain sign types may only be permitted provided a building meets a specific setback.

Additional signs are permitted during sale/rent or construction. Additional small signs are permitted at entrances, doors, parking spaces, etc.

Tenants of a multi-unit building are entitled to signage based on the size of their space. Permitted illumination types and hours vary by zoning district.

Examples

A conforming or legally nonconforming use in the R-20 is permitted 16 sf, either freestanding or projecting.

A 200'x250' building in the B-3, whose 250' length faces the street, is permitted 2 signs totalling 500 sf overall; however, a wall or freestanding sign is limited to 250 sf and projecting to 60 sf max.

A 40'x60' building in the B-5, whose 60' length faces the street, is permitted three signs totalling 60 sf overall. They choose an 8 sf projecting sign, a 24 sf freestanding sign, and a 28 sf wall sign.

A tenant leasing 2,500 sf of space in the I-2 is permitted 2 signs totalling 25 sf overall.

A 30,000 sf industrial building in the I-2 is permitted a 100 sf freestanding sign, up to 30 feet high.

Any use in the O is permitted one sign, either a wall sign or a freestanding sign, and neither may be larger than 12 sf.

A tenant with 70 feet of business frontage on the fifth floor of a building in the CBD is permitted a wall sign no larger than 40 sf. A projecting sign is not permitted at that height.

A tenant with 18 feet of business frontage on the first floor of a building in the CBD is permitted 2 signs totalling 18 sf overall. They choose a 6 sf projecting sign and use the Mill Motif for a 24 sf wall sign.

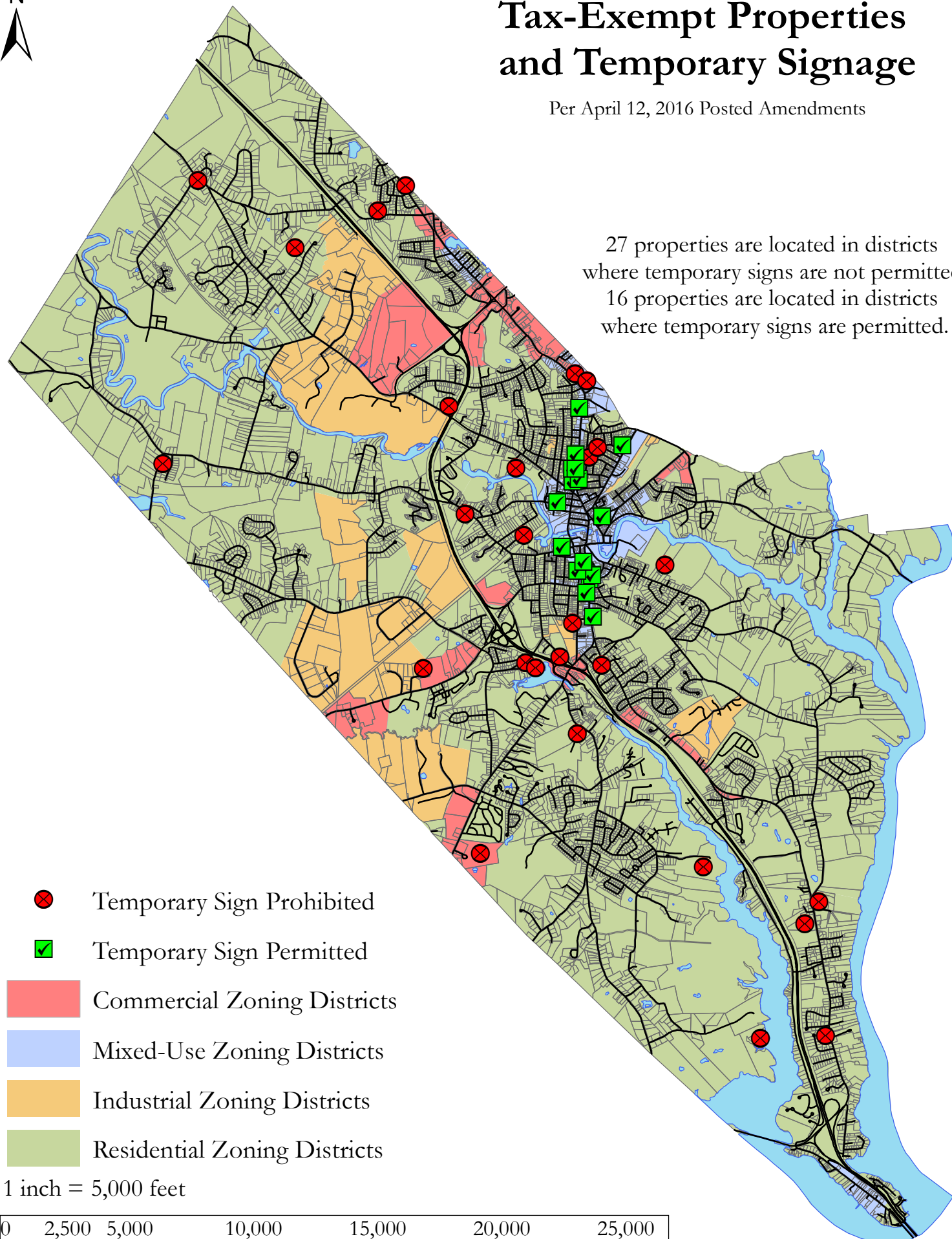
A 10,000 sf building in the CBD-G is permitted 2 signs totalling 24 sf overall. They choose a 4 sf freestanding sign and a 20 sf wall sign.



Tax-Exempt Properties and Temporary Signage

Per April 12, 2016 Posted Amendments

27 properties are located in districts
where temporary signs are not permitted.
16 properties are located in districts
where temporary signs are permitted.



ZONING **PRACTICE**

FEBRUARY 2016



AMERICAN PLANNING ASSOCIATION

➞ ISSUE NUMBER 2

PRACTICE **TEMPORARY SIGNS**



Temporary Sign Regulations in a Post-Reed America

By Wendy E. Moeller, AICP, and Alan Weinstein

Any community planner who has had the responsibility of administering and enforcing a zoning code has likely had to deal with the often complex issue of temporary signs—those signs that seemingly pop up overnight and proliferate if unchecked.

These same planners may understand the need for the signage to advertise local events, business activities, elections, and the like, but they are also charged with regulating the temporary signs to prevent their excessive use, often to preserve community character.

According to a recent survey of local governments, more than 80 percent of respondents stated that staff enforcement of their temporary sign regulations was one of their community's biggest issues, and almost a third responded that content neutrality—the regulation of signs without consideration of the content of the sign message—was an ongoing issue (Moeller 2015). A more in-depth review of the responses showed that even those communities that did not feel content neutrality was an issue had some level of content regulation in their existing sign regulations, most often the regulation of real estate or election signs. This is particularly noteworthy, given that the

regulation of a sign's content was the subject of the U.S. Supreme Court's June 2015 ruling in *Reed v. Town of Gilbert, Arizona*, a case with a number of ramifications for sign regulations across the country.

This article summarizes the ruling in *Reed* and introduces how it impacts a core aspect of temporary sign regulations, which is how we define signs. This is followed by the best practices communities can utilize to help regulate temporary signs in a post-*Reed* America.

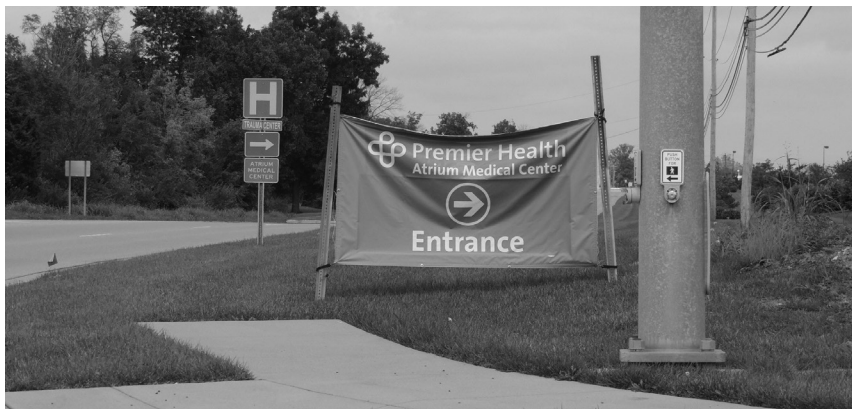
REED V. TOWN OF GILBERT, ARIZONA

The U.S. Supreme Court's decision in *Reed v. Town of Gilbert* on June 18, 2015, is, undoubtedly, the most definitive and far-reaching statement that the Court has ever made regarding the day-to-day regulation of signs. While the sign code provisions challenged in *Reed* involved only the regulation of temporary noncommercial signs, the Court's 6–3 majority

decision, written by Justice Clarence Thomas, likely applies to the regulation of permanent signs as well as temporary signs, business signs as well as residential signs, and possibly, on-site versus off-site signs.

The rules that Justice Thomas announced in *Reed* could not be more straightforward. A sign regulation that “on its face” considers the message on a sign to determine how it will be regulated is content-based. Justice Thomas emphasized that if a sign regulation is content based “on its face” it does not matter that the government did not intend to restrict speech or to favor some category of speech for benign reasons. He wrote: “In other words, an innocuous justification cannot transform a facially content-based law into one that is content-neutral.” Further, a sign regulation that is facially content neutral is also a content-based regulation if it is justified by—or that has a purpose related to—the message on a sign. For example, a code provision that allows more lawn signs between mid-August and mid-November would be facially content neutral but might be challenged as being justified by or have a purpose related to allowing “election campaign” messages.

Whether content-based “on its face” or content neutral but justified in relation to content, Justice Thomas specified that the regulation is presumed to be unconstitutional and will be invalidated unless the government can prove that the regulation is narrowly tailored to serve a compelling governmental interest. This is known as the “strict scrutiny” test and few, if any, regulations survive strict scrutiny. This may be particularly true in regard to sign regulations, given that a number of federal courts have previously ruled that aesthetics and traffic safety, the “normal” governmental



Wendy E. Moeller



Temporary signs are an important tool for businesses and residential uses alike, so it is important to have reasonable rules for temporary signs in your land-use regulations.



Wendy E. Moeller

➡ Temporary signs with noncommercial speech tend to be more of a presence during election times. Rules for these signs can vary greatly by individual state rules and case law.

interests supporting sign regulations, are not “compelling interests.”

Justice Thomas’s opinion calls into question almost every sign code in this country: Few, if any, codes have no content-based provisions under the rules announced in *Reed*. For example, almost all codes contain content-based exemptions from permit requirements for house nameplates, real estate signs, political or election signs, garage sale signs, “holiday displays,” etc. Almost all codes also categorize temporary signs by content, and then regulate them differently. For example, a real estate sign can be bigger and remain longer than a garage sale sign. Or the code allows the display of more election signs than “ideological” or “personal” signs, but the election signs must be removed by a certain number of days after the election, while the personal or ideological signs can remain indefinitely.

Many sign codes also have content-based provisions for permanent signs. Because the *Reed* rules consider “speaker-based” provisions to be content based, differing treatment of signs for “educational uses” versus “institutional uses” versus “religious institutions” could be subject to strict scrutiny. The strict scrutiny test could also apply for differing treatment of signs for “gas stations” versus “banks” versus “movie theaters.”

Reed does not, however, cast doubt on the content-neutral “time, place, or manner” regulations that are the mainstay of almost all sign codes, provided they are not justified by—and do not have a purpose related to—the

Justice Thomas’s opinion calls into question almost every sign code in this country: Few, if any, codes have no content-based provisions under the rules announced in *Reed*.

message on the sign. Justice Thomas acknowledged that point, noting that the code at issue in *Reed* “regulates many aspects of signs that have nothing to do with a sign’s message: size, building materials, lighting, moving parts and portability.” Justice Alito’s concurring opinion, joined by Justices Kennedy and Sotomayor, went further.

While disclaiming he was providing “anything like a comprehensive list,” Justice Alito noted “some rules that would not be content based.” These included rules regulating the size and location of signs, including distinguishing between building and freestanding signs; “distinguishing between lighted and unlighted signs”; “distinguishing between signs



Wendy E. Moeller

➡ Prior to *Reed*, it was common to see standards for development or construction signs, but this can be an example of a content-based regulation if the sign is defined as relating to a development or construction project.

with fixed messages and electronic signs with messages that change”; distinguishing “between the placement of signs on private and public property” and “between the placement of signs on commercial and residential property”; and rules “restricting the total number of signs allowed per mile of roadway.”

But Justice Alito also approved of two rules that seem at odds with Justice Thomas’s “on its face” language. Alito claimed that rules “distinguishing between on-premises and off-premises signs” and rules “imposing time restrictions on signs advertising a one-time event” would be content neutral. But rules regarding “signs advertising a one-time event” clearly are facially content based, as Justice Kagan noted in her opinion concurring in the judgment, and the same claim could be made regarding the on-site/off-site distinction. Further, neither Justice Thomas nor Justice Alito discussed how courts should treat codes that distinguish between commercial and noncommercial signs, a point raised by Justice Breyer in his concurring opinion.

In fact, the lower federal courts are already dealing with claims that codes that differentiate between commercial and noncommercial signs or that regulate on-site and off-site signs differently are content based and

subject to strict scrutiny. To date, only one federal district court has accepted the claim that the on-site/off-site distinction is content based under *Reed*, with several other courts rejecting that claim. No decision to date has extended the *Reed* decision to include the regulatory distinction between signs bearing commercial versus noncommercial messages.

Keep in mind, however, that even content-neutral “time, place, or manner” sign regulations are subject to intermediate judicial scrutiny rather than the deferential “rational basis” scrutiny applied to regulations that do not implicate constitutional rights such as freedom of expression or religion. Intermediate scrutiny requires that a government demonstrate that a sign regulation is narrowly tailored to serve a substantial government interest and leaves “ample alternative avenues of communication.” Because intermediate scrutiny requires only a “substantial,” rather than a “compelling,” government interest, courts are more likely to find that aesthetics and traffic safety meet that standard. That said, courts have struck down a number of content-neutral sign code provisions because the regulations were not “narrowly tailored” to achieve their claimed aesthetic or safety goals.

REGULATORY BEST PRACTICES

There are a number of comprehensive sign regulations that have been crafted over the years that can serve as a good starting point when considering an update to your own sign regulations. In this post-*Reed* time, many communities are rethinking their approach to signs, and over the course of the next year, we are likely to see new models that better respond to the direction of the Supreme Court. The problem with temporary signs is they are a small, but integral, part of overall sign regulations. This, along with the fact that there are variable state rules related to certain temporary signs (e.g., election signs), makes it difficult to create a model temporary sign code that can stand on its own and be seamlessly added to a community’s sign regulation. However, there are a number of general best practices for the regulation of temporary signs in light of *Reed*.

Distinguish Between Temporary Sign and Temporary Message

Few sign regulations make a clear distinction between a temporary message and a temporary sign. A temporary sign is where the entire sign structure is either fully portable or



Wendy E. Moeller

➡ Communities can still regulate the types of signs allowed (e.g., A-frame signs or blade signs), setbacks, size, and other structure type requirements.

In this post-*Reed* time, many communities are rethinking their approach to signs, and over the course of the next year, we are likely to see new models that better respond to the direction of the Supreme Court.

is not intended to be permanently installed. A temporary message is where the sign structure itself is permanent but the message may be temporary. The most common types of temporary messages we see in communities are electronic message centers and manual reader boards. In such cases, the sign should be regulated as a permanent structure but the

community might control how often the message may change. While these examples seem straightforward, the line between the two can be a bit blurred. An example of this situation is when business owners or communities hang banners or other signs on light poles or similar structures. To address this issue, the community should consider the supporting structure and whether it is designed in a manner to accommodate the message, even though it may be changed out through the year. A community’s banner signs attached to light poles are an excellent example where the light poles are designed with permanent fixtures on which the banners are hung. In these instances, the community should regulate the light pole, and any related fixtures that support the message, as a permanent structure with allowable temporary messages, rather than regulating it as temporary sign.

Think of the Bigger Picture

Reed may have related to an issue with a temporary sign, but the ruling has implications for all sign regulations. Generally speaking, it is impractical to completely separate out all the rules that apply to temporary signs as a distinct set of regulations. Consequently, when you consider overhauling how you regulate temporary signs, it is important to step back and take a comprehensive look at the overall sign code. First, given the implications of *Reed*, communities should take a look at all of their sign regulations to see where they may be regulating content, and consider if they are making a large number of exemptions to accommodate various types of signs. Second, one of the major driving forces of your sign regulations should be the purpose statement that sets clear direction for how and why a community regulates signs. This purpose statement needs to apply to all the different sign types, not just to temporary signs. Furthermore, your community might consider that if one of the purposes of the sign regulations is to promote businesses but limit temporary signs, then perhaps a better approach is to consider allowing more temporary messages on a permanent sign. Finally, evaluating your sign regulations as a whole will help you identify where you might have conflicts, such as allowing for larger temporary signs over permanent signs or making various exceptions based on content or permanency.

Consider the Sign’s Location

There is a long list of temporary sign types,

GLOSSARY

The following is a sampling of some of the most common content-neutral temporary sign types.

A-Frame Signs (aka Sandwich Board Signs or Sidewalk Signs)

A freestanding sign ordinarily in the shape of an “A” or some variation thereof, which is readily moveable and not permanently attached to the ground or any structure. See also the definition of *T-frame signs*.

Air-Activated Graphics

A sign, all or any part of, which is designed to be moved by action of forced air so as to make the sign appear to be animated or otherwise have motion.

Balloon Signs (aka Inflatable Devices)

A sign that is an air-inflated object, which may be of various shapes, made of flexible fabric, resting on the ground or a structure and equipped with a portable blower motor that provides a constant flow of air into the device. Balloon signs are restrained, attached, or held in place by a cord, rope, cable, or similar method. See also the definition for air-activated graphics.

Banner Signs

A temporary sign composed of cloth, canvas, plastic, fabric, or similar lightweight, nonrigid material that can be mounted to a structure with cord, rope, cable, or a similar method or that may be supported by stakes in the ground.

Blade Sign (aka Feather Signs, Teardrop Signs, and Flag Signs)

A temporary sign constructed of cloth, canvas, plastic fabric, or similar lightweight, nonrigid material and supported by a single vertical pole mounted into the ground or on a portable structure.

Freestanding/Yard Signs

Any permanent or temporary sign placed on the ground or attached to a supporting structure, posts, or poles, that is not attached to any building.

Pennants

A triangular or irregular piece of fabric or other material, whether or not containing a message of any kind, commonly attached by strings or strands, or supported on small poles, intended to flap in the wind.

People Signs (aka Human Mascots, Sign Spinners, and Human Signs)

A person, live or simulated, in the public right-of-way who is attired or decorated with insignia, images, costumes, masks, or other symbols that display commercial messages with the purpose of drawing attention to or advertising for an on-premise activity. Such person may or may not be holding a sign. [Note: There is significant debate about whether a people sign is really a sign or whether

they can be regulated by zoning, especially in light of *Reed*. Many communities still regulate these signs, but this requires special consideration.]

Portable Message Center Signs

A sign not permanently affixed to the ground, building, or other structure, which may be moved from place to place, including, but not limited to, signs designed to be transported by means of wheels. Such signs may include changeable copy.

Snipe Signs (aka Bandit Signs)

A temporary sign illegally tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, fences, or other objects.

T-Frame Signs

A freestanding sign ordinarily in the shape of an upside down “T” or some variation thereof, which is readily moveable and not permanently attached to the ground or any structure. See also the definition for A-frame signs.

Vehicle Signs

Any sign permanently or temporarily attached to or placed on a vehicle or trailer in any manner so that the sign is used primarily as a stationary sign.

and each community has its own preferences for what types of signs it wants to allow. When determining what sign types to allow in your community, be sure to consider the character of the area or zoning district where you are allowing the signs. In downtown and pedestrian-focused areas, banners and sidewalk signs are far more prevalent; larger temporary signs, such as yard signs, blade signs, and banners, are more common along high-traffic areas and in more suburban or rural areas. When it comes to historic districts or other unique areas, it is not that uncommon to see a complete prohibi-

tion of temporary signs other than those that might be posted in a window or a banner attached to a building. With an increasing focus on regulating the character of land use, such as in form-based codes, there is more opportunity to write sign regulations specific to the form of development.

Specify Temporary Sign Allowances

It is not realistic or advisable to recommend that a community simply allow “X” amount of sign area and let a property owner determine how much of that area should be utilized for

permanent or temporary signs. It may look like the easiest of solutions, but it ends up being an administrative nightmare for staff. Every time the owner increases or decreases the amount of temporary signs, there is a possibility of creating nonconforming sign issues or, more likely, eliminates all possibility of temporary signs if the owner spends the allowance completely on permanent signs. The latter issue becomes a problem when there is a legitimate need for a temporary sign in a situation where, for example, the property is for sale. Most communities do not want to take an ex-

treme approach of even appearing to prohibit all temporary signs, which they would have to do in the case of a business owner using their full sign allocation for permanent signs. A more reasonable solution is to establish a certain sign area allowance for permanent signs and a separate allowance for temporary signs. The community can then specify what types and numbers of signs are allowed, based on structure type and not content, along with any specific regulations for the individual sign types.

As far as an allowance for temporary signs goes, this is going to vary based on the individual vision and goals of the community. Some communities may want to be very permissive in the amount of signs but hold strict to the types of signs allowed, while others might restrict the amount of sign area permitted but allow for the signs to be posted for longer periods of time. One approach to consider is allowing a limited amount of temporary commercial signage that could be allowed year round but strictly control the permissible types of signs (e.g., banners and yard signs). This allowance will accommodate signs used for real estate, garage sales, and other commercial activities that may be necessary for longer stretches of time or that are often exempted because of their prevalence. Keep in mind, the allowances and types of signs may vary based on the zoning district or neighborhood. This provision could then be supplemented by allowing for some additional temporary signage for a specified number of

days and a set number of occurrences per year. This supplemental signage might provide for other types of temporary signage (e.g., balloon signs, portable signs, additional yard signs, etc.), but the time limits will keep them from becoming permanent signs. In all instances, the community should provide basic requirements for each type of sign, including setbacks, maximum heights, maximum numbers, and separation distances.

Consider Allowing Off-Premise Temporary Signs

Many localities prohibit all off-premise signs. These prohibitions are typically related to a desire to prohibit or at least limit billboard signs. The problem with such prohibitions is that temporary signs often contain off-premise content, such as the advertisement of community events or even certain directional signs. It should be clear at this point that regulating a sign by its content (e.g., real estate signs, directional signs, etc.) is problematic because of *Reed*, but, as noted in the discussion above, there is still a question of whether the ruling also prevents communities from making the distinction between on-premise and off-premise signs.

Consequently, communities are starting to consider whether it is worth the risk to make such a distinction. In order to be as content neutral as possible, some localities are focusing more on the type and size of sign to control

where and how a billboard-style sign might be allowed. Ultimately, a community should consider how people are using temporary signs and determine whether it is appropriate or not to make an on- versus off-premise distinction, especially related to temporary signs. As with any regulation, there is a balancing act of the risk of being challenged versus the benefit of the requirement.

Leave Room for Interpretation

If someone proposes a new type of sign that your regulations may not clearly address, incorporate some language that allows staff to determine if the new sign type is similar in nature to a sign you do regulate, and treat the new sign in the same manner. An example of this is treating a temporary adhesive wall sign in the same manner as a banner that can be attached to a facade. If that doesn't address the sign, the community might have to consider a text amendment to incorporate the new sign type specifically.

ADMINISTRATIVE BEST PRACTICES

The administration of sign regulations is quite often the bane of a planner's existence. A lot of the frustration is often focused on temporary signs and whether to require a permit, establish deadlines, and then enforce those deadlines and any sign-specific regulations. As mentioned earlier, administration and enforcement continues to be a major issue for the vast majority of communities surveyed as part of the research into these best practices. To combat these issues, communities are beginning to take a multipronged approach that focuses on the use of technology, ease of enforcement, and public outreach.

Take Advantage of Technology

Communities can use readily available software to help aid permitting and enforcement of temporary sign regulations, especially deadlines for sign removal. For smaller communities, this might mean using online or free calendar applications that will alert staff to when they need to inspect to determine if a sign has been removed. For larger communities, there are numerous permitting software packages that accommodate online permitting applications that require little to no administrative time. These same packages can also alert staff to specific issues, such as deadlines or application requests that exceed signage allowances for a particular site.



While it is necessary to avoid regulating the content of a sign, it is still possible to control temporary signs by the type of structure, such as this portable message center.



Seasonal businesses rely heavily on temporary signage that may be in place for extended periods of time.

Enforce Fairly and Consistently

Given that few localities have staff focused exclusively on proactively identifying code violations, most zoning enforcement is complaint driven. To counter this issue, communities should always consider what their enforcement capabilities are when writing any zoning requirement, especially as it relates to signs. Consider whether there are other staff members, outside the planning and zoning department, who could be trained and authorized to assist in enforcement, if necessary. Finally, make sure that your regulations can be fairly and consistently enforced. This can reduce the potential for conflict associated with selective enforcement, and it also tends to lead to better compliance because temporary sign users become increasingly aware of the implications of overstepping the requirements.

Educate Residents and Business Owners

Communities are finding success with administration and enforcement by proactively reaching out to businesses and residents with educational brochures or workshops related to sign regulations to ensure a clear understand-

ing of expectations and requirements. Not all business owners are aware that communities have temporary sign regulations and can risk losing money by investing in the wrong type of sign. Proactive outreach activities allow the communities to educate those owners and possibly save them time.

CONCLUSIONS

Temporary signs have long been a difficult aspect of zoning regulations. Communities want to reasonably control them, but the administrative and enforcement aspects of these ever-changing structures can pose problems, especially when the content comes into play. The *Reed* case provided a response to one element of sign regulations but still leaves some questions. At the same time, the case has also provided communities a very good reason for reevaluating how and why they regulate signs and what changes need to be made to focus on the structure rather than the content.

This article is based in part on the Signage Foundation, Inc. report Best Practices in Regulating Temporary Signs.

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Vol. 33, No. 2

Zoning Practice is a monthly publication of the American Planning Association. Subscriptions are available for \$95 (U.S.) and \$120 (foreign). James M. Drinan, JD, Executive Director; David Rouse, AICP, Managing Director of Research and Advisory Services. *Zoning Practice* (ISSN 1548-0135) is produced at APA. Jim Schwab, AICP, and David Morley, AICP, Editors; Julie Von Bergen, Senior Editor.

Missing and damaged print issues: Contact Customer Service, American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601 (312-431-9100 or customerservice@planning.org) within 90 days of the publication date. Include the name of the publication, year, volume and issue number or month, and your name, mailing address, and membership number if applicable.

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Printed on recycled paper, including 50-70% recycled fiber and 10% postconsumer waste.

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AMERICAN PLANNING ASSOCIATION

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ARE YOUR SIGN REGULATIONS
CONTENT NEUTRAL?

2



Municipal Sign Ordinances after *Reed v. Town of Gilbert*



Because the Town of Gilbert sign code placed stricter limits on temporary events signs but more freely allowed ideological and political signs—despite the fact that all three sign types have the same effect on traffic safety and community aesthetics—the code failed the narrow tailoring requirement of strict scrutiny.

As a result of *Reed*, a sign code that makes *any* distinctions based on the message of the speech is content based. Only after determining whether a sign code is neutral on its face would a court inquire as to whether the law is neutral in its justification.

Municipalities should review their sign codes carefully, with an eye toward whether the code is truly content neutral. If the sign code contains some potential areas of content bias—for example, if the code contains different regulations for political signs, construction signs, real estate signs, or others—consider amending the code to remove these distinctions.

In cases where a sign code update might take time, local planners and lawyers should coach enforcement staff *not to enforce distinctions* which might cause problems.

Check to be sure your sign code has all of the “required” elements of a sign code.

- The code should contain a purpose statement that, at the very minimum, references traffic safety and aesthetics as purposes for sign regulation.
- The code should contain a message substitution clause that allows the copy on any sign to be substituted with noncommercial copy.
- The code should contain a severability clause to increase the likelihood that the code will be upheld in litigation, even if certain provisions of the code are not upheld.
- In preparing the purpose statement, it is always best to link regulatory purposes to data, both quantitative and qualitative. For example, linking a regulatory purpose statement to goals of the local master plan, such as community beautification, increases the likelihood that the code will survive a challenge.
- If traffic safety is one of the purposes of the sign code (it should be), consult studies on signage and traffic safety to draw the connection between sign clutter and vehicle accidents.

In conducting the review of the sign code recommended above, planners and lawyers should look to whether the code contains any of the sign categories that most frequently lead to litigation. For example, if the code creates categories for political signs, ideological or religious signs, real estate signs, construction signs, temporary event signs, or even holiday lights, it is likely that the code is at greater risk of legal challenge. As a general rule, the more complicated a sign code is—i.e., the more categories of signs the code has—the higher the risk of a legal challenge.

Sign Code Guidance from the Court (Alito’s Concurrence):

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.

The requirements of your ordinance may distinguish among signs based on any content-neutral criteria. Here are some specific standards the Court might uphold:

- Rules regulating the size of signs.
- Rules regulating the locations in which signs may be freestanding signs and those attached to buildings.
- Rules distinguishing between lighted and unlighted signs.
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
- 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.
- Rules distinguishing between on-premises and off-premises signs.
- Rules restricting the total number of signs allowed per mile of roadway.
- Rules imposing time restrictions on signs advertising a one-time event.

In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.

Possible Sign Code Changes:

Increase the overall allotment of temporary signs to accommodate the maximum demand for such signage at any one time, and allow that amount of temporary signs. A regulation that singles out off-premises signs that does not apply to a particular topic, idea, or viewpoint is probably valid because it regulates the locations of commercial signs generally, without imposing special burdens on any particular speaker or class of speakers.

Define government signs and Traffic Control Devices as signs, but specifically authorize them in all districts. **Provide a base allotment of signs, and allow additional signs in relation to activities or events.** Every property has a designated amount of square feet of signage that they can use for any temporary signs on their property, year round. For example: [x] square feet per parcel, in a residentially-zoned area, with a limit on the size of signs and perhaps with spacing of signs from one another. All properties get additional noncommercial signs at certain times, such as before an election or tied to issuance of special event permit. **They key is to tie the additional sign allowance to the use of the property,** rather than the content of the sign. Consider the following:

- Allow an extra sign on property that is currently for sale or rent, or within the two weeks following issuance of a new occupational license (real estate or grand opening signs).
- Allow an extra sign of the proper dimensions for a lot that includes a drive-through window, or a gas station, or a theater (drive thru, gas station price, and theater signs).
- Allowing additional sign when special event permit is active for property (special event signs). Key: not requiring that the additional signage be used for the purpose the sign opportunity is designed for, or to communicate only the content related to that opportunity.
- Grant an exemption allowing an extra sign on property that is currently for sale or rent.
- Grant exemptions allowing an extra sign (<10 sq. ft., < 48 inches in height, and <six feet from a curb cut), for a lot that includes a drive-through window.

Every parcel shall be entitled to one sign <36 sq. inches in surface area to be placed in any of the following locations: On the front of every building, residence, or structure; on each side of an authorized United States Postal Service mailbox; on one post which measures no more than 48 inches in height and 4 inches in width.

Provide a content-neutral application process: Citizens can apply, by postcard or perhaps online, for seven-day sign permits, and receive a receipt and a sticker to put on the sign that bears a date seven days after issuance, and the municipality's name. The sticker must be put on the sign so that enforcement officers can determine whether it's expired. Because the expiration date is tied to the date of issuance, there is no risk of content-discrimination. The sticker itself would be considered government speech.