A GUIDE FOR DRAFTING A

SIGN CODE

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INTRODUCTION

Sign regulation is a challenging area for local governments. Community interests in effective communication, safety, and aesthetics must be addressed, but always with respect for individual rights and interests safeguarded by the U.S. and Oregon Constitutions. CIS is dedicated to helping local governments manage the risks associated with carrying out their government functions. We have supported this project as a tool to assist in the area of sign regulation.

This Guide for Drafting a Sign Code was created by a group of experienced practicing city attorneys. City County Insurance Services (CIS) would like to acknowledge and thank the following attorneys who have worked diligently on this project: Evan Boone, Candace Haines, Alan Rappleyea, Mark Rauch, Rich Rodeman, Bob Shields, and Randall Tosh. Each attorney participated in the project with the permission of his or her client city and the cooperation of those cities is gratefully acknowledged. However, some initial disclaimers are in order.

The final product is general in nature, represents the collective effort of the involved attorneys, and has not been endorsed any city.

CIS and the city attorneys involved in preparing this Guide hope that our efforts will be useful to city officials; however this product does not constitute legal advice and should not be used without consulting your city's own legal counsel.

We specifically did not undertake to draft a "model" sign code. Sign regulations reflect the character and values of the local community, and only individual cities can make the necessary policy decisions to determine which regulations are appropriate for that city.

This Guide strives first to familiarize the reader with the overall legal issues presented when drafting a sign code, and then, using a recently adopted sign code to illustrate how the legal issues would be reflected in code text. The Committee has also provided commentary, and at times some alternative text, to aid the drafter. Finally, following the sign code in this Guide is an appendix of material on tips and issues involved in sign code drafting.

The drafter should consider the sign code in this Guide as a starting point for discussion and drafting, rather than an "off-the-shelf" finished product. The drafter may wish to review sign codes from other jurisdictions, to see how other jurisdictions have addressed the issues that arise in defining and implementing a sign code; many jurisdictions have their sign code available online: *Hillsboro (Chapter 15.20)*, *Lake Oswego*, *Portland*, *League of Oregon Cities Web Directory*. Additionally, there are other sources of information about signs generally which may be of assistance, particularly relating to "cutting edge" sign technologies and the impact upon communities: Scenic America

Finally – or perhaps firstly-- in preparing a sign code, the importance of local elected and appointed policy makers, with adequate and meaningful public participation, cannot be overemphasized.

LEGAL LANDSCAPE

First Amendment

Sign regulation is a challenging area for cities in every state because of the constitutional guarantees contained in the First Amendment. The Fourteenth Amendment makes First Amendment constitutional guarantees enforceable against all state and local governments. Consequently, all city sign regulations must comply with the First Amendment because signs are a constitutionally protected form of expression.

First Amendment analysis was recently applied to an Oregon sign code in *G.K. Ltd. Travel v City of Lake Oswego*, 436 F3d 1064, *cert. den.* ___ U.S. ___, 127 S. Ct. 156, 166 L. Ed. 2d 38 (2006). G.K. Travel purchased a travel business in Lake Oswego and changed the text on a pole sign advertising the business. The City told G.K. Travel that changing the copy on its pole sign the sign had to conform to the sign code, which prohibited pole signs. G.K. Travel was denied a permit and a variance. After an unsuccessfully appeal, G.K. Travel sued the City seeking to have its sign code declared unconstitutional.

The U. S. District Court ruled that a small part of the Sign Code was content-based but upheld the remainder of the Lake Oswego Sign Code.. The Ninth Circuit ruled that the City could impose reasonable time, place, and manner restrictions on protected speech if the restrictions: (1) are justified without reference to content, (2) are narrowly tailored to serve a significant government interest, and (3) where ample alternative channels for communication of the information are left open.

First, the pole sign restriction, as applied to G.K. Travel, was constitutional. It was not a content-based regulation of speech and it was narrowly tailored to achieve the City's significant interest in aesthetics and traffic safety. The code left open ample alternative means of communicating G.K. Travel's advertising message, including other kinds of signs and other types of communication.

Second, the sign code itself was content-neutral. The permit exemptions for public signs, hospital emergency services, legal notices, railroad signs, and danger signs were exemptions granted to certain speakers, not to particular content. The permit exemption for temporary signs in residential zones was content-neutral in that it was event based and imposed only temporal and size restrictions. The nonconforming provision only required the City to determine whether the text of a sign had changed, not to evaluate its substantive message. The design review provision, allowing sign review for "clarity and readability" was content-neutral, as applied by the City, because the City limited "clarity and readability" to legibility and not intelligibility. The sign code was narrowly tailored to achieve significant government interests and left ample alternative channels open for communication.

Third, the temporary sign in residential zones provisions did not illegally favor commercial over non-commercial messages or regulate commercial messages on the basis of content. Certain signs were exempted from a permit requirement during certain event-based time periods, without reference to content.

Fourth, the permitting requirement in the sign code did not constitute a prior restraint on speech and was constitutional. Reasonably specific and objective standards limited the discretion exercised by the permitting authority. Although the design review criteria required reasonable discretion to be exercised by the permitting authority, that alone did not make the sign code an unconstitutional prior restraint.

Finally in GK Travel, the sign code was not unconstitutionally vague. It clearly described what conduct was permitted and provided definite sign size and type requirements. It was clear what the sign code prohibited and this clarity avoided fear of arbitrary and discriminatory enforcement. The court refused to invalidate the entire sign code because of the reasonable subjectivity of the design review process and would not apply the vagueness doctrine to prevent the City from addressing problems that were difficult to define in objective terms.

The most critical legal issue raised by a sign code is whether it regulates signs based upon their content. Under the U.S. Constitution, courts evaluate content-based regulations under a demanding test known as strict scrutiny. Under the strict scrutiny test, a content-based sign regulation will be upheld only if it is justified by a compelling governmental interest, is narrowly-tailored to achieve that interest, and is the least restrictive means for achieving that interest.

Additional First Amendment challenges frequently include the adequacy of standards, and the permit review process. There must be adequate standards, rather than licensing official enjoying "broad discretion" whether to grant or deny permit (along with effective judicial review). Thomas v. Chicago Park District, 534 US 316, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002). Standards are to be "narrowly drawn, reasonable and definite standards." Café Erotica of Florida, Inc. v St. Johns County, Florida, 360 F. 3d 1274 (11th Cir 2004) ("not in the public interest" or reference to grounds in the Building Code, when there are no grounds for denial existing in the Building Code impermissible." Desert Outdoor Advertising, Inc. v. City of Moreno Valley, 103 F.3d 814 (9th Cir. 1996). ("harmful effect upon the health or welfare of the general public, … and will not be detrimental to the aesthetic quality of the community or the surrounding land uses." G.K. Ltd Travel v. City of Lake Oswego, 436 F3d 1064 *cert. den.*, ___ U.S. ___, 127 S. Ct. 156, 166 L. Ed. 2d 38 (2006) (Standards must be capable of judicial review).

The presence of judicial review is not a substitute for "concrete standards" to guide decision maker's discretion. Granite State Outdoor Advertising, Inc. v. City of Clearwater, 351 F3d 1112 (11th Cir. 2003), *rehearing denied*, 97 Fed. Appx. 908 (Table), 11th Cir. 2004), *cert denied,* 543 U.S. 813, 125 S. Ct. 48, 160 L. Ed. 2d 17 (2004).

Oregon Constitution

In Oregon, the state constitution is more restrictive of sign regulation than the federal constitution. Some sign regulation allowed under the First Amendment is not permitted under Article I, Section 8 of the Oregon Constitution. For instance, the "off premises" v. "on premises" distinction, acceptable under the First Amendment, violates the Oregon Constitution. Outdoor Media Dimensions, Inc. v. Dept. of Transp, 340 Or. 275, 132 P.3d 5 (2006). Also, under the First Amendment, there is a distinction between commercial and non-commercial speech and greater regulation of commercial speech is allowed. The Oregon Constitution does not permit this. Ackerley Communications, Inc. v. Multnomah County., 72 Or. App. 617, 696 P.2d 1140 (1985), *rev. dismissed*, 303 Or. 165, 734 P.2d 885 (1987).

This does not mean that the Oregon Constitution prohibits any regulations of signs. In Outdoor Media, the Oregon Supreme Court stated that "Article I, Section 8 does not bar every content-neutral regulation of the time, place and manner of speech." Sign regulations must be reasonable and make no reference to the content of the sign. However, under Article I, Section 8, the appellate courts have set no specific standards or limits as to what are acceptable "time, space and manner" regulations.

Finally, under Article I, Section 8, any regulation that proscribes one or more modes of expression as a means to an end (i.e., prohibiting certain types of signs for reasons other than censorship, such as aesthetics or safety) is subject to "closer scrutiny" in order to determine "whether it appears to reach privileged communication or whether it can be interpreted to avoid such overbreadth." State v. Robertson, 293 Or 402, 649 P2d 569 (1983).

"Facial" and "As Applied" Challenges

In a "facial challenge," the person challenging a statute alleges that the statute is always, under all circumstances, unconstitutional. This type of challenge would be asserted where a sign regulation, on its face, is not content-neutral.

In contrast, an "as applied" challenge seeks relief from the application of a facially valid statute or ordinance because the regulation has been applied in an illegal or impermissible manner. Thus, even where care is taken to pass content-neutral sign regulations, it is important during implementation and enforcement to base all decisions on uniform rules and procedures. Otherwise, the application of the regulations will be challenged.

Land Use Regulation or Not?

Is the Sign Code intended to be a "Land Use Regulation" of the city? And what difference will it make if it is a land use regulation?

The Sign Code is a "land use regulation" if it implements a comprehensive plan provision. ORS 197.015(12). Ackerley Communications, Inc., v. City of Portland, 12 Or LUBA 410 (1984). Many jurisdictions adopt sign codes for, in part, aesthetic reasons. If aesthetic impacts of signage are addressed in the city's comprehensive plan, the Sign Code could be found to be a "land use regulation." See the following cases where the consideration of a sign permit as a land use decision was not challenged: Haug v. City of Newberg, 42 Or LUBA 411 (2002); Cotter v. City of Portland, 46 Or LUBA 612 (2004); Media Art v. City of Tigard, 46 Or LUBA 61 (2003)(Billboard challenge).

There may be other reasons why a municipality may want to leave a sign code inside the zoning ordinances. For instance, it may want to use the long established procedures for decision making and appeals that are found in zoning codes. It may not want to adopt special findings to support the aesthetics of a sign code and instead rely upon previously adopted policies in comprehensive plans. Additionally, the adoption of or amendment to sign codes are usually lengthy and contentious proceedings, there may be some benefit to using an city's experienced planning commission or sign code review commission to conduct these hearings.

The determination of whether the Sign Code is a "land use decision" will affect the procedural requirements of public notice, decision, and appeal. If the jurisdiction adopts the Sign Code not as a part of its land use regulation, then findings in the adopting ordinance are recommended that it is not being adopted as part of the jurisdiction's land use regulations.

Measure 37 (ORS 197.352).

Measure 37 provides compensation for the reduction in value to private property owners caused by the imposition of "land use regulations." ORS 197.352 These are defined as "local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances." ORS 197.352(11)(B)(iii).

Many cities will have their sign code regulations as part of their zoning ordinances but this does not have to be. Regulating signage can be entirely separate from the regulation of land uses. The statute provides "land use regulation means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan." ORS 197.015(12). Thus, the sign code that does not establish zoning, clearly is not a land division ordinance and any provisions relating to signs can be removed from the comprehensive plan. No statute or rule mandates that they be part of the comprehensive planning system. Sign codes can fall outside of Measure 37.

PROCESS FOR ADOPTION

While it would be going too far to say that it's all about process, it probably would not be overstating things to say that the adoption process used for your jurisdiction's sign code will be immensely important. When you consider that the City of Hillsboro worked through their code for ten years, you begin to get the idea.

The decision in *G.K. Travel* practically sets out a blueprint for process—a review of that case would be *very helpful* to you as you begin. The Court liked (and, fortunately for us, commented at length upon) what they saw of Lake Oswego's adoption procedures.

The Court noted favorably that, in regulating all the signs in the City, the ordinance was aimed at reducing visual clutter, retaining the look of the City and maintaining traffic safety. The Court was also apparently impressed that the Lake Oswego Planning Commission held public hearings, looked to the experiences of other cities to see what was and was not successful, and consulted studies, while the City Council not only considered but incorporated many of the recommendations from businesses.

The G.K. Travel plaintiffs argued that the City didn't establish that it had a problem with visual clutter or traffic safety and that there was no evidence that the sign restrictions would help with those issues in any event. The Court, in finding these arguments had no credibility, stated that they generally defer to the body which has passed the law when considering whether that law advanced the governmental purpose. The Lake Oswego Sign Code, including the pole sign restriction, was the result of much legislative deliberation, a dynamic dialogue with the City's residents and businesses and extensive hearings; these conversations, along with Council reliance on the experience of other cities, produced strong evidence of the need for sign restrictions and the form these restrictions should take. This evidence provided the City with legitimate and relevant bases for advancing its Sign Code and restricting the availability of pole signs.

Lessons learned?

- Document, document, document. Be sure that every source of information considered is listed in minutes, staff reports, or the like, whether that information is a nation-wide study, front line experiences of other cities, or citizens who want to have their say. And preserve that documentation!

- Notify everybody. The greater the community involvement, the better. Provide notice to everybody you can think of who will have even the slightest interest, and provide them with a good opportunity for input.

- Make the process as public as you possibly can. Involve everyone. Get every person or business with any interests in this matter at all to testify. In McMinnville, their second sign ordinance was the result of a year and half of study of the issues by a citizen

committee. The draft has been (and will be) forwarded to various civic organizations. McMinnville anticipates gathering input for months yet, before bringing the draft to the Planning Commission.

And while this is not really a process issue, it is important enough to restate here: draft a strong purpose statement. The Court in *G.K. Travel* commented very favorably on Lake Oswego's purpose statement and returned to it over and over in their considerations. Address constitutional issues and goals. Be sure that the statement is "personal" to your city's needs.

Drafting Notes

This Code is based largely – *but not exclusively* – on the 2006 Hillsboro Sign Code. The Committee made changes to the Hillsboro Sign Code. The Committee elected to use the Hillsboro version as a template because it was adopted just prior to the Committee's work. The Committee was aided in its drafting of the template Sign Code by former Hillsboro City Attorney Tim Sercombe. CIS retained Mr. Sercombe to defend a multi-pronged challenge to the Lake Oswego Sign Code in *G.K. Travel.* Accordingly the drafting of the Hillsboro Sign Code was able to benefit from the Ninth Circuit's opinion.

Any sign code needs to be tailored to the jurisdiction, as each jurisdiction's desire to regulate signage varies, both in terms of scope and quantity. The Committee did not intend to offer the specifics of this sign code as a model, "off the shelf" sign code. How many signs to allow, what type of signs to allow, whether to have a "comprehensive sign program," what the sign districts should be called, and what signs are permitted in specific zones are examples of issues that each jurisdiction must consider. Each section arguably is a policy decision to be made by the jurisdiction.

The Committee struggled with how much of the Hillsboro Sign Code should be removed, to present its framework as a template, and how much to leave, in order to give sufficient detail for the drafter to visualize how detailed a sign code can, or should, be. References to specific requirements of the Hillsboro Sign Code have been retained, therefore, to provide assistance to the drafter if the jurisdiction elects to include similar specific provisions, e.g., comprehensive sign program. The Committee therefore offers this sign code as a starting point for a jurisdiction's consideration.

In some cases, the committee has noted optional text by the use of [**brackets**] to indicate text that should be customized.

The drafter should carefully consider the use of term "sign" v. "signs" in the regulatory sections. "Signs" means that an unlimited number of signs are authorized; a "sign" means one sign. The jurisdiction may wish to consider a specific number of signs.

A sign code may be a land use regulation, depending on whether it implements part of the jurisdiction's comprehensive plan. Where appropriate, the Committee has noted in the text and commentary the different requirements necessitated by whether the sign is, or is not, a land use regulation. In some cases, whether a section or a paragraph is included depends on whether the sign code is intended to be a "land use regulation," and in those instances, where paragraphs are added to address land use concerns, they are lettered as "X", in such cases the drafter will need to assign the correct paragraph number to that paragraph <u>and</u> to subsequent paragraphs.

Perhaps no chapter of a jurisdiction's code can result in as much passion as the sign code – it speaks to the jurisdiction's aesthetic and commercial vision of itself, but such passion must be tempered to meet the Oregon and federal constitutional "free speech" provisions. To that end, the Committee believes that alternative sign code text will continue to evolve, and the Committee encourages city attorneys and county counsels to submit alternative sections / procedures to CIS, for inclusion on the League of Oregon City's website for future consideration by jurisdictions other.

SIGN CODE – A TEMPLATE

XX.XX.005 Title.

This chapter shall be known as the "**[City]** Sign Code."

XX.XX.010 Purpose.

The purposes of this chapter are to:

- protect the health, safety, property and welfare of the public,
- provide a neat, clean, orderly and attractive appearance of the community,
- improve the effectiveness of signs,
- provide for safe construction, location, erection and maintenance of signs,
- prevent proliferation of signs and sign clutter, minimize adverse visual safety factors to travelers on public highways and on private areas open to public travel, and
- achieve these purposes consistent with state and federal constitutional limits on the regulation of speech.

To achieve these purposes, it is necessary to regulate the design, quality of materials, construction, location, electrification, illumination, and maintenance of signs that are visible from public property, public rights-of-way and private areas open to public travel.

XX.XX.015 Definitions.

Comment: All sign codes will include certain terms that should be defined in order to clarify intent and avoid ambiguity. The term "sign" itself, as well as various categories or types of signs are examples of such terms. Consideration should be give to whether other terms used in the code (e.g., "premises", "height", etc.) need to be specifically defined or whether their common "dictionary" definition is sufficiently clear and consistent with the drafters' intent. What follows are sample definitions of the term "sign" and various subcategories or types of signs, e.g., "lawn sign," as well as other terms that may be applicable to sign codes. The specific terms defined in a sign code depend on the provisions of the code. The terms listed below are offered as examples. They may or may not be applicable, depending on your code provisions. As well, other terms may be appropriate for listing in this definition section.

For alternative language, as well as examples of other defined terms, see codes from other jurisdictions, e.g., Hillsboro (Chapter 15.20), Lake Oswego, Portland, League of Oregon Cities Web Directory.

For the purposes of the **[City]** Sign Code, unless the context indicates otherwise: words in the present tense include the future; the singular number includes the plural and the plural number includes the singular; undefined words have their ordinary accepted meaning; and, the following words and phrases mean:

"A-Frame Sign" means a double-faced temporary sign composed of two sign boards attached at the top and separate at the bottom, not permanently attached to the ground.

"Abandoned sign" means a sign or sign structure where:

A. The sign is no longer used by the person who constructed the sign. Discontinuance of sign use may be shown by cessation of use of the property where the sign is located;

B. The sign has been damaged, and repairs and restoration are not started within ninety days of the date the sign was damaged, or are not diligently pursued, once started.

"Alter" means to make a change to a sign or sign structure, including but not limited to, changes in area, height, projection, illumination, shape, materials, placement and location on a site. Altering a sign does not include ordinary maintenance or repair, repainting an existing sign surface, including changes of message or image, or exchanging the display panels of a sign.

"Athletic scoreboard" means a sign erected next to an athletic field by the owner or operator of the field and which is visible to spectators.

"Automobile service station" means a retail place of business engaged primarily in the sale of motor fuels.

"Awning" means a shelter projecting from and supported by the exterior wall of a building constructed of rigid or nonrigid materials on a supporting framework.

"Awning Sign" means a sign attached to or incorporated into an awning.

"Balloon signs" means a sign consisting of` a membrane that relies on internal gaseous pressure or a semirigid framework for maintaining its form.

"Banner" means a sign made of fabric or other nonrigid material with no enclosing framework.

"Bench sign" means a sign on an outdoor bench.

"Billboard" means a sign on which any sign face exceeds two hundred square feet in area.

"Blanketing" means blocking a pedestrian's or motorist's view of a projecting sign by another projecting sign.

"Boundaries of a site" means the area inside the legal lot lines of a site, not including any property in a public right-of-way.

"Building elevation area" means the area of a single side of a building, measured in square feet and calculated by multiplying the length of the side of the building by the height of the building to the roof line. If the roof line height varies along the side of the building, the average of the lowest and highest roof line height on that side shall be used in the calculation.

"Building frontage, primary" means the ground floor lineal length of a building wall that faces a street, driveway, parking lot, courtyard or plaza and has an entrance or exit open to the general public.

"Building frontage, secondary" means the ground floor lineal length of a building wall that faces a street, driveway, parking lot, courtyard or plaza and does not have an entrance or exit open to the general public.

"Building official" means the building official or his or her designee.

"Bulletin board" means a permanent sign providing information in a horizontal linear format, that can be changed either manually through placement of letters or symbols on tracks mounted on a panel, or electronically, through use of an array of lights in a dot matrix configuration, from which characters can be formed.

"Business complex" means a development consisting of one or more lots sharing appurtenant facilities, such as driveways, parking and pedestrian walkways, and is designed to provide varied products and services at a single location.

A. "Major business complex" means a development consisting of single or multiple principal uses and where the building(s) contain a minimum of forty-five thousand square feet in gross floor area.

B. "Minor business complex" means a development consisting of a minimum of six principal uses and where the building(s) contain a maximum of forty-four thousand nine hundred ninety-nine square feet in gross floor area.

C. "Industrial/research business complex" means a development consisting of a minimum of six principal uses and where the building(s) contain a minimum of one hundred thousand square feet of gross floor area.

> *Comment: This definition would mean a development of less than six "principal uses" and less than 45,000 square feet would not be treated as a "business complex" for purposes of sign regulation.*

"Canopy" means a permanent roofed structure which may be freestanding or attached to a building, but which is not a completely enclosed structure or awning.

"Changing Image Sign" means a sign that through the use of:

- moving structural elements,
- flashing or sequential lights,
- lights in a dot matrix or LED configuration, which may be changed intermittently, or
- other automated method,

results in movement, the appearance of movement, or change of sign image, message, or display.

"Clearance" means the distance between the average grade below a sign to the lowermost portion of the sign.

"City" means the City of [**name of City**].

"City engineer" means the city engineer or his or her designee.

"City Manager" means the City Manager or his or her designee.

> *Comment: Modify this definition here and throughout the code to refer to the highest decision making authority of the sign code within the jurisdiction, e.g., Planning Director, Community Development Director, City Manager . Note: If the jurisdiction*

does not consider the sign code to be a land use regulation, but has members of the Planning Department also administer the sign code, the drafter should consider use of the term "City Manager" as inclusive of city staff generally, and thus not necessarily because of the staff's planning position.

"City recorder" means the city recorder or his or her designee.

"Community event" means an activity or event identified as such by the city council.

"Dwelling" means any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking and sanitation.

"Filing" means depositing a document in the United States mail, postage prepaid and accurately addressed to the city, or leaving a copy with the city recorder at City Hall during work hours. For purposes of this chapter, a document is "filed" on the date it is received at City Hall.

"Fire marshal" means the fire marshal or his or her designee.

"Flag" means a rectangular piece of fabric of distinctive design that is displayed hanging free from a staff, halyard or building to which it is attached. A flag is often used to display the symbol of the United States, a nation, state, local government, business, organization or a person.

"Flashing Sign" means a sign which contains an intermittent or flashing light source, or which includes the illusion of intermittent or flashing light by means of animation, or an externally mounted intermittent light source.

"Freestanding sign" means a sign wholly supported by integral pole(s), post(s), or other structure or frame, the primary purpose of which is to support the sign and connect it to the ground. Examples include monument signs and pole signs. A freestanding sign does not include a portable sign.

"Grade" For freestanding signs, "grade" is the average level of the ground measured five feet from either end of the base of the sign, parallel to the sign face. For signs mounted on buildings, the grade is the average level of the sidewalk, alley or ground below the mounted sign measured five feet from either end of the sign face.

"Ground-mounted sign" means a freestanding sign with a minimum of twelve inches of vertical solid base directly and continuously connected to at least fifty percent of the sign face width or, is borne by two or more supports which are a minimum of twelve inches but less than eight feet above grade.

"Handheld sign" means a hand-carried sign of six square feet or less in area, worn or carried by a person when being displayed.

"Hearing Body" means the [commission or other body that hears appeals of sign code permits] of the City.

"Height" means the vertical distance measured from grade to the highest attached component of a sign including the supporting structure.

"Historical or landmark marker" means a sign constructed in close proximity to a historic place, object, building, or other landmark recognized by an official historical resources entity, where

the sign is constructed by the owner of the historic property and does not exceed twenty square feet in size.

"Historical sign" means a sign designated as a historic or cultural resource under city, state or federal law or a sign that is an historical element of an historical landmark.

"Illuminated sign" means a sign illuminated by an internal light source or an external light source primarily designed to illuminate the sign. The illumination is "external" when the light source is separate from the sign surface and is directed to shine upon the sign and "internal" when the light source is contained within the sign, but does not include signs where the text or image is composed of dot matrix or LEDs. External illumination is "direct" when the source of light is directly seen by the public, such as a floodlight, and "indirect" when the source of light is not directly seen by the public, such as cove lighting.

"Interior sign" means a sign erected and maintained inside of a building, including, but not limited to, a sign attached to or painted on the inside of windows. This definition does not include text, pictures, graphics, or similar representations in display windows.

"Lawn Sign" means a temporary freestanding sign made of lightweight materials such as cardboard or vinyl that is supported by a frame, pole or other structure placed directly in or upon the ground without other support or anchor.

"LED" means a semiconductor diode that coverts applied voltage to light and is used in digital displays.

"Lot" means a single unit of land that is created by a subdivision of land.

"Maintenance" means normal care or servicing needed to keep a sign functional or perpetuate its use, such as cleaning, replacing or repairing a part made unusable by ordinary wear, and changing light bulbs.

"Marquee" means a permanent roofed structure attached to or supported by a building.

"Menu board" means a sign placed at the beginning of a drive-up service lane of a food service establishment that includes a two-way speaker system for taking food orders.

"Monument sign" means a freestanding sign that is placed on a solid base that extends a minimum of 12 inches above the ground and extends at least 75 percent of the length and width of the sign. The above ground portion of the base is considered part of the total allowable height of a monument sign.

"Name plate" means a permanent wall sign located on the front facade of a residential structure.

"Neon sign" means a sign internally illuminated by a light source consisting of neon or other gas contained in a tube, except for fluorescent lights.

"Nonconforming sign" means a sign that was lawful when it was constructed but does not meet the requirements of the **[City]** Sign Code. When a sign permit is granted prior to the effective date of the ordinance codified in this chapter that complies with then existing requirements, the sign is conforming if it is erected within ninety days of the effective date of the ordinance codified in this chapter.

Comment: Other examples:

***Portland**: A sign that was created in conformance with development regulations, but which subsequently, due to a change in the zone or land use regulations, is no longer in conformance with the current applicable development standards. Nonconforming signs also includes signs that do not conform with the land use regulations of this Title and that were established prior to November 18, 1998.*

***Lake Oswego**: Non-conforming signs are those signs which were lawfully installed which do not comply with the requirements of this sign code.*

"Numeric information sign" means a sign only displaying current numeric measurements such as time, date, temperature, or stock indices.

"Owner" means the person owning title to real property on which a sign is located, or the contract purchaser of the real property as shown on the last available complete assessment roll in the office of county assessor. "Owner" also includes the owner of a sign who has a continuing lease of the real property on which the sign is located.

"Pennant" means a sign device made from a strip of flexible material intended to wave in the wind.

"Person" means every person, firm, partnership, association, or corporation.

"Planned unit development" means a tract or tracts of land developed as a planned unit development under city zoning / development ordinances.

"Pole sign" means a sign that is a freestanding sign connected to the ground by one or more supports with the lower edge of the sign separated vertically from the ground by a distance of nine feet or greater as measured from grade.

"Portable sign" means a sign which is not affixed to a building or other structure, or the ground in a permanent manner and is designed to be moved from place to place.

"Principal use" means a nonresidential use of property by an owner or lessee. Multiple principal uses may be located on a lot or development.

"Projecting sign" means a sign, other than a wall sign, that projects from, and is supported by or attached to a roof or wall of a building or structure.

"Public right-of-way" means travel area dedicated, deeded or under control of a public agency, including but not limited, to highways, public streets, bike paths, alleys and sidewalks.

"Public sign" means a sign erected, constructed, or placed within the public right-of-way or on public property by or with the approval of the governmental agency having authority over, control of, or ownership of the right-of-way or public property.

"Repair" means mending or replacing broken or worn parts with comparable materials.

"Roof elevation area" means the area of a single plane of a roof, measured in square feet and calculated by multiplying the difference between the height of the ridge and the height of the eave by the distance between opposing rakes.

"Roof line" means the top edge of a roof or a building parapet, whichever is higher, excluding any cupolas, chimneys or other minor projections.

"Roof sign" means a sign erected upon, against, or over the roof of any building or structure.

"Seasonal Holiday decorations" means every type of decoration displayed during and around a federally recognized holiday or on a seasonal basis, whether illuminated or not, and whether attached to utility poles, buildings or any other structure.

> *Comment: The inclusion of "seasonal" decorations presents challenges in terms of scope, and hence, enforcement. If the determination of what signs qualify as seasonal decorations cannot be "content-based," then seasonal decorations can result in decorations that do not relate to the "season" being erected during the "season." See G.K. Travel v. City of Lake Oswego.*
>
> *There are also implications related to the First Amendment, regarding religious and free expression, because some of the religious holidays are not federally recognized holidays.*
>
> *If "seasonal holiday" is eliminated, then the drafter should review the scope and limitations of "temporary signs."*

"Setback" means the horizontal distance from the property line to the sign, measured at the closest points of the sign to the property line.

"Sign" means any writing, video projection, illumination, pictorial representation, illustration, decoration, emblem, symbol, design, trademark, banner, flag, pennant, captive balloon, streamer, spinner, ribbon, sculpture, statue, or any other figure or character that:

1. Is a structure or any part thereof (including the roof or wall of a building); or
2. Is written, printed, projected, painted, constructed, or otherwise placed or displayed upon or designed into a structure or an outdoor screen or monitor, or a board, plate canopy, awning, marquee, or a vehicle, or upon any material object, device, or surface whatsoever; and
3. Communicates, or is designed to communicate on any subject whatsoever.

The scope of the term "sign" does not depend on the content of the message or image being conveyed.

It is a rebuttable presumption that a graphic, mural or art work that depicts or relates to the use of a site or structure on which it is displayed, is intended to communicate an informational message about the site or structure.

> *Comment: The Committee debated the breadth of the definition of "sign"-- should it extend to projections and/or graphics/text on the ground, i.e., parking lots, topiary, or the placement of rocks or vegetation in a manner that forms a text or graphic. Perhaps guided by the policy choices of the jurisdictions represented by the Committee members, the Committee opted for a generally broad definition, but did not include topiary or rock / vegetation. This is not to say that a jurisdiction could not include such media as a sign, but the drafter is cautioned that including such media should necessitate a careful consideration of expanding the types and quantity of permanent signage.*
>
> *This broad definition arguably includes artwork. Some sign codes attempt to except "art" from this definition with language such as: "Graphics, murals and art work that do not communicate informational messages, apart from any aesthetic or artistic message*

are not signs." Although we are not aware of relevant case law, such a distinction is arguably "content-based."

"Sign area" means the area of the sign measured within lines drawn between the outermost points of a sign, but excluding essential sign structure, foundations, or supports.

"Sign band" means a continuous horizontal band located on a facade where there are no doors, windows or other architectural features.

"Sign copy" means the message or image conveyed by a sign.

"Sign face" means the sum of the surfaces of a sign face as seen from one plane or elevation included within the outer dimensions of the sign board, frame or cabinet.

"Sign height" means the average level of the grade below the sign to the topmost point of the sign including the supporting sign structure, foundations, and supports.

"Site" means the area, tract, parcel, or lot of land owned by or under the lawful control of an owner. Abutting platted lots under the same ownership shall be considered one site.

"Street frontage" means the length or width of a site, measured along a line separating the site from a street or public right-of-way.

"Structure" means that which is built or constructed. An edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner and which requires location on the ground or which is attached to something having a location on the ground.

"Subdivision" means a site with four or more lots.

"Supporting structure" means a structure specifically intended for supporting or containing a sign.

"Suspended sign" means a sign suspended from the underside of a canopy, awning, eve, or marquee.

"Temporarily attached" means attached to a building, structure, vegetation or the ground in a manner than is easily removable.

"Temporary business" means a temporary business as defined by the city of **[City]** Municipal Code.

"Temporary sign" means a sign that is temporarily attached to a building, structure, vegetation, or the ground. Temporary signs include, but are not limited to, A-frames, banners, flags, pennants, balloons, blimps, streamers, lawn signs and portable signs.

"Transportation system plan (TSP)" means that portion of the city of **[City]** Comprehensive Plan that implements the State of Oregon Transportation Planning Rule OAR 660-012.

"Tri-vision sign" means a sign that contains display surfaces composed of a series of three-sided rotating slates arranged side by side, either horizontally or vertically, that are rotated by an electro-mechanical process, capable of displaying a total of no more than three separate and distinct messages, one message at a time, provided that the rotation from one message to another

message is no more frequent than every eight seconds and the actual rotation process is accomplished in four seconds or less.

"Unlawful Sign" means a sign that does not conform to the provisions of this Code and is not a non-conforming sign.

"Utility Sign" means a sign constructed or placed by a public utility on or adjacent to a pole, pipe, or distribution facility of the utility and within the public right-of-way or utility easement.

"Vehicle sign" means a sign placed in or attached to the motor vehicle, trailer, railroad car, or light rail car that is used for either personal purpose or is regularly used for purposes other than the display of signs.

"Video sign" means a sign providing information in both a horizontal and vertical format (as opposed to linear), through use of pixel and sub-pixel technology having the capacity to create continuously changing sign copy in a full spectrum of colors and light intensities.

"Vision clearance area" means a triangular area on lot at the intersection of two streets or a street and a railroad, alley, or driveway as defined and measured in **[City]** Zoning Ordinance No. 1945.

"Wall sign" means a sign that is painted on a wall of a building, or a sign attached to the wall of a building and extending no more than twelve inches from a wall, or attached to or erected against a roof with a slope not more than 20 degrees from vertical, with the exposed face of the sign in a plane that is vertical or parallel to the plane of that roof, and which does not project more than18 inches from the wall or roof. Window signs that are permanently attached to the outside of a window are wall signs.

"Window sign" means a sign attached to, or painted on a window, or displayed inside the building within [**6"**] inches of a window or building openings so that it is viewable from the outside of the building.

"Zoning / development ordinance" means [**City's name for its zoning / development ordinance or community development code**].

XX.XX.020 General requirements.

A. Except as provided in Section XX.XX.025 of this chapter, no person shall erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use or maintain any sign, or cause or permit the same to be done, contrary to or in violation of any of the provisions of the **[City]** Sign Code.

XX. Except for public signs, railroad, or utility signs or for signs required by state or federal laws or regulations to be of a certain color or size, signs shall be designed to be compatible with other nearby signs, other elements of street and site furniture and with adjacent structures. Compatibility shall be determined by the relationships of the elements of form, proportion, scale, color, materials, surface treatment, overall sign size and the size and style of lettering.

Comment: This general requirement for sign compatibility was one of the sections challenged in the G.K. Travel v. City of Lake Oswego case. The City prevailed based on the strength of its

procedures for administering this section. Thus, if a jurisdiction wishes a heightened level of aesthetic compatibility, the drafter is urged to review the procedures discussed in G.K Travel as guidance in assuring that the requirement is constitutionally administered.

B. Except as provided in Section XX.XX.040 of this chapter, no person shall erect, construct or alter a sign, or permit the same to be done, unless a sign or billboard permit has been issued by the city. A sign or billboard permit for the construction and continued use of a sign is subject to the terms and conditions stated in the permit and to the **[City]** Sign Code.

C. An application for sign permit approval is subject to the procedures set forth in Section XX.XX.125 of this chapter. An application for billboard permit approval is subject to the additional requirements set out in Section XX.XX.075 of this chapter.

D. No owner shall erect or construct a sign on a site that contains unlawful signs.

E. The **[City]** Sign Code shall not be construed to permit the erection or maintenance of any sign at any place or in any manner unlawful under any other city code provision or other applicable law. In any case where a part of the **[City]** Sign Code conflicts with a provision of any zoning / development, building, fire, safety or health ordinance or code, the provision which establishes a stricter standard for the protection of the public health and safety shall prevail.

F. The **[City]** Sign Code is not intended to, and does not restrict speech on the basis of its content, viewpoint or message. Any classification of signs in this chapter that permits speech by reason of the type of sign, identity of the sign user or otherwise, shall permit any type of speech on the sign. No part of this chapter shall be construed to favor commercial speech over noncommercial speech. To the extent any provision of this chapter is ambiguous, the term shall be interpreted to not regulate on the basis of speech content, and the interpretation resulting in the least restriction on the content of the sign message shall prevail.

G. If any section, subsection, paragraph, sentence, clause or phrase of the **[City]** Sign Code is declared invalid for any reason by a court having jurisdiction under state or federal law, the remaining portions of this chapter shall remain in full force and effect.

XX.XX.025 Exempt signs.

Except for signs prohibited by this chapter, the following signs are exempt from the provisions of the **[City]** Sign Code:

A. All signs which are placed inside a structure or building, and which are either not visible through windows or building openings, or are not intended to be visible from outside of the structure or building.

X. [***Additional exempt signs desired by jurisdiction***.]

Comment: To the extent any such exemptions could be seen as content-based, they could subject the code to challenge.

Comment: The drafter is cautioned against adding a number of exempt signs. See GK

*Travel, n 11: "In this case, the Sign Code reflects the City's preference for not subjecting certain entities-public agencies, hospitals and railroad companies-to the requirements of the permitting and fee scheme." The exemptions are purely speaker based according to the City's reasonable construction of the provision and say nothing of the City's preference for the content of these speakers' messages, nor do they allow the City to discriminate against disfavored speech. That is, plaintiffs have not shown that the City preferred the substance of railroad company messages, for instance, over travel agency messages and therefore exempted the railroad companies from the permitting process. See One World One Family Now v. City & County of Honolulu, 76 F.3d 1009, 1012 n. 5 (9th Cir.1996) ("Because [the] exemptions don't enable the city to discriminate against ideas it disfavors, they don't render the ordinance content-based."). **Moreover, these institutional speakers are still subject to the mandates of the Sign Code concerning the type, number and characteristics of signs that are permissible in the City; it is just that certain speakers need not obtain permits (and pay the associated fee) before posting their signs.** That the law affects plaintiffs more than other speakers does not, in itself, make the law content based. See Ward v. Rock Against Racism, 491 U.S. 781, 109 S.Ct. 2796, 105 L. Ed. 2d 661 (1989) ('A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.')."*

XX.XX.030 Prohibited signs.

Except for nonconforming signs, the following signs are unlawful and are nuisances:

A. Abandoned signs;

B. Billboards, except as permitted by Section XX.XX.075 of this chapter;

C. Video signs;

D. Any sign constructed, maintained or altered in a manner not in compliance with the **[City]** Sign Code;

E. Any nonpublic sign constructed or maintained which, by reason of its size, location, movement, coloring or manner of illumination may be confused with or construed as a traffic control device or which hides from view any traffic control device;

F. Any sign constructed in such a manner or at such a location that it will obstruct access to any fire escape or other means of ingress or egress from a building or an exit corridor, exit hallway or exit doorway. No sign or supporting structure shall cover, wholly or partially, any window or doorway in any manner that it will substantially limit access to the building in case of fire;

G. Any sign located in a manner which could impede traffic on any street, alley, sidewalk, bikeway or other pedestrian or vehicular travel way;

H. Any sign equipped with moving, rotating or otherwise animated parts, except for tri-vision signs permitted under Section XX.XX.075 of this chapter and athletic scoreboards permitted under Section XX.XX.040;

I. Any sign that is wholly or partially illuminated by a flashing or intermittent light, lights, lamps, bulbs, or tubes. Rotary beacon lights, zip lights, strobe lights, or similar devices shall not be erected or maintained, or attached to or incorporated in any sign;

J. Any nonpublic sign within the vision clearance area provisions contained in the zoning / development ordinance;

K. Any sign attached to a tree or a plant, a fence or a utility pole, except as otherwise allowed or required by the **[City]** Sign Code or other chapters of the City Code;

L. Any sign within or over any public right-of-way, or located on private property less than two feet from any area subject to vehicular travel, except for:

1. Public signs, (includes banners over the public right-of-way, with the approval of the controlling jurisdiction).

2. Temporary signs specifically allowed within the public right-of-way under Section XX.XX.045 of this chapter;

M. Temporary signs, including banners, pennants, and wind signs, except as authorized by Section XX.XX.040 or XX.XX.045 of this chapter.

N. Unlawful signs.

O. Any sign which is judicially determined to be a public nuisance.

XX.XX.035 Nonconforming signs.

A. Nonconforming signs may continue in use, subject to the restrictions in this subsection:

1. [**OPTION #1**] Removal Required for Specific Nonconforming Signs. All non-conforming [**type of sign**] signs shall be brought into compliance with [**applicable code section for the zone**] by _____, 20[**XX**].

Comment: This subsection of the draft code is primarily taken from Lake Oswego's code and it has recently withstood a federal court challenge that was petitioned to the highest court in the land. G.K. Ltd Travel v. City of Lake Oswego. As such, it is a good model to use. Non-conforming pole signs were at the heart of the GK Travel case. Lake Oswego prohibited pole signs and had a mandatory time frame in which to make them legal. Some jurisdictions may or may not want to follow this provision or to apply it to other types of signs.

If a mandatory removal provision is used under this provision, findings regarding a amortization schedule should be adopted. Lake Oswego originally adopted a five-year amortization period for pole signs, and that was extended an additional five years before enforcement began. See also below amortization period text. Also, the variance provisions in your sign code can provide some flexibility in case of hardship.

2. [**OPTION #2**] Removal Generally Required for Non-Conforming Signs Following Amortization Period. Any sign constructed made nonconforming by a provision of the sign code:

[**Option 2a**] may be maintained for a period ending no later than **[three][five]** years from the date such sign becomes non-conforming,.

[**Option 2b**]. Any sign made nonconforming by a provision of the sign code may be maintained for a reasonable period of time to amortize the investment therein. The amortization period shall be determined as follows:

(a) Except as provided in paragraphs (b) and (c) of this subsection, every nonconforming sign shall be removed in accordance with the following amortization schedule:

Value	Maximum Period of Time Sign May Be Maintained
Less than $500.00	1 1/2 years
$500 to $1,000	2 years
For each additional $1,000 increment	One additional six-month period
Maximum period regardless of value	5 years

(b) The value of any nonconforming sign shall be determined by the following formula:

V = C - (10% C) Y

V = Value of the sign for amortization purposes.

C = Original cost of the sign, including the cost of construction and installation.

Y = Number of years the sign has been standing as of the effective date of the ordinance codified in this title.

(c) The amortization period shall begin on the date of mailing by the **[City Manager]** of notice to the owner of the property on which the sign is located (as determined from the most recent tax assessor's roll), of the fact that the sign is nonconforming and subject to amortization. The notice shall include a statement of the owner’s right to seek an extension of the amortization period under subsection (3) of this section.

Comment: Alternatively, the jurisdiction may wish to consider the amortization period automatically starting upon the date the sign becomes non-conforming, with the one-year opportunity to seek an extension to start then. This may depend upon how extensive changes in the sign code are publicized in the jurisdiction, and the degree of responsibility it wishes to place upon the sign owner.

(d) Notwithstanding any other provision in this paragraph, any nonconforming sign that has been fully depreciated for federal or state income tax purposes shall be removed or modified to comply with the provisions of the sign code within one year of the date the sign became non-conforming.

3. **Extension of Amortization Period.** If the amortization period established by the above provision of this section creates an exceptional hardship for the sign owner, the owner may make an application for an extension of the amortization period, provided the application is submitted before the expiration of such amortization period. For purposes of this subsection, "owner" includes lessee.

a. Application. An application shall be submitted to the **[City Manager]** and shall be accompanied by a fee as may be set by resolution adopted by the City Council. The application shall contain the name and address of the sign owner, the land owner, the type, location and size of sign, the date the sign was erected, the height (including supports) of the sign, the cost of construction, and the length of time extension is requested; and shall be accompanied by a detailed statement of reasons an extension is sought, and why the amortization period constitutes an exceptional hardship,

b. Procedures. Applications for extension of an amortization period shall be heard by the **[hearing body]**, which shall determine whether the application satisfies the criteria set forth in subsection (b)(3) of this section. The **[hearing body]** may grant or deny the extension, and impose such conditions as may be necessary to minimize the adverse effects such extension upon surrounding properties. In granting an extension, the **[hearing body]** shall determine the length of the time for the extension. The findings and the basis for the **[hearing body]**'s decision shall be transmitted to the applicant in writing.

c. Criteria. In considering an application for an extension of the amortization period for a nonconforming sign, the following criteria shall be applied:

(1). The original cost of the sign;

(2) The date the sign was constructed and located on the site;

(3) The degree of deviation from the sign regulations;

(4) Whether unusual circumstances concerning the sign's size, height, location or nature are present;

(5) The nature of the exceptional hardship, and whether allowing an extension in light of the hardship would be inconsistent with the intent of sign amortization;

(6) The effect of the nonconforming sign on the use, value, and enjoyment of surrounding and neighboring properties;

(7) The least amount of additional time required, if any, for the applicant to amortize any unreasonable economic loss, over and above the amortization period already permitted under this section; and

(8) Proof that the sign has not been fully depreciated for federal income tax purposes shall be required except in extraordinary circumstances where such proof is deemed inapplicable.

3. General Requirements for Nonconforming Signs.

Comment: The provisions relating to nonconforming signs are frequently the result of the governing body's sensitivity to the requests of current sign permit holders for the greatest possible rights to maintain, repair, and expand the current installed signs versus the desire to phase the nonconforming signs out to achieve the underlying goals motivating the change in sign regulations. Accordingly, the nonconforming sections are tailored by each city. The Committee sets forth several different versions of nonconforming sign provisions, for illustrative purposes:

Lake Oswego (*with options suggested*)

a. A non-conforming sign shall not be:

(1) Modified, unless the modification brings the sign into compliance with this Chapter. A change of copy is allowed, except that any change in a wall sign which is painted on a structure shall comply with [**applicable code section for the zone**]

(2) Expanded.

(3) Relocated.

b. A non-conforming sign may undergo normal maintenance, except:

(1). Normal maintenance" excludes major structure repairs designed to extend the useful life of the non-conforming sign.

(2). **[*Option #1***] If a non-conforming sign is damaged by wind, fire, neglect or by any other cause, and such damage exceeds 60% of its replacement value, the non-conforming sign shall be removed.

[***Option #2***] When any proposed change, repair, or maintenance would constitute an expense of more than [**fifty**][**twenty-five**] percent of the lesser of the original value or replacement value of the sign, the non-conforming sign shall be removed..

c. Upon change of use of a business or premise, a non-conforming sign shall be brought into compliance with [**applicable code section for the zone**] within one-hundred-eighty (180) days.

Comment: This code section also allows for a change of copy. Change of copy means the change of logo and/or message upon the face of a legal sign. Code provisions that prohibit change of copy are more likely to receive a constitutional challenge. Here, the code requires compliance with the code upon change of business. This provision survived review in G.K. Travel Ltd..

Hillsboro

a. No additions or enlargements may be made to a nonconforming sign except those additions or enlargements that are required by law.

b. A sign that is moved, replaced, or structurally altered shall be brought into conformance with this chapter, except that:

(1). Nonconforming signs may be repaired and maintained and may have the sign copy changed. A sign may be removed from its sign structure for repair or maintenance if a permit is obtained under this chapter.

(2). Nonconforming signs may be structurally altered when the alteration is necessary for structural safety.

(3). Nonconforming signs may be reconstructed if required to be moved for construction or repair of public works or public utilities and the sign reconstruction is completed within ninety days after the completion of the public works or public utility construction or repair.

c. A nonconforming sign that is damaged shall not be repaired if the estimated expense to repair the sign exceeds fifty percent of the replacement cost of the sign as of the day before the sign was damaged. A damaged nonconforming sign that cannot be repaired shall be removed within ninety days of the date the sign was damaged. As used herein, “nonconforming sign” includes the sign structure, foundation and supports.

d. Whenever a nonconforming sign is damaged and the estimated cost to repair the sign is fifty percent or less of its replacement value as of the day before the sign was damaged, it may be repaired and restored to the condition it was in before it was damaged and may continue to be used as a nonconforming sign,

provided that such repairs and restoration are started within ninety days of the date the sign was damaged and are diligently pursued thereafter.

e. Whenever repairs and restoration of a damaged nonconforming sign are not started within ninety days of the date the sign was damaged or are diligently pursued once started, the sign shall be deemed abandoned.

f. Abandoned signs shall not be permitted as nonconforming signs.

g. No nonconforming sign shall be permitted to remain unless properly repaired and maintained as provided in this chapter. A sign maintained in violation of this provision shall be removed as provided in Section XX.XX.160 of this chapter. Any nonconforming sign that is determined by the building official to be an unsafe sign shall be removed as provided by Section XX.XX.165 of this chapter. Any nonconforming sign determined by the **[City Manager]** to be an abandoned sign shall be removed as provided in Section XX.XX.170 of this chapter.

B. Nothing in this section shall be deemed to prevent the maintenance of any sign, or regular manual changes of sign copy on a sign.

C. Continuation of Non-Conforming Sign as Public Nuisance; Removal and Abatement.

1. The continuation of any nonconforming sign beyond the time period(s) set forth in Subsection A of this Section is hereby declared to be a public nuisance, which may be abated as provided by this section.

2. Any non-conforming sign that remains in place after the expiration of the amortization period, or any extension thereof, shall be removed within thirty days after a written notice for removal has been posted on the property upon which the sign is located, and a copy sent by certified mail, postage prepaid, to the sign owner and land owner, if different. Such notice shall state the particulars of the violation and require removal of the sign upon or before a date specified in the notice, but not less than thirty days after such posting and mailing, and that written objections to such removal may be filed with the **[City Manager]** on or before such date. If the non-conforming sign is not removed on or before the date specified in the notice, and if no written objections to such removal are filed, the **[City Manager]** may cause the removal thereof at the expense of the owner of the real property upon which such sign is located.

3. Upon receipt of timely filing of objections, the non-conforming sign shall remain in place. Hearing upon the objections shall be held before the City Council. Notice of the time, date and place of the hearing shall be personally delivered, or mailed by certified mail, postage prepaid, to the person filing such objections at the address provided in the objections, at least ten days prior to the hearing. Any non-conforming sign ordered removed by the City Council shall be removed within thirty days after notice of the removal order has been mailed to such objector,

and if not removed within such time, the **[City Manager]** shall cause the removal to be made at the expense of the owner of the real property upon which such sign is located.

XX.XX.040 Exemptions from requirement for permit.

The following signs are allowed in all sign districts without a permit. Use of these signs does not affect the amount or type of signage otherwise allowed by this chapter. The painting, repainting, cleaning, maintenance and repair of an existing sign shall not require a permit, unless a substantial structural alteration is made. The changing of a sign copy or message shall not require a permit. All signs listed in this section are subject to all other applicable requirements of the **[City]** Sign Code.

A. Signs (including name plates and dates of erection of buildings) on multifamily residential, commercial, industrial, or institutional buildings when the sign is cut into the surface or the facade of a building, or when it is constructed of stone, masonry, bronze or other noncombustible material and projects no more than two inches from a building, so long as the cumulative sign face(s) are eight square feet or less in area;

B. One indirectly illuminated or nonilluminated sign not exceeding one and one-half square feet in area placed on any nonmultifamily residential lot. This type of sign is typically used as a name plate;

C. Flags;

Comment: a jurisdiction may want to establish the maximum size of flag permitted.

D. Vehicle signs;

E. Signs displayed upon a bus or light rail vehicle owned by a public transit district;

F. Historical sign or historical or landmark markers;

G. Seasonal holiday decorations on private property;

H. Handheld signs;

I. A sign up to six square feet constructed or placed within a parking lot, for each [**XX**] square feet of parking area. These signs are typically used to direct traffic and parking;

J. Any public notice required by federal, state or local law, regulation or ordinance,

K. Sign within the public right-of-way that is erected by a governmental agency, utility or contractor doing authorized work within the right-of-way;

L. A sign that does not exceed eight square feet in area and six feet in height, and is erected on property where there is a danger to the public or to which public access is prohibited;

M. Nonilluminated interior signs in nonresidential sign districts designed primarily to be viewed from a sidewalk or street provided the sign does not obscure more than twenty-five percent of any individual window;

N. Illuminated interior signs in nonresidential sign districts designed primarily to be viewed from a sidewalk or street, provided the sign face is less than four square feet in area;

O. One suspended sign for each principal use erected on property which is not considered public right-of-way, under an attached first floor awning or canopy upon a building with direct exterior pedestrian access, provided the sign does not exceed six square feet in area and has a minimum of eight feet of clearance;

P. An exterior sign erected next to an entrance, exit, rest room, office door, or telephone, provided the sign is no more than four square feet in area. This type of sign is typically used to identify and locate a property feature;

Q. Signs located within a sports stadium or athletic field, or other outdoor assembly area which are intended for viewing by persons within the facility. The signs shall be placed so as to be oriented towards the interior of the field and the viewing stands;

R. Signs incorporated into vending machines or gasoline pumps;

S. Temporary signs as allowed under Section XX.XX.045 of this chapter;

T. Public signs.

U. Utility signs.

Comment: A jurisdiction may wish to establish limitations for utility signs, in which case utility signs should be addressed in a separate section.

V. Signs for hospital or emergency services, and railroad signs.

XX.XX.045 Temporary signs.

Comment: the listing of types and number of temporary signage permitted throughout the jurisdiction is illustrative. See other jurisdictions' sign code to compare the type and number of temporary signs permitted throughout a particular city.

A. Temporary signs may be erected and maintained in the city only in compliance with the regulations in this chapter, and with the following specific provisions:

1. Except as approved in a comprehensive sign plan and in connection with a community event, no temporary sign shall be internally illuminated or be illuminated by an external light source primarily intended for the illumination of the temporary sign.

2. A temporary sign shall be attached to the site or constructed in a manner that both prevents the sign from being easily removed by unauthorized persons or blown from its location and allows for the easy removal of the sign by authorized persons.

3. Except as provided in this code, temporary signs shall not be attached to trees, shrubbery, utility poles or traffic control signs or devices.

4. No temporary sign shall be erected or maintained which, by reason of its size, location or construction constitutes a hazard to the public.

B. In any residential sign district, the following temporary signs shall be allowed on a lot without issuance of a permit and shall not affect the amount or type of signage otherwise allowed by this chapter. This signage shall not be restricted by content, but is usually and customarily used to advertise real estate sales, political or ideological positions, garage sales, home

construction or remodeling and similar activities. Signage shall be allowed for each lot as follows:

Comment: note that this sign code authorizes different types or numbers of temporary signs based on the type of sign district where the sign is located. If sign districts are not utilized, then the drafter should revise this section accordingly to reflect the jurisdiction's wishes. See XX.XX.050 Sign Districts.

1. Signs not exceeding six square feet in area or four feet in height during the period from one hundred twenty days before a public election or the time the election is called, whichever is earlier, to five days after the public election.

2. One temporary sign not exceeding six square feet in area and four feet in height which is erected for a maximum of eight days in any calendar month and is removed by sunset on any day it is erected.

3. A sign not exceeding six square feet in area and five feet in height during the time of sale, lease or rental of [**the lot**] [**a dwelling**] provided that the sign is removed within fifteen days of the sale, lease or rental of the [**lot**] [**dwelling**],

Comment: Some jurisdictions use the term "property", but the Committee recommends a more specific, and defined term, as to whether the event is related to the sale of a dwelling or to the underlying lot. Multi-family dwellings located on a single lot, i.e., apartments, condominiums, may result in temporary signs that seem more akin permanent signs if the multi-family dwelling structure has a re-occurring turnover of units.

4. A sign not exceeding six square feet in area during the time of construction or remodeling of the property, provided the sign is removed within seven days of the completion of any construction or remodeling. An additional sign of the same size may be erected if the property borders a second street and the signs are not visible simultaneously. On lots of more than two acres, the sign area may be increased to thirty-two square feet. In no case shall the sign or signs be erected for more than twelve months.

4. On property which has received subdivision or development approval from the city, from that approval until issuance of a building permit for the last lot to be sold or completion of the development project, one temporary sign not exceeding thirty-two square feet in area and eight feet in height on properties less than four acres in size or two temporary signs not exceeding sixty-four square feet in area each and eight feet in height on properties greater than four acres in size.

C. In any commercial/industrial sign district, station community commercial sign district, or industrial park and research park sign district, the following temporary signs shall be allowed on a lot without issuance of a permit and shall not affect the amount or type of signage otherwise allowed by this chapter. This signage shall not be restricted by content, but is usually and customarily used to advertise real estate sales, political or ideological positions, construction or remodeling, special events and similar activities. Signage shall be allowed for each lot as follows:

Comment: This could be as simple as establishing size limitations for temporary signs, without reference to specific dates / events. As signage is added for each type of event, the need to define the duration of the sign, and the size of the signs becomes necessary for each type of event.

1. Signs not exceeding four square feet in area and five feet in height, during the period from one hundred twenty days before a public election or the time the election is called, whichever is earlier, to five days after the public election.

2. A sign not exceeding thirty-two square feet in area and eight feet in height during the time of sale, lease or rental of the property provided that the sign is placed on the property for sale, lease, or rental and removed within fifteen days of the sale, lease or rental of the property, or a sign not exceeding thirty-two square feet in area and eight feet in height during the time of construction and remodeling of the property, provided the sign is placed on the property where construction and remodeling is taking place and removed within seven days of the completion of any construction or remodeling. An additional sign of the same size may be erected if the property borders a second street and the signs are not visible simultaneously. In no case shall the sign or signs be erected for more than twelve months.

3. A sign not exceeding thirty-two square feet in area during the period of charitable fundraising event being conducted on the property where the sign is erected by a charitable or nonprofit organization. This sign shall not be placed more than seven days prior to the event and must be removed within two days following the event.

D. No temporary signs or banners shall be allowed in the public right-of-way or on public property, except for those listed in this subsection.

1. The following temporary signs shall be permitted in the right-of-way without issuance of a permit and shall not affect the amount or type of signage otherwise allowed by this chapter. No temporary sign in the right-of-way shall interrupt the normal flow of vehicle, pedestrian or bicycle traffic and shall provide a minimum of five feet of clear passage for pedestrians on a sidewalk where a sidewalk exists. No temporary sign shall extend into a vision clearance area. Temporary signs allowed in the right-of-way shall include:

a. Signs owned or erected by a governmental entity;

b. Signs on public sidewalks in all [**list applicable**] districts and adjacent to commercial uses in the [**listed specific**] districts which comply with the following standards:

1. Any temporary sign is placed on the sidewalk within the first three feet behind the curb, and

2. Any temporary sign is present only during the business hours of the responsible enterprise, and

3. Any temporary sign placed elsewhere than directly adjacent to the primary use shall be placed only with the written consent of the property owner of the adjacent property. No more than two temporary signs shall

be placed in the public right-of-way adjacent to any property frontage on a single street;

c. Portable signs limited to a maximum of six square feet in area and three feet in height, displayed only on weekends and holidays, placed at street intersections in relative close proximity to a property for sale or lease during the time of that display. One single sign for each property or development shall be permitted at each intersection and shall be positioned as to be no closer than two feet from areas subject to vehicular travel;

d. Bench signs located at mass transit stops so long as the bench sign copy does not exceed fifteen square feet and the bench sign is approved by the owner;

e. Signs attached to mass transit shelters which are approved by the mass transit agency and the owner.

2. Temporary banners or seasonal holiday decorations which extend over a roadway or are attached to utility or streetlight poles shall be permitted in the right-of-way upon issuance of a permit in accordance with the procedures set out in Sections XX.XX.125 and XX.XX.135 of this chapter and shall comply with the following standards:

a. Banners or decorations which extend over a roadway shall not exceed sixty square feet in area. Banners which are attached to a single utility or streetlight poles shall not exceed twelve square feet in area.

b. Temporary banners or decorations shall be permitted only if the applicant is conducting an event or activity in the city of **[City]** that has been identified as a community event by the **[City]** city council or for purposes of identifying a geographic area or district of the city. Applications for geographic identification banners shall be submitted by an organized neighborhood association, or shall be accompanied by a petition indicating the consent of at least fifty-one percent of the property owners or retail establishments in the geographic area delineated on the banner application.

c. Applicants requesting permits for temporary banners or decorations in city of **[City]** right-of-way shall obtain all permits and approvals as outlined in Chapter XX.XX.045(D) of this Code prior to submittal of an application for a sign permit. Applicants requesting temporary banners placed over rights-of-way controlled by other agencies other than the city of **[City]** shall obtain written consent from the appropriate agency regarding the proposed banner(s) prior to submittal of an application for a sign permit. The consent shall identify any restrictions desired by the owner of the right-of-way.

d. Except for a banner(s) identifying a geographic area or district of the city, banner(s) shall be removed within two days of the applicant’s event or activity giving rise to the permit.

XX.XX.050 Sign districts—General.

Comment: If the jurisdiction does not view the sign code as a land use regulation, the drafter is cautioned regarding the sign districts being co-terminus with, and using the same designations as, the zoning districts for the jurisdiction. Although not necessarily determinative, the more similarities the sign code has to the jurisdiction's land use scheme, the more likely it may be thought of as a land use regulation, by the public and perhaps by the courts.

A. The following sign districts are created and applied to designated land. No permit shall be issued for any sign unless specifically allowed as an allowed sign under the terms of the applicable sign district or otherwise allowed as a nonconforming sign under Section XX.XX.035 or exempted under Section XX.XX.040 of this chapter. Any particular limitation in a sign district regulation shall not be construed to exclude the applicability of other restrictions imposed under this chapter.

B. The sign districts shall be as follows:

1. The residential sign district includes all land within the [**list sign/zone**] districts.
2. The commercial/industrial sign district includes all land within the [**list sign /zone**] districts.
4. The industrial park and research park sign district includes all land within the [**list sign /zone**] zoning districts.
5. [**List any additional sign /zone districts**].
6. [**list any additional Overlay Districts / corridors**] –

C. Property within a newly designated [**sign / zone**] district shall be governed by the provisions of the sign code applicable to the new [**sign /zone**] district upon the effective date of the ordinance amending the [**sign /zone**] map. Completed applications for sign permits made before the effective date of the [**sign district /zone**] change will be considered under the provisions of the **[City]** Sign Code applicable to the [**sign /zone**] district existing at the time the application was completed. All signs which are not in compliance with the provisions of the **[City]** Sign Code applicable to the newly established [**sign / zone**] district shall be considered nonconforming signs.

XX.XX.055 Residential sign district.

Comment: In determining signage for a specific area or zone / sign district, the drafter is cautioned to fully consider the uses in the zone / district, the types of signs that should be permitted, sign height, illumination, changeable copy, compatibility, etc. The specific provisions below reflect the policy choices by the City of Hillsboro, and are shown for illustrative purposes.

In addition to the temporary and permanent signage allowed without permits, the following signage is allowed subject to the requirements of this chapter:

A. Permitted Sign Types, Number and Area.

Signs within the residential sign district are limited as follows and require issuance of permits under Section XX.XX.125 of this chapter.

Comment: in referencing specific types of dwellings within the districts, the drafter is cautioned to refer to the jurisdiction's zoning ordinance, and to either similarly define them in the sign code or at least by reference to the zoning / development code.

A different formatting option is to list the sign / zone districts, and then list under each zone the types of signs permitted within the sign / zone districts – more text but perhaps more user-friendly.

1. Monument and Ground-Mounted Signs.

   a. In multifamily developments, one double-faced monument sign, or not more than two single-faced monument signs on either side of a vehicular entrance shall be permitted on the primary street frontage. Sign area shall not exceed sixteen square feet for each sign face. Where a complex has multiple street frontages, this signage may be permitted on each building frontage that abuts a TSP designated arterial or collector street.

   b. In subdivisions, not more than two single-faced monument signs for a subdivision or planned unit development having twenty or more lots may be permitted on either side of a public right-of-way or private street tract entrance. Sign area shall not exceed sixteen square feet for each sign face.

   c. For churches, schools, public/semipublic facilities, and privately owned community centers; one single- or double-faced monument sign shall be permitted for each such facility. Where such a facility has multiple street frontages, this signage may be permitted on each frontage. Sign area shall not exceed sixteen square feet for each sign face.

   d. For commercial and office uses in **[name of district]** Commercial districts, one single- or double-faced monument sign shall be permitted on the primary frontage of the development. In lieu of one monument sign, one single- or double-faced ground-mounted sign shall be permitted on the primary frontage of developments which contain five or more principal uses in one structure. Where a development has multiple street frontages, this signage may be permitted on each building frontage that abuts an arterial or collector street. Sign area shall not exceed thirty square feet for each sign face.

2. Bulletin Boards.

   a. For schools, churches, public and semipublic facilities, and privately owned community centers, one single- or double-faced bulletin board may be incorporated into an approved monument sign. Sign area for a bulletin board shall not exceed twenty-four square feet for each sign face.

   b. For commercial and office uses in **[name of district]**Commercial districts, one single- or double-faced bulletin board per site may be incorporated into an

approved monument or ground-mounted sign. Sign area of the bulletin board portion of the sign shall not exceed sixty-five percent of the total sign face.

3. Wall Signs.

a. For commercial uses permitted in **[name of district]** districts, one wall sign for each tenant occupancy shall be permitted. Sign area for all wall signs shall not exceed eight percent of the building elevation area, with a maximum individual sign face area of fifty square feet on primary frontages. Sign area for all wall signs shall not exceed six percent of the building elevation area on secondary frontages, with a maximum individual sign face area of twenty-five square feet.

b. For churches, schools, and public/semipublic facilities, one wall sign for each building frontage shall be permitted. Sign area for all wall signs shall not exceed eight percent of the building elevation area with a maximum individual sign face area of fifty square feet on primary frontages, and six percent of the building elevation area on secondary frontages, with a maximum sign face area of twenty-five square feet.

c. For commercial and office uses in **[name of district]**Commercial districts, total sign face area for all primary building-mounted wall signs shall not exceed twelve percent of the building elevation area with a maximum individual sign face area of one hundred square feet. Where the use has multiple frontages, the signage on secondary frontages shall not exceed eight percent of the building elevation area with a maximum sign face area of fifty square feet. No more than two wall signs shall be permitted on the primary building frontage. Only one wall sign shall be permitted on the secondary frontage.

4. Awning Signs.

a. For commercial uses permitted in **[name of district]** districts, one awning sign for each building frontage shall be permitted. Total sign area including wall signs shall not exceed twelve percent of the building elevation area, with a maximum sign face area of fifty square feet on primary frontages, and eight percent of the building elevation area on secondary frontages, with a maximum sign face area of twenty-five square feet.

b. For churches, schools, and public/semi-public facilities, one awning sign for each building frontage shall be permitted. Total sign area including wall signs shall not exceed twelve percent of the building elevation area, with a maximum sign face area of fifty square feet on primary frontages, and eight percent of the building elevation area on secondary frontages, with a maximum sign face area of twenty-five square feet.

c. For commercial and office uses in **[name of district]** Commercial districts, total sign face area for primary building-mounted wall signs and awning signs shall not exceed twelve percent of the building elevation area with a maximum sign face area of one hundred square feet. Where the use has multiple

frontages, the signage on secondary frontages shall not exceed eight percent of the building elevation area, with a maximum sign face area of fifty square feet.

5. Projecting Signs.

For upper floor businesses in the **name of district]**district, two projecting signs for each street frontage shall be permitted for buildings having two or more floors and at least fifty feet of street frontage. Sign area for each sign shall not exceed six square feet.

6. Suspended Signs.

For each business in **[name of district]** districts, one suspended sign over public right-of-way shall be permitted under an attached first floor awning or canopy with direct exterior pedestrian access. Sign area shall not exceed six square feet.

7. Banner Signs.

a. For multifamily residential developments, one banner sign shall be permitted for each development. The banner sign shall be limited to a display period of a maximum of thirty continuous days twice for each calendar year. Sign area shall not exceed fifty square feet.

b. For principal uses in **[name of district]**districts, one banner sign shall be permitted for each principal use. The banner sign shall be limited to a display period of a maximum of thirty continuous days twice during the calendar year. Sign area shall not exceed fifty square feet.

c. For temporary uses, one banner sign shall be permitted for each temporary use. The banner sign shall be allowed for the same duration as the temporary use. Maximum sign area shall not exceed fifty square feet.

B. Maximum Sign Height.

Monument signs shall be no more than six feet in height. Ground-mounted signs shall be no more than twelve feet in height.

C. Illumination.

1. Except for monument signs in the **[name of district]**zoning district, athletic scoreboards, bulletin boards, and wall signs permitted in the **[name of district]**districts, any illumination of signs in the residential sign district shall be indirect.

2. The illumination of signs within the residential sign district shall comply with the standards contained in Section XX.XX.120 of this chapter.

D. Other Limitations.

1. For major business complexes, a comprehensive sign plan, in compliance with Section XX.XX.105 of this chapter, shall be required.

2. For minor business complexes, a comprehensive sign plan in compliance with Section XX.XX.105 of this chapter, may be submitted.

3. Signage for automobile service stations in **[name of district]**Commercial districts shall comply with the provisions contained in Section XX.XX.110 of this chapter.

4. Within the **[name of district]**district, the design of all signs shall be historic in character, reflecting the type, style and materials of the 1900-1930 historic period of the district. In evaluating the design of signs in the **[name of district]**district, the approving authority shall consider elements of form, proportion, scale, color, materials, surface treatment, overall sign size and the size and style of lettering. The planning department shall maintain an inventory of depictions of approved signs to offer guidance to applicants and the approving authority in the application of these standards. Plastic-faced signs, signs displaying flashing or intermittent lights or lights of changing degree of intensity, including bulletin boards, are prohibited in this district. The content of a sign message shall not be considered as a part of design review.

5. Within the **[name of district]**district, monument signs otherwise allowed by subsection (A)(1)(b) of this section are prohibited.

6. Within the **[name of district]**district, the design of a sign shall be evaluated in its relationship to the architectural style of the building on the site and signage on adjacent properties. To the extent feasible and without interfering with the communication need of the sign owner, the form, proportion, scale, color, materials, surface treatment, size, illumination, and size and style of lettering of a sign shall be harmonious with the building style and design, and signs of adjoining properties. The number of graphic elements on a sign shall be held to the minimum necessary to convey the sign message and shall be composed in proportion to the area of the sign face. Plastic-faced signs, signs displaying flashing or intermittent lights or lights of changing degree of intensity, including bulletin boards, are prohibited in this district. The content of a sign message shall not be considered as a part of design review.

7. When an applicant submits a determination by an architect or other design professional that the design standards of this section are met, it creates a rebuttable presumption that the criteria are satisfied. In order to overcome this presumption, and deny a sign permit for the failure to satisfy design criteria, the city must obtain a contrary opinion from an architect or other design professional that the criteria are not met and a recommendation of the design changes needed to obtain compliance with the standards.

XX.XX.060 Commercial/industrial sign district.

In addition to the temporary and permanent signage allowed without permits, the following signage is allowed subject to the requirements of this chapter:

Comment: in referencing specific types of uses within the districts, the drafter is cautioned to refer to the jurisdiction's zoning ordinance, and to either similarly define them in the sign code or at least by reference to the zoning / development code.

A. Permitted Sign Types, Number and Area.

Signs within the commercial/industrial sign district are limited as follows and require the issuance of permits under Section XX.XX.125 of this chapter:

1. Monument or Ground-Mounted Signs.

a. For principal uses, one single- or double-faced monument or ground-mounted sign shall be permitted for each lot along the primary street frontage. Where a use has multiple street frontages, this signage may be permitted along each frontage building frontage that abuts an arterial or collector street. Sign area shall not exceed forty square feet for each sign face.

b. Major or Minor Business Complex. Monument signs in major or minor business complexes shall be permitted in accordance with the comprehensive sign plan provisions contained in Section XX.XX.105 of this chapter.

c. For churches, schools, and public/semipublic facilities, one single- or double-faced monument sign shall be permitted for each such facility. Where such a facility has multiple street frontages, this signage may be permitted on each frontage. Sign area shall not exceed forty square feet for each sign face.

2. Pole Signs.

a. For major or minor business complexes, pole signs shall be permitted in accordance with the comprehensive sign plan provisions contained in Section XX.XX.105 of this chapter.

3. Wall Signs.

a. For a principal use, the total sign face area for all building-mounted wall signs, including multiple signs for multiple tenants, shall not exceed eight percent of the building elevation area on the primary frontage, with a maximum individual sign face area of one hundred twenty square feet. Where the use has multiple building frontages, the total signage area on secondary building frontages shall not exceed six percent of the building elevation area, with a maximum individual sign face area of sixty square feet. However, if the building elevation area on a frontage exceeds five thousand square feet, the maximum individual sign area may increase to one hundred ninety-nine square feet.

b. For major or minor business complexes, wall signs are permitted in accordance with the provisions of this section and the comprehensive sign plan provisions contained in Section XX.XX.105 of this chapter.

4. Awning Signs.

a. For principal uses, the total sign face area for awning signs and wall signs shall not exceed twelve percent of the building elevation area on the primary frontage, with a maximum sign face area of one hundred twenty square feet. Where the use has multiple frontages, the signage on secondary building frontages shall not exceed eight percent of the building elevation area, with a maximum sign face area of sixty square feet.

5. Numeric Information Signs.

For principal uses, one single- or double-faced time, numeric information sign with a maximum of six square feet shall be permitted.

6. Bulletin Boards.

a. Schools, churches and public and semipublic facilities, one single- or double-faced bulletin board may be incorporated into an approved monument or ground-mounted sign. Maximum sign area for a bulletin board shall not exceed twenty-four square feet for each sign face.

b. Theater Marquees. One single-faced bulletin board, or one double-faced bulletin board constructed so that the two faces connect at one end with an angle of forty-five degrees or more, may be incorporated into a theater marquee. Maximum sign area for the bulletin board shall not exceed twelve percent of the building elevation area on the primary frontage, with a maximum sign face area of one hundred twenty square feet. The total combined area of theater marquee bulletin boards, awning signs and wall signs shall not exceed the maximum percentage of building elevation area permitted for the building elevation.

7. Banner Signs and Balloon Signs.

a. Principal Use. One banner sign or one balloon sign shall be permitted for each principal use and shall be limited to a display period of a maximum of thirty continuous days twice during the calendar year. Maximum sign area shall not exceed fifty square feet, as calculated pursuant to Section XX.XX.080(A) of this chapter.

b. Temporary Business. One banner sign or one balloon sign shall be permitted for a temporary business and shall be allowed for the same duration as the temporary business. Maximum sign area shall not exceed fifty square feet for a banner sign. Sign area for a balloon sign shall be calculated pursuant to Section XX.XX.080(A) of this chapter.

8. Electronic Message Signs.

a. For principal uses, one single- or double-faced electronic message sign per site may be incorporated into an approved monument or ground-mounted sign. Sign area of the electronic message portion of the sign shall not exceed fifty percent of the total sign face.

b. For major or minor business complexes, one single- or double-faced electronic message sign per complex may be incorporated into a monument or ground-mounted sign approved under the comprehensive sign plan provisions contained in Section XX.XX.110 of this chapter. Sign area of the electronic message portion of the sign shall not exceed fifty percent of the total sign face.

9. Illuminated Interior Signs.

a. For principal uses, one or more illuminated interior signs may be installed into the windows facing a public street or sidewalk. Sign area of individual illuminated interior signs shall not exceed four square feet; and the cumulative area of two or more illuminated interior signs installed in windows on the same building elevation shall not exceed fifteen percent of the overall window area on that elevation.

b. For major or minor business complexes, one or more illuminated interior signs may be installed into the windows facing a public street or sidewalk. Sign area of

individual illuminated interior signs shall not exceed four square feet; and the cumulative area of two or more illuminated interior signs installed in windows on the same building elevation shall not exceed fifteen percent of the overall window area on that elevation.

10. Projecting Signs.

For principal uses, one or more projecting signs shall be permitted per use. Maximum sign area shall not exceed twenty square feet. Total sign area for wall and projecting signs shall not exceed twelve percent of the building elevation area on the primary frontage. Where the use has multiple frontages, total sign area for wall and projecting signs.

11. Roof Signs.

a. For a principal use, the **[City Manager]** may approve one roof sign, in lieu of other building-mounted signs, only upon finding that there are no other reasonable means of signing the business or use, due to extraordinary circumstances related to the physical location or structure of the building, distance from nearby streets, proximity of surrounding buildings or vegetation, or other factors over which the applicant has no control.

b. Approval of a roof sign shall be subject to the following standards:

1. The sign is installed on a gabled, hipped, mansard, or otherwise sloped roof;

2. Sign area for the roof sign shall not exceed eight percent of the roof elevation area, with a maximum area of one hundred twenty square feet;

3. The highest point of the roof sign shall not exceed the height of the ridge of the roof; and

4. Issuance of a building permit and final approval of the installed sign by the building department.

B. Maximum Sign Height.

1. Monument signs shall be no more than six feet in height.

2. Ground-mounted signs shall be no more than twelve feet in height.

3. Pole signs in a major or minor business complex shall not exceed the sign heights outlined in Section XX.XX.105 of this chapter.

4. Pole signs permitted in the Tualatin Valley Highway sign corridor, as defined in Section XX.XX.050 of this chapter, shall not exceed twenty-four feet in height.

5. The overall height of a balloon sign, if installed on the ground, shall not exceed the height of the lowest building on the site. If installed on top of a building, the height of the balloon sign above the roof of the building shall not exceed a distance equal to the height of the building above grade.

C. Illumination.

Illumination of signs within the commercial sign district shall meet the standards contained in Section XX.XX.120 of this chapter.

1. For a major business complex, a comprehensive sign plan in compliance with Section XX.XX.105 of this chapter shall be required.

2. For a minor business complex, a comprehensive sign plan in compliance with Section XX.XX.105 of this chapter may be submitted.

3. Signage for automobile service stations shall comply with Section XX.XX.110 of this chapter.

4. Pole signs are prohibited within three hundred feet of public right-of-way designated as a freeway or as light rail transit on the transportation system plan.

5. Where up to five principal uses are contained in a building(s) with less than thirty thousand gross square feet of building area, one monument or ground-mounted sign shall be permitted for each lot.

6. Balloon signs permitted in the commercial/industrial sign district shall the securely installed by a professional sign contractor.

XX.XX.070 Industrial park and research park sign district.

In addition to the temporary and permanent signage allowed without permits, the following signage is allowed subject to the requirements of this chapter:

Comment: in referencing specific types of uses within the districts, the drafter is cautioned to refer to the jurisdiction's zoning ordinance, and to either similarly define them in the sign code or at least by reference to the zoning / development code.

A. Permitted Sign Types, Number and Area. Signs within the industrial park and research park sign district are limited as follows and require the obtaining of permits under Section XX.XX.125 of this chapter:

1. Monument Signs.

a. Principal Use. One single- or double-faced monument sign shall be permitted for each lot along the primary street frontage. Where a use has multiple street frontages, this signage may be permitted along each building frontage that abuts a TSP designated arterial or collector street. Sign area shall not exceed thirty square feet for each sign face.

b. Principal Use on Sites Larger Than Five Acres. One single- or double-faced monument sign shall be permitted for each lot along the primary street frontage. Where a use has multiple street frontages, this signage may be permitted along each building frontage that abuts an arterial or collector street. Sign area shall not exceed sixty square feet for each sign face.

c. Churches, Schools and Public/Semipublic Facilities. One single- or double-faced monument sign shall be permitted for each such facility. Where such

a facility has multiple street frontages, this signage may be permitted on each frontage. Sign area shall not exceed thirty square feet for each sign face.

2. Wall Signs.

a. Principal Use. The total sign face area for building-mounted wall signs shall not exceed eight percent of the building elevation area on the primary frontage, with a maximum individual sign face area of one hundred square feet. Where the use has multiple building frontages, the total signage on secondary building frontages shall not exceed six percent of the building elevation area with a maximum individual sign face area of one hundred square feet. However, if the building elevation area on a frontage exceeds five thousand square feet, the maximum individual sign area may increase to one hundred ninety-nine square feet.

3. Bulletin Boards.

a. Churches, Schools and Public/Semipublic Facilities. One single- or double-faced bulletin board may be incorporated into an approved monument sign. Maximum sign area for the bulletin board shall not exceed twenty-four square feet for each sign face.

4. Banner Signs.

a. Principal Use. One banner sign shall be permitted for each principal use and shall be limited to a display period of a maximum of thirty continuous days twice during the calendar year. Maximum sign area shall not exceed fifty square feet.

b. Temporary Business. One banner sign shall be permitted for a temporary business and shall be allowed for the same duration as the temporary business. Maximum sign area shall not exceed fifty square feet for a banner sign.

5. Electronic Message Signs.

a. For principal uses, one single- or double-faced electronic message sign per site may be incorporated into an approved monument or ground mounted sign. Sign area of the electronic message portion of the sign shall not exceed twenty-five percent of the total sign face.

b. For major or minor business complexes, one single- or double-faced electronic message sign per complex may be incorporated into a monument or ground-mounted sign approved under the comprehensive sign plan provisions contained in Section XX.XX.105 of this chapter. Sign area of the electronic message portion of the sign shall not exceed twenty-five percent of the total sign face.

6. Roof Signs.

a. For a principal use, the **[City Manager]** may approve one roof sign, in lieu of other building-mounted signs, only upon finding that there are no other reasonable means of signing the business or use, due to extraordinary circumstances related to the physical location or structure of the building, distance from nearby streets, proximity of

surrounding buildings or vegetation, or other factors over which the applicant has no control.

b. Approval of a roof sign shall be subject to the following standards:

1. The sign is installed on a gabled, hipped mansard, or otherwise sloped roof;

2. Sign area for the roof sign shall not exceed eight percent of the roof elevation area, with a maximum area of one hundred twenty square feet;

3. The highest point of the roof sign shall not exceed the height of the ridge of the roof; and

4. Issuance of a building permit and final approval of the installed sign by the building department.

B. Maximum Sign Height. Monument signs shall be no more than six feet in height.

C. Illumination. The illumination of signs within the industrial park and research park sign district shall meet the standards contained in Section XX.XX.120 of this chapter.

D. Other Limitations.

1. A comprehensive sign plan may be submitted for industrial and research business complexes and shall comply with Section XX.XX.105 of this chapter.

XX.XX.075 Billboard districts and permits.

Comment: Billboards need not be authorized within a city. See generally G.K. Travel v. Lake Oswego, (no constitutional right to communicate via pole signs). If permitted, there should be no distinction between on-premise / off-premise billboard. Outdoor Media Dimensions, Inc. v. Dept. of Transp., 340 Or. 275, 132 P.3d 5 (2006)

Comment: If included, it is recommended that the billboard restrictions be in a separate section from the rest of the sign code. Billboard regulation is frequently challenged; it would be harder to also challenge other parts of your sign code in attempting to demonstrate unconstitutionality as it relates to billboard signs, and thus reduces the possible challenge to the entire sign code.

A. No billboard shall be constructed or maintained within the city unless the owner obtains a billboard permit from the **[City Manager]**. A billboard permit is a type of sign permit required under Section XX.XX.020 of this chapter.

B. An owner of a billboard site may apply for a billboard permit as provided in Section XX.XX.125 of this chapter. The **[City Manager]** shall issue or deny the billboard permit within thirty days of receipt of the permit application. If there is more than one complete application for a billboard permit, the **[City Manager]** may select an application for approval by chance. A billboard permit is a type of sign permit. A billboard permit shall be issued under the provisions of Sections XX.XX.125 and XX.XX.135 of this chapter.

C. A billboard permit is subject to the following standards:

1. A billboard must be located within the boundaries of **[list]** district.

2. No more than sixteen billboard permits shall be issued at any one time for billboards within the **[list]** district. The number of billboard permits within the **[list]** district may be increased by the number of any billboards located on land designated industrial or commercial in the city's comprehensive plan, located adjacent to [**street / highway name – define scope of area**]. No more than two billboard permits shall be issued at any one time for billboards within the **[list]** district. The **[City Manager]** shall limit the number of billboard permits within the **[list]** billboard district to one permit if that permit allows a tri-vision sign or an electronic message sign. The **[City Manager]** shall also limit the number of billboard permits within the **[list]** billboard district if consolidation is approved under subsection (C)(10) of this section.

3. A billboard permit may be assigned without the consent of the city. The permittee shall provide notice of any assignment to the city. The allowed location of a billboard may be changed by modification of the permit. The **[City Manager]** shall approve a modification if the new location is consistent with the requirements of this section of the code.

4. Except as provided herein and in subsection (C)(10) of this section, each sign face of a billboard shall not exceed three hundred square feet in area. The signage area may be increased an additional twenty percent for any signage that is irregular in form and projects beyond the outer dimensions of the sign board, frame or cabinet. Each side of a double-faced billboard shall be a separate sign face for purposes of these signage area limitations.

5. Any billboard in the **[list]** billboard district may be a tri-vision sign or an electronic message sign. No tri-vision sign of electronic message sign may be located within the **[list]** billboard district until or unless the number of billboard permits for that district is limited to one permit. Any billboard may be double-faced, allowing sign copy on two sides of a sign structure, provided the two sides are parallel to each other within a deviation of ten degrees.

6. The building height zoning limitation for the property upon which a billboard is situated applies to that billboard.

7. Within the **[list]** billboard district, no billboard shall be located closer than one hundred fifty linear feet from the property line of any residentially zoned property as measured along the same side of the highway and at the highway frontage where a sign is proposed, unless the residential property is separated from the billboard property by [**highway name**].

8. All billboards shall be subject to the separation requirements established by state statute or rule.

9. The provisions of this section control over any inconsistent requirement or limitation in the underlying sign district applicable to the property on which a billboard is located.

10. Within the **[list]** billboard district, a billboard permit holder may file a consolidation application to combine two billboards with areas less than three hundred square feet into one billboard with an area less than seven hundred square feet. The **[City Manager]** shall approve the billboard consolidation application if the consolidated billboard meets the locational standards in subsections (C)(7) and (C)(8) of this section. In the event a billboard permit holder receives a consolidated billboard permit, the number of permits allowed within the billboard district shall be permanently decreased by the number of consolidated permits issued.

11. No person installing a billboard shall scatter, daub, or leave any paint, paste, glue, or other substances used for painting or affixing advertising matter or scatter or throw or permit to be scattered or thrown any bills, waste matter, paper, cloth, or materials of whatsoever kind removed from signs on any public street, sidewalk, or private property.

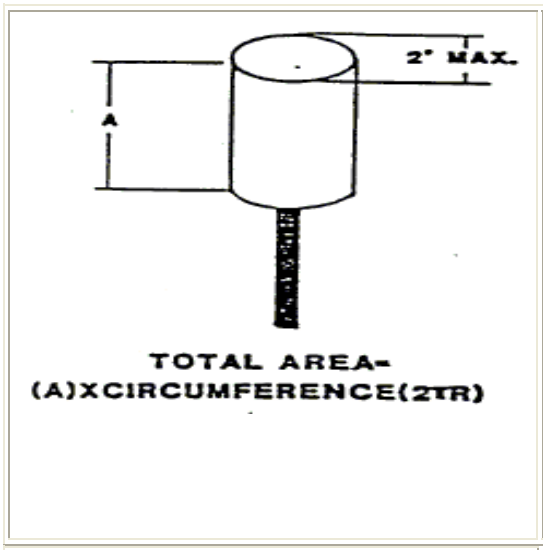
XX.XX.080 Measurements.

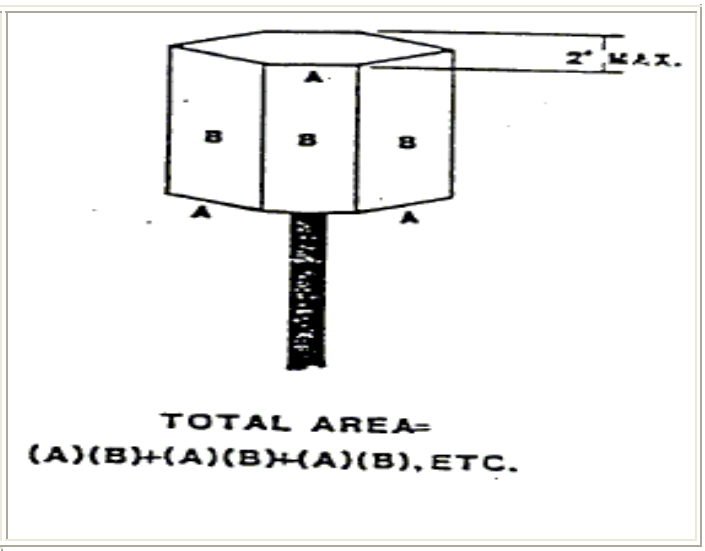
The following shall be used in measuring a sign to determine compliance with this chapter:

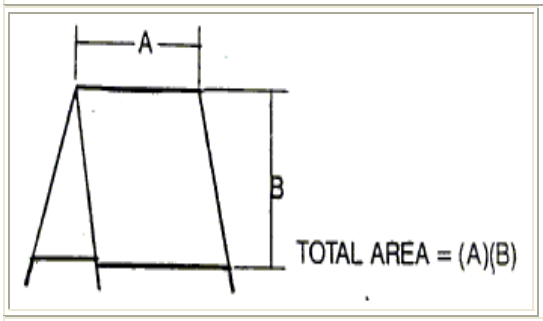
A. Sign Area.

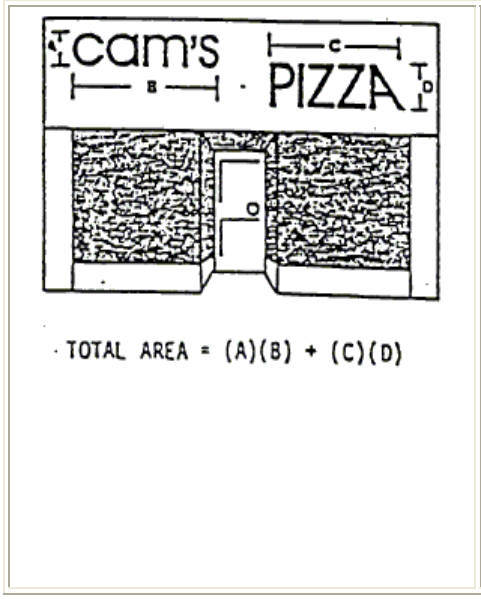
1. Sign area shall be measured within lines drawn between the outermost dimensions of the frame or cabinet surrounding the display area containing the sign copy. When signs are not framed or on a base material and are inscribed, painted, printed, projected or otherwise placed upon, or attached to a building, canopy, awning or part thereof, the sign area is the smallest possible space enclosing the sign copy that can be constructed with straight lines. Where a sign is of a three-dimensional, round, or irregular solid shape, the largest cross-section shall be used in a flat projection for the purpose of determining sign area.

Table [XX]


2" MAX.
A
TOTAL AREA=
(A)XCIRCUMFERENCE(2πR)


2" MAX.
A
B
B
B
A
A
TOTAL AREA=
(A)(B)+(A)(B)+(A)(B), ETC.


A
B
TOTAL AREA = (A)(B)


cam's
PIZZA
C
B
D
TOTAL AREA = (A)(B) + (C)(D)

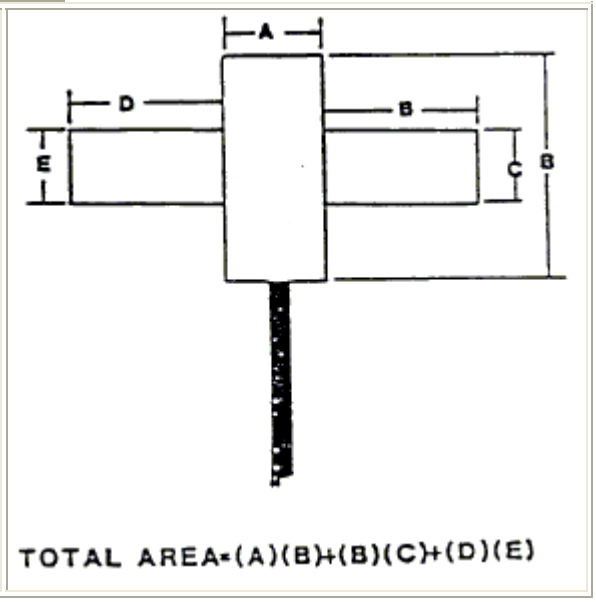
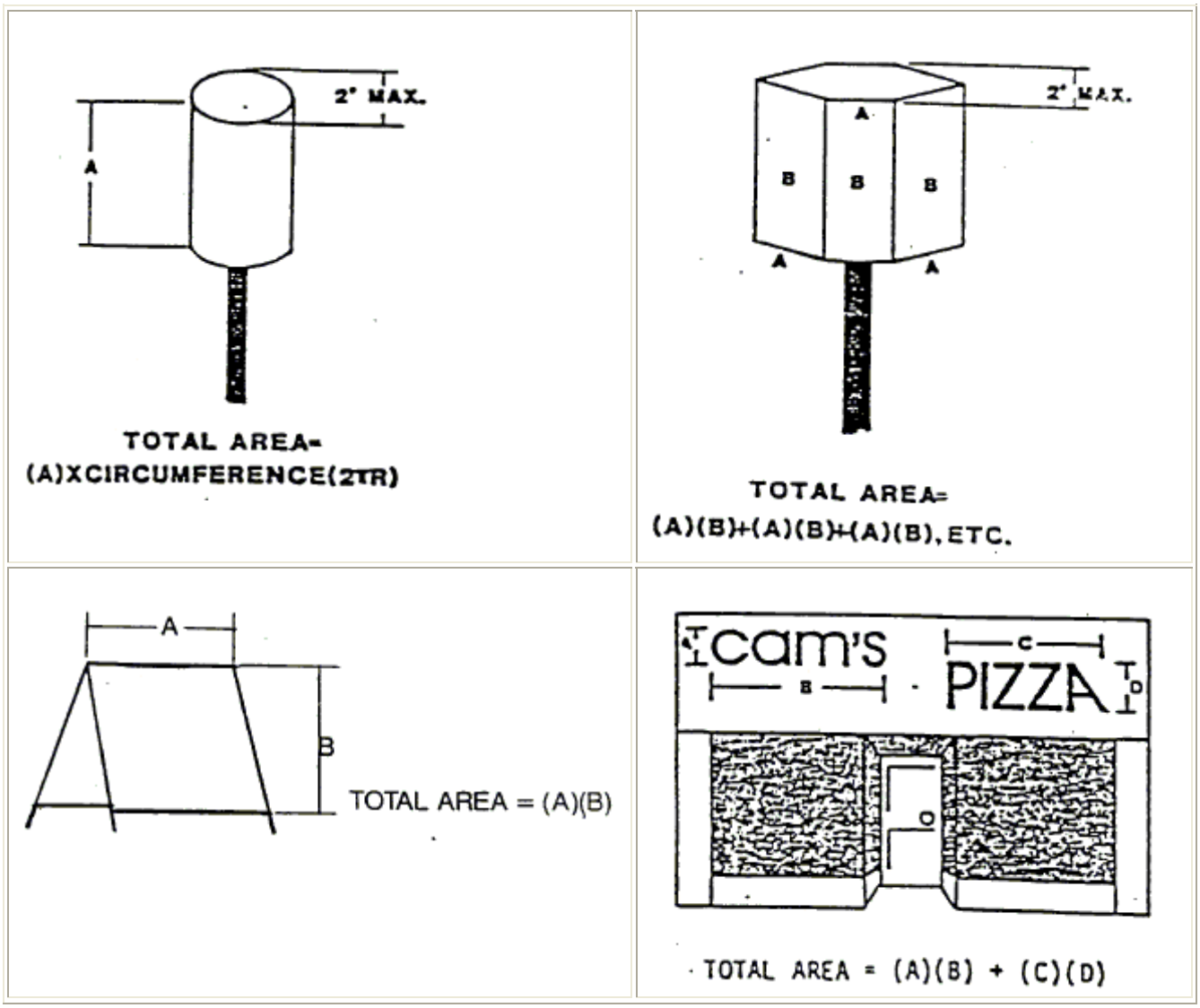

A
D
B
E
C
B
TOTAL AREA=(A)(B)+(B)(C)+(D)(E)

Table [XX]



2. The area of all signs in existence at the time of enactment of the ordinance codified in this chapter, whether conforming or nonconforming, shall be counted in establishing the permitted sign area.

3. When signs are constructed in multiple separate pieces containing sign copy, sign face area is determined by a perimeter drawn in straight lines, as small as possible, around all pieces.

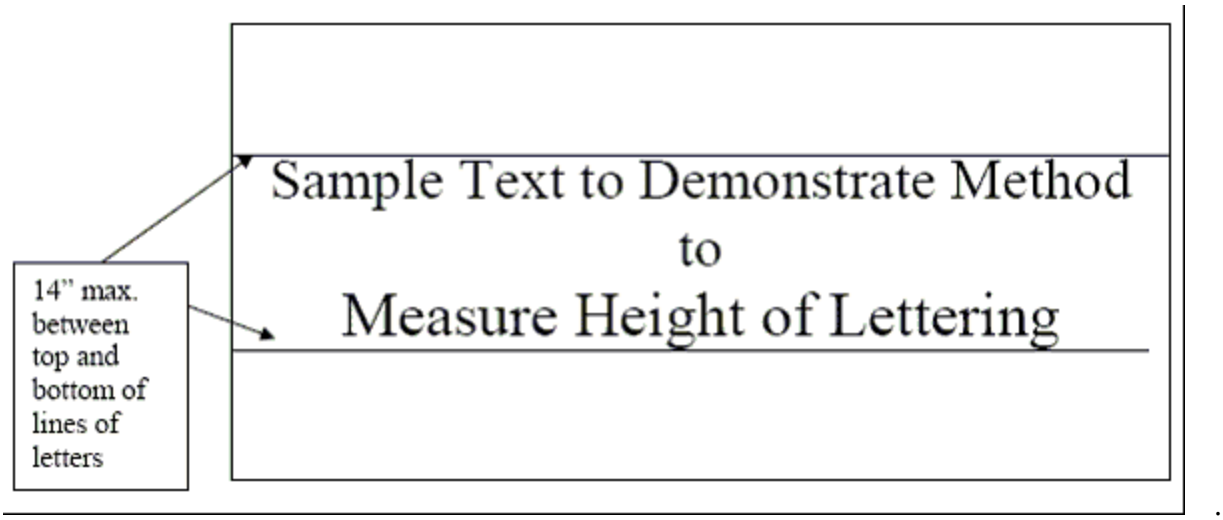
B. Height.

1. Height of sign above grade is measured from the average level of the grade below the sign to the topmost point of the sign including the supporting structure.

2. Where there is a limitation on the size of lettering, the lettering shall be measured cumulatively in height. See graphic below.

///

TABLE [XX]
METHOD OF MEASURING HEIGHT OF LETTERING FOR CORNICE SIGNS



C. Clearance.

Clearance is measured from the average grade below the sign to the lowermost point of the sign.

D. Spacing.

1. For the purpose of applying spacing requirements to signs, distances shall be measured parallel to the centerline of the adjacent street or highway.

2. The sign or sign location under consideration shall be included as one sign.

3. A back-to-back sign is counted as a single sign for the purpose of spacing distances.

[**E. Visibility**.]

Comment: Some jurisdictions may wish to attempt to regulate the visibility of the signs vis-à-vis other signs. These should be carefully thought out because there are likely challenges in the administration and enforcement.

XX.XX.085 Projecting signs.

An otherwise authorized sign shall be permitted to project over public right-of-way if the sign meets all of the following requirements:

A. The sign is attached to the face of a building where the building face is located within five feet of the property line abutting a street.

B. No external cross braces, guy wires, trusses, or similar bracing systems are used in constructing the sign.

C. The sign extends no more than eight feet from the building face and shall be no less than [**XX**] feet above the ground under the projecting sign.

D. The sign does not project above the roof line or parapet wall, whichever is higher.

E. Projecting signs shall conform to all provisions of this section which are designed to provide safe minimum clearance along public sidewalks and streets. The sign must have a minimum of [**8.5**] feet clearance from the ground. The outer edge of the projecting sign must be set back a minimum of two feet from the curbline.

[**F. Spacing between an earlier erected and any later erected projecting sign shall be a minimum of twenty feet**.]

Comment: only applicable if the jurisdiction imposes a spacing requirement, see XX.XX.080.E.

XX.XX.090 Wall signs.

A. A wall sign shall not project more than eighteen inches from the wall to which it is attached. A wall sign located on an alley frontage shall not project more than twelve inches from the wall to which it is attached and shall have fifteen feet of clearance.

B. A wall sign shall not project above the roof line, or top of the parapet wall, whichever is higher.

C. No external braces, guy wires, “A” frames, or similar bracing systems shall be used in constructing a wall sign.

D. The height of a wall sign attached to the end or face of a marquee shall not exceed thirty inches. The lower edge of this sign shall not extend below the marquee.

E. Wall signs on mansard roofs of thirty degrees or less may be installed vertically if solid background is used.

F. Wall signs shall be placed within the sign band.

XX.XX.095 Freestanding signs.

A. No part of a freestanding sign shall be erected or maintained within three feet of a street front property line, or within five feet of a side lot line, unless the application for the permit has been reviewed by the fire marshal and the fire marshal has determined that the location of the sign does not interfere with adequate fire access to any property.

B. No part of a freestanding sign shall project or extend into any public right-of-way.

C. Except as provided in this subsection, no freestanding sign shall project or extend into any vision clearance area. One or two sign poles supporting a freestanding sign may be located within the vision clearance area if they are necessary for the support of the sign, and if no other

portion of the sign is located within the vision clearance area between two feet and ten feet overgrade.

D. A freestanding sign shall be directly supported by poles or foundation supports in or upon the ground. No external cross braces, guy wires, “T” frames, “A” frames, “trusses,” or similar bracing systems shall be used to buttress, balance, or support a freestanding sign.

E. Only one freestanding sign is allowed for each street frontage, unless multiple signs are approved through a comprehensive sign plan.

F. A minimum of nine feet in clearance is required in areas accessible to vehicles. The lowest point of these signs may be less than nine feet above grade in areas not accessible to vehicles when the signs are protected from physical damage by the installation of bumper poles or other ground protections.

G. Freestanding signs permitted in a commercial/industrial sign district, station community commercial sign district or industrial park and research park sign district shall not be located closer than fifty linear feet from the property line of any single-family residential, multifamily residential, or station community residential zoned property as measured along the street frontage.

XX.XX.100 Awning signs.

A. Awning signs are permitted only as an integral part of the awning to which they are attached or applied.

B. The awning supporting structure shall maintain a clearance of eight feet.

C. An awning shall not extend to within two feet from the curb. An awning shall not project above the roof line.

D. The awning sign shall extend no more than eight feet from the building face.

XX.XX.105 Changing Image Signs

A. Changing images permitted under this chapter shall comply with the following standards and all other applicable requirements under this code or other applicable law:

1. The sign is constructed, established, operated, or otherwise function in such a way that the message or display changes no more frequently than every [*] hours/minutes;

2. The changing image sign may not be more than [**forty (40)**] square feet, whether the changing image is stand alone or a part of a more comprehensive or aggregate sign; and

3. Subject to subsection 4 of this section, the changing image sign must be constructed, established, operated, or otherwise function in such a way as to not exceed the following illumination limitations:

(A) For a sign comprised of red only, the intensity level (NIT) may be no more than [**3,130**] in the daytime and [**1,125**] in the nighttime;

(B) For a sign comprised of green only, the intensity level (NIT) may no more than [**6,300**] in the daytime and [**2,250**] in the nighttime;

(C) For signs comprised of amber only, the intensity level (NIT) may be no more than [**4,690**] in the daytime and [**1,675**] in the nighttime; and

(D) For signs with full color, the intensity level (NIT) may be no more than [**7,000**] in the daytime and [**2,500**] in the nighttime; and

4. The permittee shall submit to the Building Official a written certification from the sign manufacturer, stating that the light intensity of the sign has been factory pre-set not to exceed the levels specified in subsection (3) of this section, and the intensity level is protected from end-user manipulation by password-protected software or other method as deemed appropriate by the Building Official.

5. No other flashing light is permitted on the same side of a sign containing a changing image sign.

B. Electronic message signs permitted under this chapter shall comply with the following standards and all other applicable requirements under this code or other applicable law:

1. The rate of` change for sign copy from one message to another message shall be no more frequent than every eight seconds and the actual copy change shall be accomplished in four seconds or less. Once changed, the copy shall remain static until the next change.

2. Displays may travel horizontally or scroll vertically onto electronic message signs, but must hold in a static position after completing the travel or scroll.

3. Electronic message signs requiring more than four seconds to change from one copy to another shall be turned off during the change interval.

4. Sign copy shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of lights, or blinking of chasing lights. Copy shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, or otherwise portray graphics or animation as it moves onto, is displayed on, or leaves the sign face.

5. No electronic message sign lamp may be illuminated to a degree of brightness than is greater than necessary for visibility. In no case may the brightness exceed eight thousand nits or equivalent candelas during daylight hours, or one thousand nits or equivalent candelas between dusk and dawn. Signs found to be too bright shall be adjusted or removed as directed by the **[City Manager]**.

XX.XX.110 Comprehensive sign plan.

A comprehensive sign plan provides a means for defining common sign regulations for multi-tenant projects by providing incentives in the design and display of multiple signs. A comprehensive sign plan shall be required for all major business complexes and may be submitted for minor business complexes, industrial and research business complexes, and institutional uses. An application for a comprehensive sign plan approval shall be filed at the time permits for permanent signs on the property are sought. If a sign is for a development that requires development review under **[City]** Zoning / development Ordinance Sections 133 and 136, then the sign shall be reviewed as part of the development review process prior to approval of a sign permit. The plan shall be reviewed under the procedures set out in Section XX.XX.125 of this chapter. A decision on the plan application is subject to review under the procedures set out in Section XX.XX.135 of this chapter.

Comment: if the jurisdiction wishes signs to be compatible with other nearby signs, the drafter should consider how a comprehensive sign plan will be implemented. Presumably, following approval of a comprehensive sign plan, subsequent signs that comply with the plan should be approvable. But what of later-erected nearby signs and the requirement that the new sign under the sign program be compatible with the then existing signs?

A. An application for a comprehensive sign plan shall include information on the following:

1. The location of all wall, projecting, monument, and freestanding signs;

2. A description of the signs including construction materials, color scheme, unifying design elements, and any proposed lighting;

3. An itemization of sign sizes including height and area at all identified sign locations;

4. The location of any area designated for temporary signs, and documentation of the means by which such signs may be illuminated if approved.

B. A comprehensive sign plan shall comply with the following standards:

1. The signs and the signs together with the architectural style of structures in the business complex shall share common design elements. The content of any sign message shall not be considered in determining whether common design elements are present.

2. The comprehensive sign plan shall accommodate future revisions that may be required because of changes in principal uses or tenants; and

3. The comprehensive sign plan shall comply with the standards of this chapter, including any special allowances for sign area, number, location, and height provided for in this section.

C. Wall signs in a comprehensive sign plan shall meet the following requirement:

1. The allowed sign area shall be the amount authorized in the relevant sign district.

D. Freestanding signs and monument signs in minor business complexes shall meet the following requirements:

1. One freestanding sign shall be permitted for the entire complex. The maximum height of such sign shall be twenty feet. The maximum area of this sign shall be one hundred square feet for a single-faced sign and two hundred square feet for a double-faced sign.

2. One monument sign shall be permitted on each pad site or lot located within the minor business complex. The sign shall not exceed six feet in height and thirty-two square feet in area for a single-faced sign and sixty-four square feet in area for a double-faced sign.

E. Freestanding signs and monument signs in major business complexes shall meet the following requirements:

1. One freestanding sign shall be permitted for the entire major business complex. The maximum height of this sign shall be twenty-six feet. The maximum area of this sign shall be one hundred thirty square feet for a single-faced sign and two hundred sixty square feet for a double-faced sign.

2. Where a complex has multiple street frontages, one freestanding sign shall be permitted on each street frontage classified as an arterial or collector on the transportation system plan and having a minimum of five hundred feet of frontage. There shall be three hundred lineal feet of separation, measured along each side of the right-of-way, between the two freestanding signs.

3. One monument sign shall be permitted on each pad site or lot located within the major business complex. The sign shall not exceed six feet in height and thirty-two square feet in area for a single-faced sign and sixty-four square feet in area for a double-faced sign.

F. Monument signs in industrial and research business complexes shall meet the following requirements:

1. One double-faced sign located at the primary vehicular entrance or a maximum of two single-faced signs on either side of the primary vehicular entrance shall be permitted. The sign shall not exceed thirty-two square feet in area for a single-faced sign and sixty-four square feet for a double-faced sign. The sign may either be constructed as a monument sign with a maximum six-foot height, or incorporated into a decorative wall.

2. One monument sign shall be permitted on each lot located within the industrial and research business complex. The sign shall not exceed four feet in height and sixteen square feet in area for a single-faced sign and thirty-two square feet in area for a double-faced sign.

G. Where development review is accomplished through the approval of a development permit for a commercial or industrial building or site, a comprehensive sign plan shall be included with the conceptual drawings, illustrations and building elevations and shall address the standards contained in this chapter. The sign plan shall be reviewed and approved by the [**[hearing body]**], in association with building and site design, as a part of the development permit review process using the standards set out in this section.

XX.XX.115 Automobile service station sign plan.

Comment: This provision arguably is a "speaker-based distinction," which could subject the provision to legal challenge. The distinction may well be justified and defensible based on considerations such as the heightened need to control sign clutter for service stations so the traveling public can clearly identify the service station and the services and goods it offers, given the nature of the business – servicing autos on the adjacent right of way -- to prevent slow traffic cruising gas stations to find the best deal. If this type of provision is to be included in the sign code, the entity should be able to document their consideration of such factors."

An automobile service station sign plan shall be required for all automobile service stations. An application for an automobile service station sign plan approval shall be filed at the time permits for permanent signs on the property are sought and shall comply with the provisions contained in this section. The plan shall be reviewed under the procedures set out in Section XX.XX.125 of this chapter. A decision on the plan application is subject to review under the procedures set out in Section XX.XX.135 of this chapter.

A. One freestanding sign shall be permitted. The sign area may include both a stationary sign face area and a bulletin board or changing image sign area. The maximum area for such a sign shall be fifty square feet for a single-faced sign and one hundred square feet for a double-faced sign.

1. The maximum height of a freestanding monument sign shall be six feet.

2. The maximum height of a freestanding ground-mounted sign shall be twelve feet.

3. The maximum height of a freestanding pole sign, including supporting structure, shall be twenty-four feet. The minimum clearance of a freestanding pole sign, excluding supporting structure, shall be fifteen feet.

B. Except for a service station opening for a period up to three weeks, flags, pennants, or other attention-seeking or advertising devices shall not be permitted.

C. Wall signs associated with an automobile service station sign plan shall not exceed the amount authorized in the relevant sign district. In lieu of the wall signage allowed by this section, one sign shall be permitted on the automobile service station canopy facing the principal frontage. Total sign area shall not exceed twenty percent of the visible vertical surface of the canopy face, with a maximum sign face area of fifty square feet. Where the use has multiple frontages, one additional sign shall be permitted on the canopy facing each secondary frontage. Total sign area on the secondary frontage shall not exceed ten percent of the visible vertical surface of the canopy face, with a maximum sign face area of twenty square feet.

XX.XX.120 Construction and maintenance standards.

A. All permanent signs shall be constructed and erected in accordance with the requirements of the Uniform Building Code.

Comment: The International Structural Specialty Code, Appendix H, contains structural requirements relating to sign materials, loads and stresses, as well as provisions relating to "exempt signs", "sign definitions", etc. The State has <u>not</u> adopted Appendix H, so the jurisdiction should review Appendix H to determine if it wishes to adopt Appendix H, in full or in part, to require a building permit review as part of the sign permit. If not adopted, then the signs are subject to the State Building Code, as determined by the local building official, e.g., structural requirements for free-standing or marquee signs, electrical code, etc.

When reviewing Appendix H, the Committee recommends the drafter consider the following revisions to Appendix H:

Section H101: The first sentence should be moved to Section H103.

Section H101.2: delete, because that is duplicative with this Sign Code.

Section H102: delete, because this Sign Code has its own definitions of types of signs.

Section H112.4: delete, as this is addressed in height limitations relating to projecting signs.

Section H113.4: delete, as this is addressed in the sign size limitations contained in this Code.

B. All illuminated signs must be installed by a state-licensed sign contractor, subject to the requirements of the State Electrical Code. All electrically illuminated signs shall be listed, labeled, and tested by a testing agency recognized by the state of Oregon.

C. Building and electrical permits shall be the responsibility of the applicant. Prior to obtaining building and electrical permits, the applicant shall obtain a sign permit or demonstrate an exception from the permit requirements of this chapter.

D. All signs, together with all of their supports, braces, guys, and anchors shall be kept in good repair and be maintained in a safe condition. All signs and the site upon which they are located shall be maintained in a neat, clean, and attractive condition. Signs shall be kept free from excessive rust, corrosion, peeling paint or other surface deterioration. The display surfaces of all signs shall be kept neatly painted or posted. Signs which are faded, torn, damaged or otherwise unsightly or in a state of disrepair shall be immediately repaired or removed.

E. No sign shall be erected or maintained in such a manner that any portion of its surface or supports will interfere in any way with the free use of any fire escape, exit, or standpipe. No signs shall be erected or maintained so as to obstruct any building opening to such an extent that light or ventilation is reduced below minimums required by any applicable law or provisions of this code.

XX.XX.125 Illumination—General restrictions.

A. No sign, light, lamp, bulb, tube, or device shall be used or displayed in violation of this section.

B. Regardless of the maximum wattages or milliampere rating capacities allowable under Section XX.XX.120(E) of this chapter, no light source shall create an unduly distracting or hazardous condition to a motorist, pedestrian or the general public. Lighted signs shall be placed, shielded or deflected so as not to shine into residential dwelling units or structures, or impair the road vision of the driver of any vehicle.

C. External light sources for a sign shall be directed and shielded to limit direct illumination of any object other than the sign.

D. Except for [**either**] holiday seasonal decorations, [**or signs approved under a comprehensive sign plan**], temporary signs shall not be illuminated.

E. The illumination of signs shall comply with the following standards:

1. No exposed reflective type bulb, par spot nor incandescent lamp, which incandescent lamp exceeds [**twenty-five**] watts, shall 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.

2. When neon tubing is employed on the exterior or interior of a sign, the capacity of such tubing shall not exceed [**three hundred]** milliamperes rating for white tubing nor [**one hundred**] milliamperes rating for any colored tubing.

3. When fluorescent tubes are used for interior illumination of a sign such illumination shall not exceed:

a. Within residential sign districts, illumination equivalent to four hundred [**twenty-five**] milliampere rating tubing behind a sign face with tubes spaced at least seven inches, center to center;

b. Within commercial or industrial sign districts, illumination equivalent to [**eight hundred**] milliampere rating tubing behind a sign face spaced at least nine inches, center to center.

XX.XX.130 Sign permit application.

A. Except as provided in this chapter, a permit is required to erect, construct, repair or alter a sign. If a sign is for a new development that requires development review under **[City]** Zoning / development, then the sign shall be reviewed as part of the development review process prior to approval of a sign permit.

B. An application for a sign permit shall be made on a form prescribed by the **[City Manager]** and shall be filed with the city. The application shall be filed by the owner of the sign or a representative of the sign's owner. A separate sign permit application is required for each sign, unless a combined application for all signs in a proposed development is proposed. The application shall include information required by the **[City Manager]** and the following:

1. A sketch of the site, drawn to scale, showing the approximate location of existing structures, existing signs, and the proposed sign;

2. Building frontage elevations drawn to scale, showing the sign's relative location and placement;

3. An illustration of the proposed sign, drawn to scale, showing the design, elevations, sign face dimensions and area, materials and engineering data which demonstrates its structural stability. The illustration of the proposed sign need not show the sign message, but shall show the size, style, and design of the lettering, numbers, and graphics conveying any message. The content of any message shall not be considered in the evaluation of a sign permit application;

4. The names and addresses of the applicant, the owner of the property on which the sign is to be located, the manufacturer of the sign and the person installing the sign, and the construction contractor's board number of the installer. The owner of the property on which the sign is to be located shall sign the sign permit application;

5. A fee in the amount set by council resolution. When a person begins construction of a sign requiring a sign permit before the permit is approved, the permit fee shall be doubled.

Comment: Fee charged must not "restrain" the free expression or "restrict" the right to speak freely. Fee should be reflective of the cost of the permit review and cost of the program. Fidanque v. State by and Through Oregon Gov't Stds. & Practices Comm'n, 328 Or. 1, 9 (Or. 1998); Outdoor Media Dimensions, Inc. v. Dept. of Transp, 340 Or. 275, 132 P.3d 5 (2006)

Example: Lake Oswego

19)	Signs (multiple window signs in the EC zone treated as a single sign)	$ 329
	Special event sign	$ 95
	Variance to Sign Code	$ 1,081
	Sign Retrieval Fee (violations)	$ 20
	Refundable deposit for Public Notice Signs	$ 70

C. When deemed necessary by the building official, building or electrical permits shall be obtained as a part of the sign permit process. When required by Section XX.XX.095 of this chapter, the approval of the fire marshal shall be obtained.

Land Use Regulation

X. Public Notice of Sign Permit Application and Comment Period.

Comment: *If Sign Permit review is a "limited land use decision" (approval or denial based on discretionary standards that regulate the physical characteristics of a use permitted outright, i.e., design review), then must provide for at least 14-day written comment period by properties within 100 feet. ORS 197.195(3). Notice is required to be given to the recognized neighborhood association in which the site is located. ORS 197.763(1)(b).*

Notice must contain:

- *Statement that issues that could be basis of appeal must be stated in written comment; list criteria; address;*
- *date/time/place comments are due;*
- *copies of application available for inspection / copying;*
- *name of staff person.*

ORS 197.195(3).

It is recommended that the notice process be the same as for the city's zoning/development applications which are "limited land use decisions," for consistency.

D. The **[City Manager]** shall grant or deny the sign permit application based upon the information submitted with the application and other information obtained by or submitted to the city.

Non-Land Use Regulation	Land Use Regulation
1. A decision on a sign permit application shall be made within seven calendar days of submission of a complete application, unless a later decision period is specified under the below subsections.	1. A decision on a sign permit application shall be made within seven calendar days following completion of the Public Comment Period above, unless a later decision period is specified under the below subsections. The decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.
Comment: To exercise prior restraint (requiring a permit before erection of a sign), it is recommended that the time for application review and appeal provide for expeditious review. If review of application is content-neutral with objective criteria, quick time for review is not required. St. Petersburg. "time	*Comment: Decision to be made following close of Comment Period. ORS 197.195(4) requires a statement explaining the decision See also Non-Land Use Regulation Comment opposite.*

limits are not per se required when the licensing scheme at issue is content-neutral." See also Thomas v. Chicago Park. GK Travel. However, this depends on court finding the licensing scheme was a content-neutral time, place and manner permit scheme. GK Travel. In Granite State Outdoor Advertising, Inc. v. City of Clearwater, 5 day completeness review and 5-10 working days substantive review deemed constitutional. In Thomas v. Chicago Park, 28 days was approved. GK Travel (14 day review).	

If a decision is not made within the time specified in this section, the applicant may temporarily install the sign as requested, at the applicant's risk for costs of removal, until such time as the City's decision is issued and is final.

> *Comment: The Code should specify what remedies applicant has if the review is not completed in the time specified -- can the sign be put up while waiting for decision? Is permit deemed issued? Granite State Outdoor Advertising, Inc. v. City of Clearwater*

X. When the requested permit is part of an application for [a comprehensive sign plan] or [an automobile service station plan] reviewed by the [City Manager], a decision on the permit shall be made within thirty days of submission of a complete application.

E. Notice of Decision

Non-Land Use Regulation	Land Use Regulation
4. If the application is denied, the **[City Manager]** shall mail the applicant written notice of the decision and shall explain why the application was denied. [**The decision shall also include an explanation of the applicant's appeal rights.**] The decision shall be mailed to the address of the applicant on the application by regular mail.	4. The **[City Manager]** shall mail the applicant and any persons who submitted a written comment upon the application within the Public Comment Period written notice of the decision and shall explain why the application was approved or denied. The decision shall also include an explanation of the appeal rights. The decision shall be mailed by regular mail to the address of the applicant on the application and to interested persons to the address stated in their Comment.
*Comment: The **[bracketed text]** is not required by statute.*	*Comment:* o *Decision must be based upon the*

	submitted record and explain the justification for the decision. ORS 197.195(4). o *Explanation of appeal rights required by ORS 197.195(4).*

E. A sign permit application shall be approved if:

1. The application complies with all of the applicable provisions of this chapter and any other objective requirement imposed by law. No standard shall be applied to deny a permit if the operation of that standard violates a constitutional right of the applicant. If, as part of the application, an applicant identifies a particular standard alleged to have unconstitutional effect, and provides reasons for that contention, the **[City Manager]** shall seek the opinion of the city attorney on the contention. If the city attorney concludes that the operation of the standard violates a constitutional right of the applicant, the **[City Manager]** shall not apply the standard in reviewing the application;

2. The applicable permit fee has been paid.

F. An approved sign shall be constructed and installed within six months of the final approval of the permit, including resolution of any appeal. The sign permit shall be void if installation is not completed within this period or if the sign does not conform to the approved permit. Sign permits mistakenly issued in violation of this chapter or other provisions of this code are void. The **[City Manager]** may grant a reasonable extension of time for the installation deadline upon a showing of reasonable grounds for delay.

G. If sign does not conform to the building code after inspection, the sign will be subject to removal under Section XX.XX.155 of this chapter.

H. The **[City Manager]** may revoke a sign permit if the director finds that there was a material and misleading false statement of fact in the permit application.

XX.XX.135 Adjustments.

A. Adjustments to the numeric standards of this section shall be allowed only in compliance with this subsection. Adjustments may be requested to allow relocation of a sign, on the subject property, reducing the height of a sign, or enlarging the area of a sign. Adjustments allowing the use of prohibited signs, or allowing signage other than that specifically allowed by this code, are not permitted.

B. Requests for adjustments shall be filed with the city, on a form provided by the planning department, and accompanied by a fee as approved by the city council. The request shall include the information required for a sign permit, as specified in Section XX.XX.125(B) of this chapter, the specific standard from which the adjustment is requested, and the numeric amount of the adjustment, and written responses to the following approval criteria:

Land Use Regulation
Comment: when setting up the application and appeal process, attention should be given to the requirement for processing an application to a final decision within the 120-day period required by ORS 227.178.

Hillsboro

1. Compliance with the applicable standard would create an unnecessary hardship due to physical conditions of the property (topography, lot size or shape, or other circumstances over which the applicant has no control), which are not present on other properties in the same vicinity or sign district, and the adjustment is necessary to permit signage comparable with other properties in the same sign district in the vicinity;

2. The hardship does not result from actions of the applicant, owner(s) or previous owner(s), or from personal circumstances of the applicant, owner(s) or previous owner(s), such as physical condition, age or financial situation; and

3. Approval of the adjustment will not adversely affect the function or appearance of the development and use of` the subject property and surrounding properties; and will not impose limitations on other properties and signage in the area including signage that would be allowed on adjacent properties.

Lake Oswego

1. Strict application of the code requirement would deny the applicant a reasonable opportunity to communicate by sign in a manner similar to like persons or uses because of an unusual or unique circumstance relating to the property or the proposal, such as site or building location, building design, physical features on the property, or some other circumstance;

2. The sign which would result from the variance will not affect the surrounding neighborhood or other property affected by the request in a manner materially inconsistent with the purpose of the Sign Code as stated in XX.XX.010; and

3. The degree of the variance is limited to that reasonably necessary to alleviate the problem created by the unique or unusual circumstance identified pursuant to subsection (1) of this section.

C. The [**hearing body**] shall conduct a public hearing on the request for adjustment. The [**hearing body**] shall approve, approve with conditions, or deny the adjustment, based upon the evidence at the hearing. The **[hearing body]** may impose such conditions as are deemed necessary to mitigate any adverse impacts which may result from approving the adjustment. The hearing shall be conducted under the procedures used by the [**hearing body**] for a quasi-judicial land use hearing.

D. The city recorder shall give written notice of the hearing by mail to owners of property located within one hundred feet of the lot containing the sign, using for this purpose names and addresses of owners as shown upon the latest assessment role of the county assessor. Failure of a person to receive the notice specified in this section shall not invalidate any proceeding in connection with the application for an adjustment.

Comment: Some jurisdictions expand the notice area beyond the statutory minimum of 100 feet. ORS 197.763(2)(a). Notice to neighborhood associations is required by ORS 197.763(2)(b)

Comment: if the sign code is a land use regulation, the notice of decision area should be the same as for a limited land use decision (variance) under the development code.

E. The [**hearing body**] shall issue its decision in writing explaining the reasons why the adjustment was approved or denied. The decision shall be mailed to the address of the applicant on the application by regular mail. The decision of the [**hearing body** shall be final.

XX.XX.140 Appeal of decision on sign permit.

Non-Land Use Regulation	Land Use Regulation
A. An applicant may appeal the denial of an application for a sign permit, conditions of approval of the allowance of a permit or revocation of the permit. An appeal may be initiated by filing a form prescribed by the **[City Manager]**, that is filed within twenty days of the date of mailing the decision of the **[City Manager]**. The form shall specify the bases for the appeal. Except as provided herein, the appeal shall be to the [**hearing body**]. The decision of the [**hearing body]** may be appealed to the city council. In considering the appellant's contentions, the city council shall exercise only the review authority listed in subsection (F) of this section.	A. An applicant or interested person who appeared by submission of a Comment may appeal the denial of an application for a sign permit, conditions of approval of the allowance of a permit, or revocation of the permit. An appeal may be initiated by filing a form prescribed by the **[City Manager]**, that is filed within twenty days of the date of mailing the decision of the **[City Manager]**, city engineer or the building official. Except as provided herein, the appeal shall be to the **[hearing body]**.

Comment: A decision of approval or denial should be in writing, with a copy provided to the applicant. Café Erotica (concurring opinion); GK Travel *To exercise prior restraint (requiring a permit before erection of a sign), it is recommended that the time for appeal provide for expeditious review. Granite State Outdoor Advertising, Inc. v. City of Clearwater, Thomas v. Chicago Park, GK Travel*	*Comment: At least one internal appeal required from hearing officer's decision to the planning commission or to the City Council is required, if the initial decision is made without a hearing. ORS 227.175(10)(a)(A).* *Comment: See ORS 227.010 - .090 to determine if other hearings bodies within the jurisdiction qualifies as a "Planning Commission." Appeal could be directly to city council. ORS 227.175(10(a)(D).*
	2. The hearing before the [**hearing body**] shall be de novo, and is not limited to the issues stated in the appeal notice.
	Comment: ORS 227.175(10)(a)(D) and (E) require the initial post-hearing officer hearing be de novo, without limitation of evidence or argument to what was reviewed by the hearings officer.
	3. The decision of the [**hearing body**] may be appealed to the city council. In considering the appellant's contentions, the city council shall exercise only the review authority listed in subsection (F) of this section.
	Comment: only one internal appeal is required; the hearing body's decision could be the final decision of the City. If the sign code is considered a land use regulation, refer to similar provisions in the jurisdiction's development code. [In setting the application processing times and hearing notice requirements, keep in mind the 120 day limitation for processing land use permits]

B.

Non-Land Use Regulation	Land Use Regulation
	The city recorder shall give written notice of the hearing by mail to owners of property

	located within one hundred feet of the lot containing the sign, using for this purpose names and addresses of owners as shown upon the current records of the county assessor, and to the recognized neighborhood association in which the site is located. Failure of a person to receive the notice specified in this section shall not invalidate any proceeding in connection with the application for an appeal.
Comment: The extent of public notice of an appeal hearing is up to the City, as the focus under the First Amendment is only upon the speaker's rights. Some jurisdictions may elect to involve the public, and issue public notices of hearings, akin to land use hearings.	*Comment: Again, some jurisdictions expand the notice area beyond the statutory minimum of 100 feet. ORS 197.763(2)(a). Notice to neighborhood associations is required by ORS 197.763(2)(b)*

C. The [**hearing body**] shall conduct a public hearing on the appeal within 21 days following the receipt of the filed notice of appeal.

Comment: To exercise prior restraint (requiring a permit before erection of a sign), it is recommended that the time for appeal provide for expeditious review. Granite State Outdoor Advertising, Inc. v. City of Clearwater, Thomas v. Chicago Park, GK Travel

The [**hearing body**] shall grant or deny the permit based upon the evidence at the hearing and the record of its administrative proceedings.

Non-Land Use Regulation	Land Use Regulation
The hearing may be conducted under the procedures used by the **[hearing body]** for a quasi-judicial hearing.	The hearing shall be conducted under the procedures used by the **[hearing body]** for a quasi-judicial land use hearing.
	Comment: The initial evidentiary hearing procedures of ORS 197.763 must be followed. See also ORS 197.195(5).

D. The [**hearing body**] shall issue its decision in writing explaining the reasons why the permit was granted or denied.

Non-Land Use Regulation	Land Use Regulation
The decision shall be mailed to the address of the applicant on the application by regular mail.	The decision shall be mailed by regular mail to the address of the applicant on the application and to interested persons to the address stated in their Comment.

Municipal Court Not Available or Not Elected	Municipal Court Option
Comment: no additional text is necessary, as subsection D grants broad authority to consider the appeal.	E. In considering the appellant's contentions, the **[hearing body]** shall exercise only the following review authority: 1. Determining whether the **[City Manager]** failed to follow applicable procedures in taking action on the permit or the sign in ways that prejudiced the rights of the appellant; 2. Determining whether the **[City Manager]** properly applied the provisions of this chapter; 3. Modifying the decision of the **[City Manager]** only to the minimum extent necessary to be consistent with the requirements of this chapter or of other laws; 4. Attaching such conditions to granting all or a portion of any appeal as necessary to achieve the purposes of this chapter. F. When the appeal form in an appeal of a sign permit or revocation states an issue involving the application of state or federal constitutional law, the municipal court judge shall resolve the constitutional law issues on an expedited basis. Notice of the hearing before the municipal court judge shall be provided as set forth in subsection (B) of this section. The court shall conduct a public hearing on the constitutional issues and may allow the reception of factual evidence. The city attorney may appear on behalf of the city. Following the hearing, the court shall issue a written opinion on the constitutional issues. If the constitutional issues are the only issues raised in the appeal, the court shall direct the **[City Manager]** to grant or deny the permit or

	revocation. The directed decision of the **[City Manager]** is the final decision of the city. If other issues are raised in the appeal, the decision of the municipal court shall be binding on the **[hearing body]** . Following resolution of these other issues, the decision of the **[hearing body]** may be appealed to the city council. In considering the appellant's contentions, the city council shall exercise only the review authority listed in subsection (F) of this section. *Comment: the drafter should consider whether the appeal should be bifurcated between the constitutional issues (if any) and the non-constitutional issues, with the Municipal Court hearing the constitutional issues.*

Note to Drafter regarding Appeal Beyond City's Final Decision

Non-Land Use Regulation	**Land Use Regulation**
Judicial appeal would be by a writ of review. ORS 34.010.	*City's decision is either a "land use decision" or a "limited land use decision", resulting in judicial appeal to LUBA. ORS 197.825.*
Littleton ("Ordinary court procedural rules and practices (generally) provide reviewing courts with judicial tools sufficient to avoid delay-related First Amendment harm.", citing Freeman)	
In Oregon, we do not differentiate based on content, so burden is upon applicant to show that application meets Code requirements. See Café Erotica of Florida, Inc. v St. Johns County, Florida, 360 F. 3d 1274, 1294 (11th Cir 2004)'s concurring opinion: "Although this provision demands a content-based analysis, it is not an impermissible prior restraint. First, there is not a Metromedia violation because commercial speech is not advantaged over non-commercial speech. Rather, the provision establishes a preference for "core" speech by making the county bear the burden of proof and costs of initiating cases in circuit court if a denial is based on the content of the message. "Second, in Freedman v. Maryland, the Supreme Court required municipalities to "bear the burden of going to court to suppress speech and must bear the burden of proof once in court." FW/PBS v. City of Dallas, 493 U.S. 215, 227, 107 L. Ed. 2d 603, 110 S. Ct. 596 (1990) (citing Freedman v. Maryland, 380 U.S. 51, 58-60, 85 S. Ct. 734, 738-40, 13 L. Ed. 2d 649 (1965)). The county was most likely attempting to write its code to meet this Freedman requirement." (citations in original).	

XX.XX.145 Inspections.

A. If a building permit is required, the building official shall perform a sign inspection upon notification by the permittee that the construction is ready for inspection. Failure of the permittee to notify the building official of the progress of construction for inspection purposes shall result in the revocation of the sign permit. A final inspection of a sign shall be made upon completion of all construction work and prior to its illumination.

B. All signs may be inspected or reinspected at the discretion of the building official. The building official may inspect footings for monument, ground-mounted or freestanding signs. The building official may enter at reasonable time upon the premises of any person licensed under the provisions of this chapter for the purpose of inspection of signs under construction.

XX.XX.150 Enforcement of Sign Code – General Provisions

Comment: It can be difficult to enforce sign codes. The defendant is such cases often points to other instances in the City where violations have occurred and have not been

enforced. This leads to arguments that the city is selectively enforcing its ordinance in violation of Article 1 Section 8 (free expression) and Article 1 Section 20 (equal privileges) of the Oregon Constitution and the First Amendment as well is the Equal Protection and Due Process under the Fourteenth Amendment of the US Constitution.

The basic elements of this claim are 1) that there is selectivity in enforcement; 2) that the selective enforcement is intentional; and 3) that the selective enforcement is based on a unjustifiable standard. City of Portland v. Bitans, 100 Or App 297, 302, 786 P2d 222 (1990); McQuillin, Municipal Corporations Section 27.57.10. The argument that others have not been prosecuted is not sufficient. Selectivity in enforcement is allowed unless there is proof that it was deliberately pursued because of some impermissible reason such as race, religion or some other arbitrary standard. Proof of sporadic or non-existent enforcement in the past is not adequate.

In Oregon, these challenges to enforcement have generally failed. City of Eugene v. Crooks, 55 Or App 351, 637 P2d 1350 (1981).

The proposed code allows for monetary penalties and the recovery of costs for both signs on right of way and private property that are taken down by the City.

- *On private property, before the sign can be taken down and the owner charged, there should be notice and an opportunity for a hearing.*
- *On public property, non-permitted signs can be summarily removed and the owner given notice before the property is destroyed. Some codes and some jurisdictions merely remove the signs and destroy them. To avoid issues regarding the taking of private property, notice is proposed to be given before the property is destroyed.*

A. The following referenced code sections may be utilized for enforcement of this Sign Code, in regards to the types of sign violations referenced:

1. Sign in public right-of-way or on City-owned real property: Section XX.XX.155.
2. Sign on private property or on non-City-owned public property, other than on public right-of-way: Section XX.XX.160.
3. Unsafe Sign: Section XX.XX.165.
4. Abandoned Sign: Section XX.XX.170.

B. In addition to any other provisions contained herein, the [**City Manager**] is authorized to undertake such action as the [**City Manager**] deems necessary and convenient to carry out the provisions of this Sign Code, as is permitted by law.

C. Nothing contained herein shall preclude the issuance of citations for civil violations of this ordinance, either prior to, concurrently with, or after action is commenced to declare a sign to be unlawful or to removal an unlawful sign.

D. The **[City Manager]** may promulgate reasonable rules and regulations necessary to carry out the provisions of this chapter.

E. When a sign is removed, altered, and/or stored under these enforcement provisions, removal and storage costs may be collected against the sign owner and the person responsible for the placement of the sign. The city council shall establish the fees for removal and storage of signs, and for other associated fees, by resolution, from time to time.

F. This chapter shall not be construed to create mandatory enforcement obligations for the City. The enforcement of this chapter shall be a function of the availability of sufficient financial resources consistent with adopted budgetary priorities and prosecutorial priorities within the range of delegated discretion to the **[City Manager]**.

> *Comment: Just because a city prosecutes one violation and not another is not in itself prohibited discrimination. In the example of the sign code violation, unless the city is actually prosecuting a sign code because of the content of the message or because of membership in suspect class, there would be no improper prosecution. See also Medford Assembly of God v. City of Medford, 72 Or App 333, 339, 695 P2d 1379 (1984).*

XX.XX.155 Enforcement - Sign in public right-of-way or on City-owned real property.

Any sign installed or placed in the public right-of-way or on City-owned real property, except in conformance with the requirements of this chapter, may be removed by the [**City Manager**] as follows:

A. Immediate confiscation without prior notice to the owner of the sign.

B. The city shall store any sign ordered to be removed by the **[City Manager]** for a period of [**30**] days from the time the person responsible therefore is notified as provided in subsection C. The city shall continue to store such sign for any additional period during which an appeal or review thereon is before the [**City Manager / municipal court**.]

C. If a telephone number or address of the owner of the sign, person responsible therefore, or person or business that is the subject of the communication on the sign in on the text of a sign, the City shall contact the said person or business by telephone or by mail (based on the manner of contact stated on the sign) and advise that the City believes that:

1. The sign was found in a location that the City believes to be a public right-of-way or City-owned real property;

2. That no permit was issued for the placement of the sign in said location, and that the sign is not otherwise lawfully permitted to be in said location;

The communication shall advise said person or business that the City has confiscated the sign and shall destroy the sign after [**30**] days from the time the person responsible therefore is notified, unless either the sign is claimed and the removal and notice fees are paid in full or a Request for Hearing is submitted by the reputed sign owner to the [**City Manager**].

If no telephone number or mailing address is stated for the owner of the sign on the sign, the City shall retain the sign for a period of [**15**] days to permit the sign owner to ascertain that the sign has been removed and to file a Request for Hearing.

D. Upon receipt of a Request for Hearing, the City Recorder shall determine that that applicable fee is paid, and shall then schedule a hearing before the [**City Manager / municipal judge**] within [**3]** business days. The City Recorder shall notify the reputed sign owner and the appropriate city staff of the date, time, and place of the hearing upon the removal of the sign.

E. The hearing shall be conducted by the [**City Manager / municipal judge**]. The procedures for the hearing shall be established by the [**City Manager / municipal judge**] sufficient to provide the parties not less than the minimum due process required under state and federal law.

F. A prima facie violation of this Code shall be met if it is shown that:

1. The sign was located in a public right-of-way or City-owned real property; and

2. The sign owner is not a public entity or other public entity authorized to install and maintain public signs within the public right-of-way under this Sign Code.

The sign owner may rebut the prima facie showing of violation upon a showing that the sign was lawfully permitted within the public right-of-way or City-owned real property, or that the law does not require the sign owner to obtain a permit under this Sign Code to place a sign within the public right-of-way or on City-owned real property.

G. The [**City Manager / municipal judge**) shall issue a written decision within [**7**] days following close of the hearing. The decision shall be based upon substantial evidence in the record. A copy of the decision shall be mailed to the reputed sign owner at such address as provided on the Request for Hearing. The decision of the [**City Manager / municipal judge**] shall be the final decision of the City.

H. If the [**City Manager / municipal judge**] determines that the sign was not lawfully placed upon the public right-of-way or City-owned real property, then, following any applicable appeal or review period, the sign shall be destroyed in such manner as the [**City Manager**] determines appropriate. Destruction of the sign is in addition to any penalties that may be imposed under separate proceedings for civil violation of this Sign Code.

Land Use Regulation	Non-Land Use Regulation
Comment: If the decision is a land use decision, the appeal period to LUBA is 21 days from the date of the decision.	*Comment: if the decision is not a land use decision, the appeal period is 60 days, under the writ of review provisions of ORS 34.030.*

Comment: Some jurisdictions may wish the option of allowing the sign owner to recover the sign. The following alternative text is suggested:

> At the expiration of the time specified in this section, if the person responsible for the sign or other interested person has not reclaimed the sign as provided herein, the **[City Manager]** may destroy the sign or dispose of it in any manner deemed appropriate. To reclaim any sign removed by the **[City Manager]** the person reclaiming the sign shall pay the city an amount equal to the entire costs incurred by the **[City Manager]** as provided in subsection (I).

If the [**City Manager / municipal judge**] determines that the sign was lawfully placed upon the public right-of-way or City-owned real property, then the City shall re-install the sign upon the same place that it was removed from within [**3**] business days of the issuance of the decision and the fee for Request for Hearing shall be refunded to the payor of the fee.

Comment: The City may wish to include its right to appeal from the decision. In that case, re-installation of sign should be delayed until the appeal period has passed.

I. Costs, as determined by Section XX.XX.150(E), shall be the responsibility of the sign owner and the person responsible for the placement of the sign, collectively and individually.

XX.XX.160 Enforcement - Sign on private property or on non-City-owned public property, other than on public right-of-way.

A. The **[City Manager]** may order the removal of any sign erected or maintained on private property or on non-City-owned public property, other than on public right-of-way, in violation of the provisions of this chapter or other applicable provisions of this code. If necessary to enter the premises to inspect the sign, the [**City Manager**] shall seek an administrative warrant for entry to the premises.

B. An order to bring a sign into compliance or to remove a sign shall be in writing and mailed or delivered to the owner of the sign, if known, and the owner of the building, structure or premises on which the sign is located, if the owner of the sign is not known.

C. The order shall inform the owner of the sign, if known, and the owner of the building, structure or premises on which the sign is located, if the owner of the sign is not known that the sign violates the regulations in this chapter and must be brought into compliance or be removed

within [**60**] days of the date of the order, or such earlier date as shall be stated in the order. The order shall also state the reasons why the **[City Manager]** concludes the sign violates the regulations in this chapter and shall inform the owner of the sign, if known, and the owner of the building, structure or premises on which the sign is located, if the owner of the sign is not known of the right to submit a Request for Hearing, to determine whether or not the sign is in violation of this Sign Code.

D. A Request for Hearing shall be filed by the reputed owner of the sign, or owner of the building, structure or premises on which the sign is located within [**15**] days following mailing or delivery of the order. The Request for Hearing shall be filed with the City Recorder.

E. Upon receipt of the Request for Hearing, the City Recorder shall proceed in the manner specified in Section XX.XX.155(D), and a hearing shall be held, and decision issued, in the manner specified in Section XX.XX.155(E) and (G).

F. A prima facie violation of this Code shall be met if it is shown that the sign:

1. Does not conform to the requirements of this Code; or

2. Is posted by a person that is not authorized to post the sign in the specific location.

The prima facie showing of a violation may be rebutted upon a showing that the sign was lawfully permitted or authorized under this Code, or is otherwise required to be installed and maintained by state or federal law.

G. If the [**City Manager / municipal judge**] determines that the sign is not permitted or authorized by this Sign Code, or by other applicable state or federal law, then within [**10**] days following any applicable appeal or review period, the owner of the sign, or owner of the building, structure or premises on which the sign is located shall cause the sign to be removed, or altered in such a manner as to be made to conform to the requirements of this Sign Code. A sign which is not removed or altered in such a manner as to be made to conform to the requirements of this Sign Code, is defined as a public nuisance.

Comment: some jurisdictions may wish to consider different periods for removing permanent v. temporary signs. Other jurisdictions may decide that an illegal sign should be removed, following, hearing, post haste, regardless of its classification.

H. The [City Manager] may:

1. Exercise all rights and remedies to cause the removal of the sign, including but not limited to removal of public nuisance, injunctive order, or as otherwise existing under Oregon law; and/or

2. Seek judgment against the owner of the land and the sign owner, individually, or collectively, for the removal and other costs pursuant to Section XX.XX.150(E), and may collect upon the judgment in the manner provided by Oregon law; and/or

3. Seek such additional orders from a court of competent jurisdiction to permit entry upon the premises and removal of the sign.

I. Costs, as determined by Section XX.XX.150(E), shall be the responsibility of the sign owner and the person responsible for the placement of the sign, collectively and individually. The costs shall be made a lien against the land or premises on which such sign is located, and may be collected or foreclosed in the same manner as liens otherwise entered in the liens docket of the City.

XX.XX.165 Removal of unsafe signs.

A. If the **[City Manager]** finds that any sign by reason of its condition it presents an immediate and serious danger to the public, the **[City Manager]** may, without prior written notice, order the immediate removal or repair of the sign within a specified period. The City Manager shall follow the procedures provided in Section XX.XX.160, subsections (B), (C), (D), (E), (H), except that the [**City Manager**] may shorten the time deadlines as reasonable, considering the risk to the public from the sign if the sign were to fail.

B. If the [**City Manager / municipal judge**] determines that the sign presents an immediate and serious danger to the public, then within such time as set by the [**City Manager / municipal judge**] the owner of the sign, or owner of the building, structure or premises on which the sign is located shall cause the sign to be removed, or altered in such a manner as to be made to eliminate the threat of death, injury, or damage to the public and its property. A sign which is not removed or altered in such a manner as to be made safe, is defined as a public nuisance.

C. Costs, as determined by Section XX.XX.150(E), shall be the responsibility of the sign owner and the person responsible for the placement of the sign, collectively and individually. The costs shall be made a lien against the land or premises on which such sign is located, and may be collected or foreclosed in the same manner as liens otherwise entered in the liens docket of the City.

XX.XX.170 Removal of abandoned signs.

A. An owner of a sign shall remove the sign when it is abandoned.

B. The [**City Manager**] may order the removal of abandoned signs in the same manner as provided in Section XX.XX.160, and the procedures for requesting a hearing, and the decision issued, shall be as set forth therein.

C. Abandonment of a sign shall be made when it is shown that:

1. The sign is no longer used by the person who constructed the sign or the property where the sign is located is no longer used. The sign owner may rebut the prima facie showing of this ground of abandonment upon a showing that a reasonable effort is underway to continue the use of the property or sign,

2. The sign has been damaged, and repairs and restoration are not started within ninety days of the date the sign was damaged, or are not diligently pursued, once started.

D. Costs, as determined by Section XX.XX.150(E), shall be the responsibility of the sign owner and the person responsible for the placement of the sign, collectively and individually. The costs shall be made a lien against the land or premises on which such sign is located, and may be collected or foreclosed in the same manner as liens otherwise entered in the liens docket of the City.

XX.XX.175 Reserved.

XX.XX.180 Violations.

A. It shall be a violation of this Code for any person to perform, undertake, allow, or suffer the following:

1. Installation, creation, erection, suffering, or maintenance of any sign in a way that would create a non-conforming sign;

2. Failing to remove any non-conforming signs within sixty calendar days after the expiration of the amortization period;

3. Failing to remove any non-conforming sign after being order to do so;

B. Continuing Violation**.** Each day of a continued violation shall be considered a separate violation when applying the penalty provisions of this Code.

XX.XX.185 Penalties and Other Remedies.

A. The [**municipal / circuit**] court is empowered to hear and determine violations of this chapter.

B. In addition to any other penalty of law, the municipal court or any other court of competent jurisdiction may issue a judgment necessary to ensure cessation of the violation, including but not limited to injunctive order and/or monetary penalty.

C. Any person who places a sign on property in violation of this chapter shall be punishable by a fine not to exceed **[XX]** dollars.

XX.XX.190 Amendments.

Non-Land Use Regulation	Land Use Regulation
Comment: The drafter should consider whether the Sign Code should contain an amendment process that requires greater public notice and comment than required for the city's regular ordinances, given the need for meaningful public participation.	*Comment: The drafter should also comply with the required notice and adoption process required for land use regulations.*

APPENDIX A - First Amendment Pitfalls In The Regulation Of Signs

FIRST AMENDMENT PITFALLS IN THE REGULATION OF SIGNS

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Summary of GK Ltd Travel v. City of Lake Oswego

In *GK Ltd. Travel v. City of Lake Oswego*, 436 F.3d 1064, 1077 (9th Cir. 2006), the Ninth Circuit Court of Appeals sustained Lake Oswego's sign regulations against a variety of federal constitutional claims. The case provides guidance in framing and defending the regulation of signs by local governments. The plaintiffs in the case were a sign owner (Ramsey Signs), its lessee (GK Travel) and GK's two shareholders. The city and its code enforcement officer were the defendants. Plaintiffs' pole sign was used to advertise and identify GK Travel, a travel agency. The city reformed its sign code in 1985 and again in 1994 to eliminate classifications of signs based on content. As part of the 1994 changes, the city phased out allowance of pole signs over a five-year amortization period, which was later extended to ten years. The case arose out of enforcement efforts against plaintiffs' nonconforming pole sign.

The plaintiffs asserted 17 claims for relief. Two of the four damage claims sought compensation under 42 U.S.C. § 1983 because of the enforcement of the pole sign limitation. The remaining two damage claims (race discrimination and just compensation for removal of sign) were without factual support or were premature. The claims for injunctive and declaratory relief alleged that the ordinance was unconstitutional because it triggered compliance upon change of copy on a sign, prohibited pole signs which were a "protected medium" of speech, impermissibly classified based on the content of signs, the viewpoint of the sign owner, and commercial/non-commercial sign distinctions, failed to provide sufficient procedural safeguards in obtaining a sign permit, granted "unbridled discretion" to the issuer of sign permits, and was vague and overbroad.

The city obtained summary judgment in the district court in all but a few particulars. The court found, and the city conceded, that the regulations of "danger," "official notices," "no solicitation," and "for charitable fundraising events" signs were based on content of messages and were not justified. The remainder of the sign code was found to be constitutional and the

[1] Editor's note: Mr. Sercombe was appointed to the Oregon Court of Appeal in 2007 and is no longer in private practice. [5/07]

judgment of the district court was affirmed on appeal. The circuit court upheld the pole sign limitations and the remainder of the sign code against all of the constitutional claims.

The opinion is significant in several respects. First, the court found that the sign code was content-neutral. Importantly, the court held that classifying on the basis of speaker is not a content-based regulation, and upheld the city's speaker-based exemptions to the permitting process. (These exemptions spared hospitals, railroads and public bodies from obtaining a permit and paying a fee.) The court also found that event-triggered allowances for temporary signs were not content-based restrictions, and upheld these allowances for signs around the time of elections and the sale or lease of real estate. Finally, the court declared it is not a content-based regulation merely because a city officer has to read a sign in order to determine if the change of copy regulation applies.

Second, the court granted deference to the city's stated purposes in the sign code. While the plaintiffs argued that the city had to prove the existence of traffic safety problems or aesthetic decline and show how the sign code would remedy them, the court accepted the evidence offered by the city and announced a general deference to the city's determination that the sign code served its legitimate interests.

Third, the court upheld permitting regulatory classifications based on sign structure types. In upholding the near complete ban on pole signs, the court held that pole signs were not a "venerable means of communication" and that the city's limitation was justified by its aesthetic interests. The court also found that the sign code left open ample alternatives to pole signs, including other non-sign-based forms of communication, as well as other types of signage.

Fourth, the court upheld the city's design review process. Because the code contained sufficiently specific criteria to determine whether the sign in question was "compatible" with the surrounding environment and required written reasons for a denial, it did not grant unbridled discretion to city officials. The court also rejected the plaintiffs' vagueness challenge, and held that the "somewhat elastic" criteria in the design review process did not invalidate the code.

Finally, the court determined that the procedural protections in the Lake Oswego sign code were sufficient to meet constitutional standards. The court determined the sign code was content-neutral, and therefore did not require all the procedural requirements of content-based prior restraints. The court was satisfied that the sign code requires quick processing of sign permit applications and a written decision with findings; it did not require more.

Plaintiffs' petition for a writ of certiorari was denied by the United States Supreme Court.

Other Issues in Sign Code Litigation

While the *GK LTD Travel* case addresses many pertinent topics in sign code litigation, there are several other current issues municipalities should consider in drafting and defending their sign codes. The following section addresses some of the most important questions.

1) Can a municipality provide generic exemptions to the permitting requirements under its sign code?

Courts draw distinctions between exemptions from the application of municipal sign codes to certain types of signs and exemptions from permitting and fee requirements. *GK Ltd. Travel v. City of Lake Oswego*, 436 F.3d 1064, 1077 (9th Cir. 2006). Cases arise where exemptions from code requirements allow certain messages to appear in forms unavailable to other messages, such as banning noncommercial billboards but allowing signs placed by government bodies or memorial plaques placed by historical agencies. *Nat'l Adver. Co. v. City of Orange*, 861 F.2d 246, 248 (9th Cir. 1988). While such categorical exemptions from sign code requirements are consistently found unconstitutional, *id.*, the law is not entirely clear as to when exemptions from permitting and fee requirements are permissible.

Depending on how they are drafted, generic exemptions from municipal permitting and fee requirements can constitute impermissible content-based restrictions as well. Even though permitting exceptions narrow the reach of the sign ordinance, they will be struck down if the exceptions favor particular sign messages. For example, in *Solantic LLC v. City of Neptune Beach*, 410 F.3d 1250 (11th Cir. 2005), the Eleventh Circuit invalidated a city ordinance that exempted 17 different categories of signs from both the form and permitting schemes imposed in the sign code, including several seemingly "generic" exemptions.[2] The court emphasized that even if the enumerated exemptions applied only to the permit requirements, the character of the exceptions would still render them unconstitutional because they were based on the content of the messages. 410 F.3d at 1256 n.6. The court relied on its previous decision in *Dimmit v. City of Clearwater*, 985 F.2d 1565 (11th Cir. 1993) to support a finding that the permitting exemptions were content-based. In *Dimmit*, the court invalidated a city ordinance that exempted from permitting requirements flags representing a governmental unit or body but not flags of another organization or group. *Id*. at 1262.

However, not all exemptions from permitting requirements have been struck down as content-based restrictions. In *Solantic*, the Eleventh Circuit distinguished its previous decision in *Messer v. City of Douglasville*, 975 F.2d 1505 (1992) in which it held that an ordinance exempting certain signs from a city permit requirement was not content-based on the grounds that the *Messer* exemptions were "much more limited"[3] and "contained no specific exemptions for political, historical, religious, or special event signs." 410 F.3d at 1263 n.12.

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[2] The following kinds of signs are among the exemptions enumerated by the Neptune City Sign Code. "Signs erected by, on behalf of, or pursuant to the authorization of a government body, including… legal notices, identification signs and informational, regulatory or directional signs; … Official signs of a noncommercial nature erected by public utilities…; Holiday lights and decorations; …Public warning signs to indicate the dangers of trespassing, swimming, animals or similar hazards; …. and Religious displays." 410 F.3d at 1257.

[3] "The ordinance in *Messer* exempted from permitting requirements and/or permit fees the following signs: (1) one wall sign per building, attached to the side of the building, announcing the business; (2) one real estate "for sale" sign per property; (3) one bulletin board located on religious, public, charitable, or educational premises; (4) one construction identification sign; (5) directional traffic signs containing no advertisements." 410 F.3d at 1263 n. 12 (quoting *Messer v. City of Douglasville*, 975 F.2d 1505, 1511 (11th Cir. 1992)).

As noted above, in *GK LTD. Travel v. City of Lake Oswego*, the Ninth Circuit upheld exemptions from the city's permit and fee requirements for "public signs, signs for hospitals or emergency services, and railroad signs." 436 F.3d at 1076.[4] The court found that these exemptions are "purely speaker based" and "say nothing of the City's preference for the content of these speakers' messages." *Id.* at 1077. The court also held that event-based exemptions for temporary signs in residential zones were not content-based. *Id.* However, the Ninth Circuit did not disturb the district court's holding that exemptions for "legal notices" or "danger signs" were constitutionally impermissible (as based on the message of the sign rather than the identity of the sign owner). The district court reasoned that there are no obvious owners for either type of sign, and therefore the distinction based on speaker was inapplicable. *Id.* at 1076.

The Ninth and Eleventh Circuits take different positions on whether speaker-based exemptions from permit requirements are content-based or content-neutral. In *Solantic*, the Eleventh Circuit expressly rejects the idea that exemptions favoring certain speakers are not content-based. 410 F.3d at 1265 ("The sign code exemptions that pick and choose the speakers entitled to preferential treatment are no less content-based than those that select among subjects or messages."). The Ninth Circuit takes a contrary view in *GK LTD. Travel*, holding that municipalities may exempt certain speakers from permitting and fee requirements without the burden of justifying a content-based regulation. The court notes that these institutional speakers are otherwise required to follow the substantive requirements of the sign code and concludes that just because the law affects one class of speakers more than others does not make the law content-based. 436 F.3d at 1077.

The key differences between the valid and invalid ordinances providing exemptions to permitting requirements seem to be the breadth of the exemptions and the presence of an articulated requirement of content-neutrality. The *Messer* exemptions are extremely narrow and very limited in scope. The *GK Travel* exemptions are entirely content-neutral and justified solely on the basis of the party speaking or a triggering event. There, the Ninth Circuit expressly notes the sign code's demand for content-neutrality.[5] 436 F.3d at 1077. Speakers exempt from permit and fee requirements should not be exempt from the general sign regulation scheme, as exemptions from form requirements are routinely held unconstitutional. *See Nat'l Adver. Co. v. City of Orange*, 861 F.2d 246 (9th Cir. 1988) (striking down content-based exemptions to general ban on billboard signs).

2) What kind of procedural protections must a municipality provide to permit seekers?

[4] The Lake Oswego Code defined "public sign" as "a sign erected and maintained by a public agency within the right-of-way of a street or alley."

[5] The provisions allowing temporary signs without a permit expressly state that "signage shall not be restricted by content" but is "usually and customarily used to advertise real estate sales, political or ideological positions, garage sales, home construction or remodeling" and other temporary events.

Municipalities seeking to impose sign permitting requirements must comply with the procedural protections established by prior restraint jurisprudence. In *Freedman v. Maryland*, 380 U.S. 51 (1965), the Court articulates the requirements imposed by the First Amendment for valid licensing processes. These requirements have been summarized as: "(1) any restraint prior to judicial review can be imposed only for a specified brief period, during which the status quo must be maintained; (2) expeditious judicial review of that decision must be available; and (3) the censor must bear the burden of going to court to suppress the speech and must bear the burden of proof once in court." *Solantic*, 410 F.3d at 1270 (quoting *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990)).

Whether or not the *Freedman* protections apply depends upon whether the permitting scheme in effect is content-based or content-neutral. In *Thomas v. Chicago Park Dist.*, 534 U.S. 316 (2002), the Court evaluated a content-neutral licensing scheme for public park use and found that "*Freedman* is inapposite because the licensing scheme at issue here is not subject-matter censorship but content-neutral time, place, and manner regulation of the use of a public forum." *Id.* at 322. Following *Thomas*, multiple courts have concluded that the *Freedman* requirements apply only to content-based permitting schemes. *See Solantic*, 410 F.3d at 1271(citing *Granite State Outdoor Adver., Inc. v. City of St. Petersburg*, 348 F.3d 1278, 1281 (11th Cir. 2003)); *GK LTD. Travel*, 436 F.3d at 1082.

Therefore, so long as the city's sign code is content-neutral, courts will not require all the *Freedman* procedural protections to be in place. However, municipalities still must avoid granting "unbridled discretion" to their city officials in making determinations under the code and provide avenues for "effective judicial review." *Thomas*, 534 U.S. at 323.

3) What must a local government prove to justify its sign code?

The sign code must meet the *Ward* test for time, place and manner restrictions

When a municipal sign ordinance is challenged as violating the First Amendment, courts will use the test laid out in *Ward v. Rock Against Racism*, 491 U.S. 781 (1989) to determine the constitutionality of the restrictions on speech. Municipalities defending their ordinances will have the burden of showing that the regulations are reasonable time, place, and manner restrictions. Under *Ward*, time, place and manner restrictions must be content-neutral, narrowly tailored to serve significant government interests, and provide for ample alternative channels of communication. An analogous test is used to justify the regulation of commercial speech under *Central Hudson Gas and Elec. v. Public Serv. Comm'n*, 447 U.S. 557 (1980).

To satisfy the first prong of the test, the regulations must be content-neutral, which means that the regulations must be justified without reference to the content of the regulated speech. *Id.* at 791. Many sign codes fail under this prong, as it is difficult to draft exemptions to sign codes that do not classify permissible speech according to content. *See Nat'l Adver. Co. v. City of Orange, supra*. In *City of Orange*, the sign code granted exemptions to the ban on noncommercial billboards for a variety of speakers and topics, including signs placed by

governments and public utilities, memorial tablets or plaques, flags of national or state bodies, and changeable reader boards. *Id.* at 248. The court found that the exemptions were based on content and ultimately struck down the sign code. *Id.* at 249. Content-based regulations must meet a higher standard and are much more difficult for governments to justify.

If the regulations in a sign code are found to be content-neutral, the government must also show that they serve significant government interests and are narrowly tailored to advance those interests. *Ward*, 491 U.S. at 796. The most common government interests advanced in sign code litigation are traffic safety and aesthetics. The Supreme Court has held that both of these interests are "significant" for the purposes of the *Ward* test. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507 (1981). While courts will defer to the legislative body's judgment in determining whether the government's ends are advanced by a particular regulation, they will also examine the city's statement of purpose and any studies or findings advanced by the litigants to justify the regulations. *GK Travel LTD*, 436 F.3d at 1073. Municipalities should clearly articulate their interests in passing sign regulations in a statement of purpose included in the sign code ordinance.

Once a city demonstrates its ordinance serves significant government interests, it must also show that the regulations on speech are narrowly tailored to advance those interests. *Id.* The more exceptions to form and permitting requirements included in a code, the less likely it is that a court will find the code to be necessary to advance the stated regulatory purposes. In *Solantic v. City of Neptune Beach*, the 11th Circuit found that the City never explained how its purported interests in traffic and aesthetics were served by the numerous exemptions in the code. The court faulted the city for failing to explain how a sign depicting a religious figure with flashing lights and moving parts (which was permissible under the exemption for religious displays) would be any less distracting to motorists than a moving or illuminated sign featuring another figure which was categorically barred by the code's general prohibition on moving parts or flashing lights. *Solantic*, 410 F.3d at 1267. While the city's interests may have been legitimate, the code had too many loopholes to appear to seriously advance them. The ultimate question before most courts is whether the code in question could have been written more narrowly (*i.e.*, with less exceptions) and still advance the stated interest.

By contrast, the Ninth Circuit upheld the City of Lake Oswego's ban on all pole signs, finding it was narrowly tailored to serve the city's interests in traffic safety and aesthetics. The court found that because of their height, pole signs could reasonably be perceived by the city to be aesthetically harmful and distracting to travelers and that severely limiting their presence in Lake Oswego "directly serves the City's purposes." *Id.* By banning all pole signs, and not excepting certain signs, Lake Oswego's code was upheld as narrowly addressing a specific problem.

The final prong of the *Ward* test requires that even narrowly tailored content-neutral regulations on speech leave open ample alternative opportunities for a speaker to convey his or her message. *GK LTD Travel*, 436 F.3d at 1074. A city defending its sign code must show that speakers have other reasonable opportunities to communicate. In *GK Travel*, the Ninth Circuit

found that even though the city had banned pole signs, the sign code left unrestricted many other non-sign based forms of communication, such as handbills, radio, television, newspaper or telemarketing. *Id.* With respect to signage, the code still authorized several other types of signs, including wall, monument and canopy signs. *Id.* Municipalities should consider what other avenues are left open to speakers when they restrict certain media.

The local government has the burden of proof to show its code meets the *Ward* factors

When a sign code is challenged, the burden is on the municipality to show that its code meets the *Ward* requirements. Different courts have required varying amounts of evidence from government entities in meeting this burden, but at the very least, the government must come forward with some justification for its restrictions on speech. The amount and kind of required evidence will depend somewhat on whether the sign code is subject to a "facial" or "as applied" challenge. A "facial" challenge alleges that any enforcement of the ordinance creates an unacceptable risk of the suppression of ideas. *Kuba v. 1-A Agricultural Assoc.*, 387 F.3d 850, 856 (9th Cir. 2003) (citing *Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998)). An "as applied" challenge alleges that the restriction on speech is unconstitutional as applied to the litigant's particular speech activity or to a particular permitting decision, even though the law may be capable of valid application to others. *Id.* The kind of evidence needed to meet the government's burden in overcoming these challenges varies somewhat depending on which type of challenge is brought and under which of the *Ward* factors the sign code is attacked.

When a challenger alleges that an ordinance is content-based, the city must show that its code provisions are content-neutral. In a "facial" challenge, the city can present the text of the code itself to show that its provisions or exemptions do not discriminate on the basis of content. A statement of purpose espousing content-neutrality can also be helpful in supporting the city's position. *See GK LTD Travel*, 436 F.3d at 1077. In an "as applied" challenge, whether or not a facially content-neutral ordinance was applied to censor or limit particular sign messages may create jury claims for damages, depending upon factual issues about consistency in the application of the ordinance. *Seattle Affiliate of the October 22nd Coalition v. City of Seattle*, 403 F.Supp.2d 1185, 1194 (W.D. Wash. 2006). Courts will consider evidence of past discriminatory enforcement (or lack thereof) in assessing a city's claims of content-neutral application.

The city also has the burden of demonstrating that its stated interests are significant and that the regulation in question is narrowly tailored to advance those interests. Though courts often combine this two-prong test into a single inquiry, municipalities defending sign ordinances should be prepared to provide *both* evidence of sign-related problems (to justify the significance of the interest) *and* evidence that demonstrates that the proposed regulations will address the identified problems (to show narrow tailoring). In an as applied challenge, the city's actual motivation in enforcing its ordinance may sometimes create a question for the jury which speaks to both the legitimacy of the interest and narrow tailoring. *See, e.g., October 22nd Coalition*, 403 F.Supp.2d at 1194. However, whether a jury will ultimately make this determination is dependant on the particular facts of each case. Similarly, a jury may also consider whether the

city's ordinance has left open ample alternative channels for the speaker to communicate his message, but this question, once again, is very fact dependant. *Id*. (finding, as a matter of law, that placing marchers on sidewalk instead of street along permitted parade route provided an ample alternative).

The required justification may vary.

The amount of evidence a city must provide varies somewhat by court and by the particular type of speech limitation. In cases dealing with regulations that limit the physical characteristics of signs (size, height and structure limitations), courts defer to a municipality's means-end determinations. As noted in *City of Ladue v. Gilleo*, 512 U.S. 43, 48 (1994), "[i]t is common ground that governments may regulate the physical characteristics of signs . . . ."

In contrast, regulations that preclude signage may require more substantial justification. A court will question and require stricter justification for any "broad prophylactic rule[]" that is of the kind that is "inherently suspect in the area of free expression." *Edenfield v. Fane*, 507 U.S. 761 (1993). In *Weinberg v. City of Chicago*, 310 F.3d 1029 (7th Cir. 2002), the court struck down the city's prohibition on peddling near a sports stadium because the city had "provided no objective evidence" that its stated interests in traffic flow and safety were jeopardized by the plaintiff's peddling. *Id.* at 1039. The court noted that the city offered "no empirical studies, no police records, no reported injuries, nor evidence of any lawsuits filed" to support either its interest in pedestrian safety or the proposition that its ordinance advanced that interest. *Id.*

Other courts have not required as significant a showing from the city defending an ordinance burdening speech. In the commercial speech context, courts have permitted litigants to justify speech restrictions "solely on history, consensus, and simple common sense." *Falanga v. State Bar of Georgia*, 150 F.3d 1333, 1341 (11th Cir. 1998)(citing *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995)). However, municipalities should be wary of this seemingly permissive language. Even in cases where this lower standard has been applied, the city has been required to offer more than "conclusory affidavits" from interested parties. *City of Watseka v. Illinois Public Action Council*, 796 F.2d 1547, 1555 n.15 (7th Cir. 1986). Similarly, in *GK Ltd Travel*, the 9th Circuit noted favorably the existence of testimony and hearings in the city's record about the problems of "visual pollution" associated with pole signs and the dialogue between the city and business leaders regarding the proposed sign code. 436 F.3d at 1073. The court also considered evidence that the city had relied "on the experience of other cities" and found that "this evidence provided the City with legitimate and relevant bases for advancing its Sign Code and restricting the availability of pole signs." *Id.*[6]

At a minimum, municipalities defending their sign ordinances should offer some empirical data justifying their sign codes. While cities are not necessarily required to conduct their own independent studies and can rely on research or reports conducted in other

[6] Finally, many of the cases requiring "hard" evidence are outside the context of sign regulations and occur generally in cases dealing with leafleting and picketing. *See, e.g., Weinberg, supra.*

communities, they should be prepared to offer justification for why the experience of another city necessitates similar action in their own communities. That justification may be present in the legislative history of the sign regulation.

4) Can a local government apply design review to signs without creating "unbridled discretion" in decision makers?

Municipalities can apply design review provisions to their sign codes if they employ "narrowly drawn, reasonable, and definite standards." *Advantage Media, LLC v. City of Eden Prairie*, 2006 WL 2129304 (8th Cir. Aug 1, 2006) (citing *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123, 133 (1992)). Plaintiffs challenging design review provisions often allege that the design review process grants "unbridled discretion" to local authorities enabling them to improperly reject permit requests for unconstitutional reasons. Local governments can defeat these challenges if their sign codes contain a limited and specific set of criteria for review, including characteristics such as form, proportion, scale, color, materials, and style of lettering. *GK Ltd Travel*, 436 F.3d at 1083. Cities should also provide written reasons for the denial of any permit and an established deadline within which officials must make permitting decisions.

Most design review provisions that have been invalidated by the courts have contained overly broad design criteria or have failed to articulate standards for officials to follow. In *Desert Outdoor Adver., Inc. v. City of Moreno*, 103 F.3d 814 (9th Cir. 1996), the court struck down the city's sign code because permits could be denied on the basis of such ambiguous reasons as "harming the community's health, welfare or aesthetic quality." *Id.* at 819. Moreover, city officials could deny a permit without providing any evidence or reasons as to why a proposed sign is detrimental to the community. *Id.* Conversely, the court upheld the City of Lake Oswego's permitting process because the standards for "compatibility review" were explicitly defined in the city's sign code. *GK Ltd. Travel*, 436 F.3d at 1083.[7] Courts will also look to the history of the sign code to determine whether or not a pattern of past abuse exists. *Id.* at 1084. Lacking evidence of past discriminatory application, courts are less likely to find that a design review process is unconstitutional.

5) Can sign companies challenge regulations that do not apply to them?

The "overbreadth doctrine" creates an exception to some traditional standing requirements in First Amendment cases. This doctrine allows litigants to challenge a statute not because their own rights of free expression are violated, but because of an assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech. *CAMP Legal Defense Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1270 (11th Cir. 2006) (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973)). Under the doctrine, a party may bring a First Amendment case asserting the rights of third parties if a statute is

[7] The Lake Oswego sign code required signs to be "designed to be compatible with other nearby signs, other elements of street and site furniture and with adjacent structures. Compatibility shall be determined by the relationships of the elements of form, proportion, scale, color, materials, surface treatment, overall sign size and the size and style of lettering."

constitutionally applied to the litigant but might be unconstitutionally applied to third parties not before the court. *Id.* The challenge on behalf of the absent third parties must be a "facial" challenge.

Sign companies challenging municipal sign codes often use the overbreadth doctrine to attempt to invalidate an entire sign code, even when the code has been constitutionally applied to their particular case. In order to bring an overbreadth challenge, the sign company must still first establish what is known as "constitutional standing" before they can sue on behalf of anyone else. Constitutional standing requires a showing that the company has suffered an injury, that there is a causal connection between the injury and the city's conduct, and that there is a likelihood that the injury can be redressed by a favorable decision in the case. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Recent circuit court decisions have interpreted this requirement to mean that a sign company can only challenge the provisions of the sign code that in some way apply to them. In *Advantage Media LLC v. City of Eden Prairie*, *supra*, the sign company sought to invalidate the entire sign code on a facial overbreadth challenge. The Eighth Circuit held that because the code's provisions were severable, the sign company could not challenge other provisions of the code which were not factors in the denial of its permit applications. *Id.* at *5. Similarly, in *CAMP Legal Defense Fund, Inc. v. City of Atlanta*, 451 F.3d 1257 (11th Cir. 2006), the Eleventh Circuit concluded that the plaintiff could only challenge provisions of the contested festival ordinance that affected its activities.

However, municipalities should be aware that sign companies can indeed bring overbreadth challenges if they can show that they are subject to the provisions of the sign code. In *CAMP v. City of Atlanta*, though the court found that the plaintiff organization could not challenge the entire festival ordinance as a whole, it did have standing to challenge provisions of the code that allegedly granted unbridled discretion to licensing officials, a permitting exception for government-sponsored events, and three application requirements that allegedly functioned as unconstitutional prior restraints. *Id.* at 1275-76. Because CAMP was impacted by each of those provisions, the court found it had standing to sue. Thus, if a particular sign code (or any of its provisions) could possibly apply to a sign company, the company will be able to establish standing to challenge the code (or particular provisions).

6) How can municipalities regulate political signs?

Municipalities drafting sign codes must be particularly sensitive to regulations on political signs. Because political speech is at the core of the First Amendment, it is the most protected and any regulations impacting political speech will be closely scrutinized by a court. There are two primary ways in which political speech can be impermissibly burdened: when a sign code favors commercial speech over noncommercial speech and when the sign code makes content-based distinctions between types of noncommercial speech.

A sign code is invalid if it imposes greater restrictions on noncommercial speech than on commercial speech. *GK Ltd Travel*, 436 F.3d at 1081. Sign codes which make it easier, cheaper and faster to communicate a commercial message than a political message will likely be held unconstitutional. In *Beaulieu v. City of Alabaster*, 2006 WL 1791401 (11th Cir. June 30, 2006), the court struck down a sign code which required a permit to post a campaign sign but not to post a real estate sign.

As discussed throughout this paper, exemptions to permitting and form requirements are difficult to draft without making impermissible content-based distinctions. In *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250 (11th Cir. 2005), the court struck down the city's sign code because some types of signs were extensively regulated and others were exempt from regulation based on the nature of their messages. *Id.* at 1266. In the case of political signs, homeowners could post signs "related to elections, political campaigns, or referendums" without a permit, but could not post a different political message unrelated to an upcoming election. *Id.* at 1264-65. The court held that these content-based distinctions between types of noncommercial speech are unconstitutional.

Conversely, the City of Lake Oswego was able to successfully regulate political signs by avoiding content-based distinctions. In *GK Ltd Travel*, the sign code provided for an exemption for all signs placed in residential zones regardless of content. 436 F.3d at 1077. The only restrictions were temporal and size limits. Under the code, residents could erect a temporary sign without a permit so long as that sign goes up not more than 90 days prior to an election, stays up not more than five days following the election, and is no larger than six square feet. *Id.* The sign code explicitly prohibited content-based regulation and allowed for residents to display any message of their choosing as long as the size and time requirements were honored. The court found that the code was neutral with respect to noncommercial messages and upheld the regulations.

Practical tips for municipal lawyers drafting sign codes

1. Include a statement of purpose in the sign code that clearly identifies the city's interests in sign regulation. Cite to evidence of the problems necessitating the sign code as well as evidence that the proposed solution will address the problems. Reliable sources of evidence include empirical studies, anecdotal evidence from citizens (compiled complaints about distractions or dissatisfaction with current sign scheme), transcripts from hearings on the issue, studies of the impact of sign codes conducted in other cities that can be reasonably related to the problems faced in your city, or other data showing a correlation between the signs to be regulated and the problems you want the code to solve.

2. Include minimal exemptions and define them without reference to content. Speaker-based exemptions have been upheld in the Ninth Circuit, but not in the Eleventh Circuit. Short lists of clear, narrow, exemptions are more often upheld than longer lists. Event-based exemptions are also upheld, so long as the

exemption is not content-based. For example, instead of allowing temporary signs for the conveyance of messages about candidates or election issues, merely permit additional temporary signs of any content during the period of 90 days before an election. Instead of allowing signs about subdivision sales, consider allowing additional signage of any content on subdivision property that is the subject of sales.

3. Provide opportunities to comment and participate in the creation of sign regulations to affected persons and industry groups. The factual foundation for the regulation will be more firm if the comments are recognized by modifications or discussion.

4. Explicitly disavow regulatory distinctions based on the message of a sign in the text of the ordinance. A provision in the sign code for the City of Hillsboro, Oregon provides that,

   "The Hillsboro Sign Code is not intended to, and does not restrict speech on the basis of its content, viewpoint or message. Any classification of signs in this chapter that permits speech by reason of the type of sign, identity of the sign user or otherwise, shall permit any type of speech on the sign. No part of this chapter shall be construed to favor commercial speech over non-commercial speech. To the extent any provision of this chapter is ambiguous, the term shall be interpreted to not regulate on the basis of speech content, and the interpretation resulting in the least restriction on the content of the sign message shall prevail."

5. Publicly-owned signs should not be completed exempted from sign regulation. They can be exempted from the requirements to obtain a permit and pay a permit fee.

6. If possible, place the decision-making authority under a sign code in either a single individual, or a select committee, to increase the likelihood that code decisions will be consistent. The more people with authority to make permitting decisions increases the risk that the code may be applied inconsistently.

7. Provide written reasons for permit denials and include a time limit for permit decisions in the text of the sign code.

8. Provide some type of formal administrative review of all adverse permitting decisions.

9. Use a separate severability clause than the standard one in your code. In particular, be sure to state that the physical limitations on signage (size, height, location, illumination and number restrictions) are severable.

10. Consider including a variance provision to allow a court to find that the sign code is more narrowly tailored. Subjective variance criteria, however, risk a determination of "unbridled discretion."

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TABLE OF CASES[8]

[8] Table of Cases lists cases cited in the Sign Code Template, not in the Appendix.