



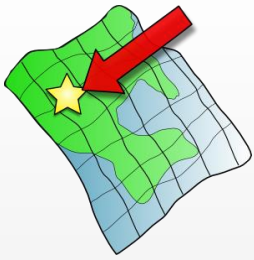
Boylan Code

Sign Language

**Presented on Behalf of the NY Planning Federation
at the 2016 Annual Conference**

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Presentation Roadmap

- Goal – Explore a variety of issues relating to regulation of signs by NY municipalities
- Reed vs. Town of Gilbert (2015)
- What is a Sign?
- Time, Place and Manner vs. Content
- Commercial and Non-Commercial
- Signs on Government Property
- Sign Codes
 - Purpose and Intent, Definitions, Time/Place (Where and When), Sign Permits, Prohibited Signs, Design Standards (Manner), Enforcement

Reed v. Town of Gilbert (2015)

Town of Gilbert Sign Code – No Outdoor Signs without a Sign Permit.

**PERMIT
REQUIRED**

However, 23 Exemptions from Permit Requirement.

- Exemptions Include:
 - **Ideological Signs** – Any Sign communicating a message or idea for noncommercial purposes, not including . . . construction sign, temporary directional sign for a qualifying event, political signs, garage sale sign . . .
 - Up to 20 SF in Area. No time limitation.
 - **Political Signs** – A temporary Sign designed to influence the outcome of an election.
 - Up to 16 SF in Area. Up to 60 days before Primary and 15 days after General.
 - **Temporary Directional Signs** Relating to a Qualifying Event – Temporary Signs intended to direct pedestrians, motorists, etc. to a qualifying event.
 - Qualifying Event includes “assembly, gathering, activity sponsored or arranged by a religious, charitable, community service, educational or other similar non-for-profit organization.”
 - Up to 6 SF. Up to 12 hours before event and no more than 1 hour after event.

Reed v. Town of Gilbert (cont.)



Good News Community Church holds several Sunday church services around Town.

Places 15-20 signs around Town – specifying time and location.

Posted early Saturday and removed on Sunday afternoon.

Town CEO cites Church for Violation of Sign Code.

Town Sign Code provides: Temporary Directional Signs are limited to 12 hours before event and 1 hour after.

After attempt to rectify, Church files suit – Freedom of Speech violated by Town.



Reed v. Town of Gilbert (cont.)

- Court → 1st Amendment - The government “has no power to restrict expression because of [the expression’s] message, its idea, its subject matter, or its content.”
 - **Content-based Regulation of Speech is Presumptively Unconstitutional**
- Court → Town of Gilbert’s Sign Code is Content Based and thus Presumptively Unconstitutional



- **Content Based** = Regulate based upon Message Conveyed, Identity of Speaker or Point of View
 - **Motive** is irrelevant
 - **Topics** in addition to Viewpoints constitute problematic Content-Based Regulation

Reed v. Town of Gilbert (cont.)



- Conservative approach to identifying “Content-based” Sign Regulations – If you have to read it to regulate it, it may be Content-based
 - This is not settled Law – but a useful tool.
- Physical / Geometrical aspects of a Sign are not Content-based
 - **Non-Content Based Restrictions are Generally Referred to as “Time, Place and Manner” Restrictions. Court Examples:**
 - Size,
 - Location,
 - Lighted vs. Unlighted,
 - Electronic and Changeable vs. Non-Electronic,
 - Where on a property Signs may be Placed (i.e., setbacks),
 - What Districts Signs may be placed,
 - Total # of Signs permitted,
 - Time Restrictions (without regard to content)



**New Jersey Man Ticketed by Town
for Flying Donald Trump Flags**

New Jersey Man Ticketed by Town for Flying Donald Trump Flags

- Hornick, 54, a retired West Long Branch firefighter, was issued a ticket March 25 for flying Trump's signature bright blue "Make America Great Again" flags.
- He said he was shocked when police showed up at his home and wrote him the ticket that day. That's because he's called the police himself up to five times to report that the flags have either been stolen or vandalized since he put them up
- "The ordinance states that the display of political signs is prohibited before 30 days prior to an election, and must be removed five days after," said Lori Cole, the West Long Branch clerk.
- She added that Hornick must appear for a court date, scheduled for April 20, and is facing a minimum fine of \$100, or up to \$2,000 if he doesn't take the flags down.
- "I'm not a football fan. I'm not a sports fan. But what I have honestly become is a Donald Trump fan," he told Patch. "And I can't believe my freedom of expression is being violated like this. I'm allowed to hang a flag on my property."



What is a Sign?



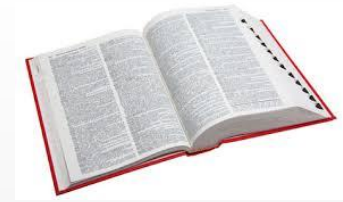
What is a Sign?



What is a Sign?



Defining “Sign”



What is a Sign?

- A (Trump) flag?
- A mural?
- A (giant boot) sculpture / statue?
- A vehicle?

Merriam Webster:

a : a display (as a lettered board or a configuration of neon tubing) used to identify or advertise a place of business or a product

b : a posted command, warning, or direction

c : signboard - a board with writing or a picture on it that gives information about something (such as a business)

Sign -

A notice, bearing a name, direction, or advertisement, that is displayed or posted for public view.

Municipalities may define Sign in Code.

Broad or Narrow Definition?

Note on Vehicle as a Sign:

- People v. Target Advertising
 - When the sole or primary purpose of the Vehicle is to act as a Sign, may regulate as a Sign.

Sign: Any material, structure or part thereof, or any device attached to a structure or painted or represented thereon, composed of or upon which is placed lettered or pictorial or other matter for visual communication, when used or located out-of-doors or on the exterior of any building or indoors as a window sign, for the public display of any message, advertisement, notice, directional matter or name.

How to Regulate → Time, Place and Manner



- **Time**

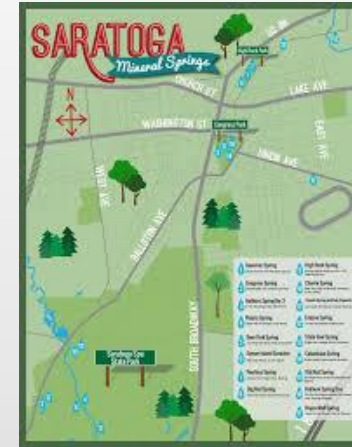
- Portable Signs may be displayed between the hours of 7Am and 5pm
- Temporary Signs may be placed for 60 days

- **Place**

- Signs must be placed at least 10 feet from any property Line
- No more than 3 Signs in Residential District

- **Manner** (e.g., Physical Characteristics)

- Signs must be less than 36 Square Feet in Area
- Signs cannot be more than 10 feet tall



- **TPM Regulations**

- 1. Do not regulate **Content**
- 2. **Advance a Significant Gov. Interest** (traffic, aesthetics)
- 3. **Permit Alternative Channels**



- Cleveland Area Board of Realtors v. City of Euclid

- No Residential Lawn Signs Except Names and Address of Residence
- No Alternative Channels for Communication
- Lawn signs are important channel

Commercial vs. Non-Commercial

Non-Commercial Speech: Expression of personal, political or religious point of view

Commercial Speech: Business purposes. For advertising, profit motivation.

Central Hudson Gas v. PSC – Commercial Speech is entitled to lesser protection than Non-Commercial Speech

Therefore, Non-Commercial Speech must always be permitted where Commercial Speech is permitted

National Advertising Co. v. Town of Babylon

Town Code: Signs on Business Property only allowed to address name of business or goods/services it offers

Court: Unconstitutional = Discriminated against non-commercial messages in favor of commercial speech

Point to Remember – Cannot favor Commercial Speech over Non-Commercial.

Important Legal Debate: Can a Sign Code distinguish between Commercial and Non-Commercial Signs (or is this impermissible Content distinction)?

Many, many Sign Codes Distinguish b/w Comm. and Non-Comm.



Signs on Municipal Property

As long as Sign Code does not impermissibly distinguish based upon Content, a NY Municipality may Regulate Signage on its own property (including ROWs) by:

- Prohibiting, Limiting, Requiring a Permit or Permitting



- **Sidewalks.** A “Traditional Public Forum.”
 - Members of City Council v. Taxpayers for Vincent → May prohibit Signs on Sidewalks.
- **Permits for Municipal Property.**
 - Abel v. Orangetown – Political candidate posted signs on shoulders of roads and ordered to remove – no Permit.
 - Lawsuit Filed. Provision Upheld → ALL signs, regardless of content, required permit.

Signs on Municipal Property

Political Signs on Municipal Property - Sugarman v. Village of Chester

- District Attorney candidate sues 12 NY municipalities
- Allegation – Sign regulations imposed unconstitutional regulation relating to political campaign signs
- Court struck down many of the sign regulations – among the reasons:
 - Some municipalities exempted signs from size requirements, but subjected political signs to size requirements – Content Based!
 - Laws which require removal of political signs a short time after election has taken place, but which do not require removal of other temporary signs. Content based!
 - Regulations which granted public officials complete discretion in granting or denying sign permits may be unconstitutional because that discretion has potential for becoming a means to suppress a certain point of view.
 - For Sign Permit, include Elements/Factors to consider, eliminating complete discretion.
 - # of other signs in area,
 - Setback from road,
 - Total area of signage on subject parcel,
 - Visibility of Sign,
 - Whether public official supports political candidate on the sign.

NO!

Drafting a Sign Code - Purpose

Provide the Legislative Intent / Reasoning for the Sign Code

Forms the Constitutional Basis for the Sign Code – A Court will look to the Intent Section when it “scrutinizes” Code to determine whether Municipality has a significant / compelling interest . . .



The following reasons for Sign Regulations will support Constitutionality of a Sign Code

- Promote and protect the public health, welfare and safety of the residents.
- Enhance and protect the physical appearance of the community.
- Preserve the scenic and natural beauty of designated areas.
- Reduce sign or advertising distractions and obstructions that may contribute to traffic accidents.
- Reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way

Drafting a Sign Code - Definitions

Whatever is not defined will be left to Court to decide and interpreted in favor of resident.

Definitions allow municipality to customize its Sign Code – i.e., defining “Sign” narrowly vs. broadly.

Definitions will set the stage for the categories / parameters upon which the Code will be able to regulate. Consider defining “Types” of Signs that can be regulated in different ways (different types of Signs merit different types of treatment because they raise different kinds of issues):

Billboards



Freestanding Signs

Drafting a Sign Code - Definitions

Definitions will set the stage for the categories / parameters upon which the Code will be able to regulate. Consider defining “Types” of Signs that can be regulated in different ways:

Portable Signs (“A Frame”)



Temporary Signs



Pole Signs



Drafting a Sign Code – Definitions – Electronic Signs

Electronic Sign: A sign whose display (or any portion thereof) utilizes light emitting diode (LED) technology or similar technology that permits a sign face to present different displays by a method other than physically removing and replacing the sign or its components.

Unique Issues – Flashing / Animation → Distraction to Drivers, Light Pollution, Aesthetics (grouped)



Particular Issues to consider regarding Electronic Signs:

- Which Districts permitted (if permitted at all) (R vs. C/I)?
- Animation permitted at all? Animation permitted on smaller Signs?
- What constitutes Animation / How often may Message be changed? (1/sec, 1/min, 1/hr, 1/day)?
 - Flashing, Scrolling, Fading, Intensity of Light Changing

Drafting a Sign Code – Time / Place / Manner Provisions

Using the Defined Categories, Specify Regulations for Each Type of Sign:

- **Place - Zoning Regulations:**
 - Which types of Signs are allowed in Each District?
 - Are LED Signs permitted in R?
 - Are Pole Signs permitted in A?
 - Are Commercial Signs permitted in R?
 - Government Property (Sidewalks, ROWs, Medians)?
- **Place – Subject Parcel:**
 - Where on the parcel is a Sign Permitted?
 - Front, Side and Rear Setbacks
 - Setback from the Road
 - Distance from Other Signs (i.e., Pole Signs, Temp. Signs)

Drafting a Sign Code – Time / Place / Manner

Using the Defined Categories, Specify Regulations for Each Type of Sign:

- **Place – In Relation to Building(s) on Parcel:**

- May Signs be Posted on Roof?
- May Signs be Posted in a Window? % Window Coverage?
- May Signs be Posted on Building Wall? % Wall Coverage?



- **Time – When and For How Long?**

- For how long may Temporary Signs stay up?
- When, if ever, must Illuminated Signs be turned off?
- What time of day may Portable Signed be posted? Removed?



Drafting a Sign Code – Time / Place / Manner

“Manner” – Dimensions, #s and Other Miscellaneous Provisions

- **Dimensions and # of Total Signs –**

- Height and Width for each Type of Sign (Pole Sign vs. Temporary Sign)
- Sign Area for each Type of Sign (Billboard vs. Portable Sign) (Per Side?)
 - How to Measure Sign Area



- Total Area of Signage for a single Parcel / Building (consider Zoning District) (i.e. % of road frontage)
- How many Signs may be present on a single parcel? Consider size of Parcel? Zoning?
- How many Signs may be present attached to a single building? Consider size of Building?
- How many Signs of each Type (Temporary, Pole Sign, etc.) may be present on a single Parcel?

Drafting a Sign Code – Time / Place / Manner

“Manner” – Dimensions, #s and Other Miscellaneous Provisions

- **Other Miscellaneous Provisions**
 - May Signs be Illuminated? If so, in what Districts? What types of Signs (Billboards)?
 - Internally Lit? Gooseneck Lighting?



- Architectural Standards → Recommend Use of Architectural Board with Factors / Standards
 - For Example – Only Two Different Types of Font may be Used
- Maintenance Standards – Require that Signs be kept in good repair.

Drafting a Sign Code – Sign Permits

- Should your municipality have a Sign Permit procedure?
- If so, what Signs require a Permit and which are Exempt (not based upon Content!)?
 - Signs on Municipal-Owned Lands?
 - LED Signs?
 - Temporary Signs?
 - Billboards?
- Does the Permit apply only to new Signs? How about Replacement? New Message/Tenant? Repair? Upgrade? Movement?
- Procedure –
 - Administrative – Code Enforcement
 - Quasi-Judicial (like a Special Use Permit) – Planning Board
 - Ensure Criteria for Granting/Denying Permit are Laid Out Clearly
 - Else – Risk of Claim of Discrimination
 - IE – Setbacks, # of Signs, Lighting Compliance, Aggregate Sign SF

Drafting a Sign Code – Add'l Provisions

- **Prohibited Signs:**

- Based upon Physical Characteristics, NOT Content:
 - Moving / Mechanical Signs,
 - Flashing/Blinking/Neon Signs,
 - Roof Signs,
 - Dilapidated / Non-Maintained Signs



- **Enforcement:**

- Specify Fines / Penalties
- Removal Provisions
 - After Notice
 - How Long to Keep?
 - Cost to Recover?
 - Be clear.



Thank You! Questions?

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Donald A. Young, Esq., practices primarily in the Boylan Code's Municipal Law and Land Use group, but he also practices in the Firm's Litigation and Real Estate groups. A graduate from the University of Rochester (B.A., double major in Economics and Honors Psychology), Mr. Young earned his law degree from the State University of Buffalo Law School (J.D., *cum laude*), where he was an Editor of the *Buffalo Law Review*.

Mr. Young advises on municipal law and land use and zoning law throughout his daily experiences with complex municipal and land use issues, often working in concert with public officials, staff and consultants such as engineers. For example, Mr. Young has drafted, revised and implemented a wide range of legislation, including zoning ordinances, as well as provisions dealing with open space and conservation, signs, refuse, wind turbines and land use moratoria. Mr. Young has implemented sewer, water and drainage districts and has guided municipal officials through complex SEQR analyses in relation to a number of complex projects. Furthermore, he has developed expertise in a wide range of other areas dealing with municipalities, for example, by advising the local legislative body with respect to rezoning applications, planned development districts, open meetings law and ethics, advising and acting as Planning Board attorney on a number of site plan and subdivision issues, advising and acting on behalf of the Zoning Board of Appeals with regard to various zoning and variance issues, and by working with Code Enforcement to implement and enforce local ordinances. He currently serves as counsel for a variety of municipalities in New York.

Mr. Young has shared his knowledge and experience in articles published in the *Daily Record*, the *Rochester Business Journal* and the Association of Towns *Talk of the Towns*. Furthermore, Mr. Young is an accomplished speaker, presenting on behalf of the Association of Towns at a variety of summer schools, as well as a numerous annual conferences on behalf of the Association in New York City. Mr. Young has also spoken on behalf of the New York Planning Federation. In addition, Mr. Young has spoken on behalf of the National Business Institute, and has spoken to and offered training to public officials at various town halls around New York.

Finally, Mr. Young has recently started a legal blog at www.zonedinlegal.com, where he regularly writes about municipal, land use and zoning issues.