

Guidepost to Municipal Sign Regulation

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Dedication

This publication is dedicated to the memory of William Coolidge, attorney, municipal judge, mentor, and friend.

Disclaimer

The purpose of this publication is not to provide a comprehensive discussion of all aspects of sign regulation. The materials are intended to highlight several, but not all, areas where legal issues commonly arise concerning municipal sign regulation. The law is constantly changing and timely legal advice based on current law is essential to avoiding liability. This publication is provided for general informational purposes only, does not constitute legal advice and may not apply to your specific situation. You should consult with your city attorney before taking any action based on such information.

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Guidepost to Municipal Sign Regulation

I. Introduction

Sign ordinances have come under tremendous scrutiny over the last decade and numerous local governments in Georgia have been forced to expend resources to defend their ordinances in both state and federal courts. Thus, cities intent on regulating signage would be wise to review and consider amending their ordinances to avoid or prevail in litigation. Any review of existing ordinances, however, should only be done in consultation with the city attorney.

The law has continued to change since the publication of the previous editions of this booklet. Decisions from the Eleventh Circuit Court of Appeals have simultaneously made the crafting of heretofore widely considered content neutral distinctions nearly impossible, but at the same time have increased the difficulty for those challenging sign regulations to establish standing. Luckily for cities, the Georgia Supreme Court has followed the lead of the federal courts on the standing issue. However, the Georgia legislature enacted a statutory provision that has complicated regulating the number of signs on private property.

This publication attempts to address some of the sensitive areas surrounding sign regulation. There are probably numerous alternative schemes for regulating signs, including limiting sign size and location by street frontage; the model is merely an example of one such scheme. While litigation in this area will likely continue, it is our hope that this manual will be of service to cities desiring to maintain safe and aesthetically pleasing communities.

II. Key Concepts

Governmental Interests

An ordinance regulating signage must serve a “substantial governmental purpose” in order to satisfy the United States and Georgia Constitutions.¹ An ordinance that does not include a statement of purpose to show what governmental interests are protected by its enactment is likely to be voided in any state court review.² Lack of definitive purposes underlying the ordinance will absolutely void the ordinance under federal review.³ The two predominant governmental interests in sign regulation are public safety, namely guarding against signs that obstruct or interfere with the view of motorists and pedestrians and aesthetics, preventing the proliferation of signs that detract from the attractiveness and thus quality of life of the community.⁴ In enacting sign regulation local governing authorities may wish to cite to specific evidence, either testimony from hearings or research from professional studies, supporting the need for such regulation. A transcript from a hearing or a copy of a study can be incorporated by reference and attached to the ordinance.

Content Neutrality

The model ordinance included in this publication regulates signs based on size, height, shape, design, spacing, and distance factors, but it attempts to make no distinctions between commercial and non-commercial speech. Similarly, on-premise and off-premise signs are considered content based signs by the Georgia Supreme Court and

¹ *Metromedia v. City of San Diego*, 443 U.S. 507, 508 (1981); *Café Erotica v. State of Georgia*, 507 S.E.2d 732 (1998).

² See *SMD, LLP v. City of Roswell*, CAFN E-65358, *Order (Fulton Super Ct. Nov. 18, 1999)*.

³ See e.g. *City of Ladue v. Gilleo*, 512 U.S. 43 (1994).

⁴ *But see State of Georgia v. Café Erotica*, 507 S.E.2d 732 (1998), (holding that even though there was no specific evidence to support the purposes stated in the act the Court could defer to the common sense of the legislature).

no longer constitute an allowable regulatory distinction.⁵ Although some minor distinctions in content may be permissible, courts utilize strict scrutiny to analyze such distinctions and have held that restricting non-commercial speech in areas where commercial speech is allowed is unconstitutional.⁶

The Eleventh Circuit Court of Appeals has drastically heightened the level of scrutiny in content neutrality to the point of absurdity. In Solantic v. City of Neptune Beach, 410 F.3d 1250 (11th Cir. 2005), in addition to finding that the lack of a time frame for granting or denying a permit rendered a city's sign ordinance unconstitutional, the Eleventh Circuit Court of Appeals found that because the exceptions to the regulatory requirements of the ordinance (i.e. governmental signs and memorial signs) were based on content, not form, the ordinance was therefore an unconstitutional prior restraint on speech. Thus this case expanded the traditional prohibition on viewpoint discrimination to include regulations that categorize signs based on their function. Were it not for the standing cases that followed soon after this decision, sign regulation in this circuit would be extremely difficult if not impossible.

Neptune Beach's ordinance was based on a requirement that all signs without permits were illegal. The ordinance then exempted certain types of signs from regulation entirely. While exemptions from permit requirements are generally upheld, exemptions from the regulatory scheme itself are inherently problematic. If not very limited and carefully crafted with supportive findings unique to each exemption, such exemptions result in total invalidation of the ordinance. Georgia's Supreme Court has adopted a similar approach, finding that an explicit requirement that no sign may be erected except

⁵ See Fulton County v. Galberaith, 282 Ga. 314 (2007).

⁶ See Metromedia v. City of San Diego, 443 U.S. 507, 508 (1981).

under a permit is essentially a “ban” with subsequent exemptions (as found in allowable signs) being per se illegal.⁷

Any content requirements found in an ordinance are suspect and despite severability language, can have far reaching consequences well beyond the requirements themselves. For instance, regulations requiring the author of a non-commercial message to be identified on the face of an advertisement have been held unconstitutional.⁸ Such content based distinctions should therefore be kept to a minimum and should always be supported by direct findings. Requiring commercial ground signs to bear the street address of establishments for which they advertise is helpful to local law enforcement and the general public. Because such a regulation would introduce a distinction between commercial and non-commercial speech, it was not included in the model ordinance. Such an explicit content requirement however, if added to the model, should be supported with findings of fact as to the public safety nature of the specific requirement.

⁷ See Fulton County v. Galberaith, 282 Ga. 314 (2007).

⁸ McIntyre v. Ohio Election Comm'n, 514 U.S. 334 (1995).

Due Process

Cities should also be aware that trial courts have struck down ordinances in part because they did not contain a specific time period in which to make the initial decision on whether to issue or deny a sign permit.⁹ Cities should err on the side of caution and allow for prompt judicial review where permits are denied. Cities may wish to allow for variances where topography prevents compliance. The granting of variances should be done carefully however, or the ordinance may become unenforceable. An absolute time limit for consideration of a variance, as well as standards that do not address the content of the sign are essential if a variance scheme is to pass muster.

Some cities in the United States have enacted total bans on certain kinds of signage. That avenue does not appear to be available to cities in Georgia.¹⁰ The better practice is to regulate solely by size, height, setback, and physical characteristics. Additionally, case law has established that a city may not force the removal of existing signs without providing the owner with just compensation.¹¹ Amortization clauses do not suffice as just compensation.¹² At least one superior court has enjoined the enforcement of an entire comprehensive sign ordinance because of its finding that the ordinance's ban on new non-grandfathered billboards was unconstitutional.¹³ The United States Supreme Court has implied that a total commercial billboard ban may be permissible by referring to one as the: "most direct and perhaps the only effective approach to solving the

⁹ Z.J. Gifts v. Littleton, 124 S.Ct. 2219 (2004).

¹⁰ Union City Board of Appeals v. Justice Outdoor Displays, 467 S.E.2d 875 (1996).

¹¹ Lamar Advertising of South Georgia v. City of Albany, 389 S.E.2d 216 (1990).

¹² *Id.*; SMD, LLP v. City of Roswell, CAFN E-65358, *Order (Fulton Sup. Ct. Nov. 18, 1999)*.

¹³ SMD, LLP v. City of Lilburn, (CAFN 97A-8861-7), Superior Court of Gwinnett County; *But see SMD, LLP v. Cobb County*, (CAFN 99-1-0098-18) Superior Court of Cobb County (upholding a similar ban).

problems they create.”¹⁴ The Georgia Supreme Court has allowed square footage, spacing, and height restrictions to stand. However, regulating these factors so strictly that they in effect constitute a ban, may be unconstitutional.¹⁵

The Georgia Supreme Court has held that a time limit on political yard signs is unconstitutional.¹⁶ In fact, every case in which campaign signs have been specifically addressed has resulted in invalidation of the entire ordinance. Therefore, enough flexibility in local ordinance sign allowances is needed to permit political expression of citizens. Similarly, the United States Supreme Court held a municipal ordinance that imposed a residential yard sign ban to be unconstitutional.¹⁷ Political speech is not limited to campaign posters, but includes virtually all expressions of public content. It is a year round entitlement of citizens to be able to express their views to their neighbors.

Zoning

Cities should be aware that billboard ordinances have been held by a number of superior courts to be zoning ordinances, even though the Georgia Supreme Court, at one time, held otherwise.¹⁸ This raises complications since zoning ordinances are subject to the Zoning Procedures Law (O.C.G.A. § 36-66-1 et. seq.) and the zoning procedures adopted by that specific local government. To minimize legal challenges, local governments should adopt sign regulations in conformance with the Zoning Procedures Law.

¹⁴ Metromedia v. City of San Diego, 453 U.S. 490, 508 (1981).

¹⁵ Union City Board of Zoning Appeals v. Justice Outdoor Displays, 467 S.E.2d 875 (1996).

¹⁶ *Id.*

¹⁷ City of Ladue v. Gilleo, 512 U.S. 43 (1994).

¹⁸ *See e.g.* City of Doraville v. Turner Communications, 223 S.E.2d 798 (1976).

Preemption

During the 2006 legislative session, an amendment to a bill dealing with illuminated signs on state routes was passed that provides as follows: “no municipal, county, or consolidated government may restrict by regulation or other means the length of time a political sign may be displayed or the number of signs which may be displayed on private property for which permission has been granted.”¹⁹ The statute is less than a model of clarity and, on its face, arguably appears to allow unlimited signage of any nature on all private property. Legislative intent will have to be determined by a court decision at some future date. Assuming that cities will not want to challenge or run afoul of this statute, those crafting sign ordinances will need to allow signs that are made exempt by the statute. As one part of an enforcement mechanism, a city can formally adopt a policy that requires inspectors to be trained on the state law and preclude issuance of citations and notices of violations for campaign signs. The model ordinance in this publication addresses this by exempting all signs under a certain size from permitting requirements and by regulating sign area rather than number of signs.

Another state statute also prohibits municipal sign ordinances from “restricting the use of any language other than English on signs for privately owned businesses.”²⁰ Thus, cities may not require that signage at businesses, either designed to designate the on premises location or merely to advertise, use the English language or provide an English translation. Since such a restriction is content based and apparently prohibited by state law, the model does not address language issues.

¹⁹ See O.C.G.A. § 16-7-58(a)(2).

²⁰ See O.C.G.A. § 36-35-6.1.

Standing

Almost a year after the Solantic decision was announced, the Eleventh Circuit, held that those raising First Amendment challenges to content neutral municipal regulations cannot use the overbreadth doctrine to challenge the entire ordinance simply because some of the provisions that do not directly impact the challenger may be invalid.²¹ Challengers may instead attack only provisions of a sign ordinance that directly impact their rights. The Georgia Supreme Court followed the logic of the federal courts and issued a similar holding, that challengers may only contest those portions of sign ordinances that cause them injury, reaffirming that the overbreadth doctrine is not an exception to the requirement of establishing constitutional standing.²²

²¹ Tanner v. Fayette County, 451 F.3d 777 (11th Cir. 2006); CAMP v. City of Atlanta, 451 F.3d 1257 (11th Cir. 2006).

²² Granite State Outdoor Advertising, Inc. v. City of Roswell, 658 S.E.2d 587 (Ga. 2008).

III. Do's and Don'ts

DO

- State as many substantial governmental purposes as possible for the ordinance.
- State a certain and reasonable time period in which to make the decision to grant or deny a sign permit.
- Comply with the provisions of the Zoning Procedures Law (O.C.G.A. § 36-66-1 et. seq.) and locally adopted zoning procedures in adopting an ordinance.
- Tailor the provisions of the zoning section to your city's unique needs.

DON'T

- Restrict non-commercial speech in places where commercial speech is allowed.
- Enact a total ban on signage.
- Require the removal of existing signs, without providing just compensation.
- Use amortization clauses to provide just compensation.
- Put a time limit on non-commercial signs that doesn't apply to commercial signs.
- Restrict the length of time a political sign may be displayed or the number of signs which may be displayed on private property.
- Restrict the use of any language other than English on signs owned by private business.
- Ban signs in residential areas.
- Suggest leaflets as a reasonable alternative to signs in residential areas.
- Require that signs indicate their author.
- Restrict the message of a sign to those the city deems appropriate.
- Enact overbroad or vague prohibitions on obscene, indecent, or immoral messages that do not provide "explicit standards".
- Enact total restrictions on all off-premise outdoor advertising of commercial establishments where nudity is exhibited.
- Give preference to religious based speech over other forms of ideological speech.

III. Model Sign Ordinance

Section 1-Purpose and Findings.

Be it ordained by the City Council of the City of _____ that:

[DO NOT ADOPT VERBATIM LANGUAGE FROM EITHER EXAMPLE]

Example 1:

(a) The City of _____'s population has grown substantially in recent years. With the increase in population has come a drastic and dramatic increase in the volume of traffic in the City. Uniform regulation of signage providing directional, commercial, and non-commercial information to the motoring public, to promote public safety, is essential.

(b) Various and diverse businesses are located within the City of _____. The need to advertise products and services must be balanced by the City's obligation to restrict clutter, maintain an aesthetically pleasing environment, protect property values, and enhance public safety.

(c) Regulation of the location, size, placement, and certain features of signs is necessary to enable the public to locate goods, services, and facilities in the City without difficulty and confusion, to improve the general attractiveness of the community, to take advantage of the beauty of the community's natural environment, and to protect property values therein. Such regulation is also necessary to facilitate and aid in the identification and location of businesses in the City in the event of police, fire, or other emergencies and to avoid confusion and delay in response to such emergencies. Accordingly, it is the intention of the City to establish regulations governing the display of signs which will:

- (1) Promote and protect the public health, safety and general welfare.
- (2) Enhance the economy and the business and industry of the City by promoting the reasonable, orderly and effective display of signs.
- (3) Restrict signs and lights which increase clutter or which increase the probability of traffic accidents by obstructing vision.
- (4) Promote signs which are compatible with their surroundings.

(d) It is also the purpose of this ordinance to insure proper maintenance, for safety and structural soundness, as well as the appearance and attractiveness of signs.

Example 2:

The Mayor and Council find that signs provide an important medium through which individuals may convey a variety of messages. However, left completely unregulated, signs can become a threat to public safety as a traffic hazard and detriment to property values and the City's overall public welfare as an aesthetic nuisance. By enacting this ordinance, the Mayor and Council intend to:

- (a) Balance the rights of individuals to convey their messages through signs and the right of the public to be protected against the unrestricted proliferation of signs;

- (b) Protect the public health, safety, and welfare;
- (c) Reduce traffic and pedestrian hazards;
- (d) Maintain the historical image of the City;
- (e) Protect property values by minimizing the possible adverse effects and visual blight caused by signs;
- (f) Promote economic development; and
- (g) Ensure the fair and consistent enforcement of sign regulations.

Section 2 -Definitions.

“Aggregate sign area” shall mean the area of all signs on a parcel, excluding the area of one face of all double-faced signs.

“Animated sign” shall mean a sign with action, motion, or changing colors which requires electrical energy. This definition includes any signs that electronically change the sign face, whether by substitution of copy or scrolling. An electronic sign that maintains a steady sign face without change for no less than six (6) hours is not considered an animated sign. However, any deviation from the minimum six (6) hour change of unchanged copy results in the sign being considered an animated sign.

“Area of a sign/ Sign area” shall mean the smallest square, rectangle, triangle, circle, or combination thereof, which encompasses one face of the entire sign, inclusive of any border and trim but excluding the base, apron, supports, and other structural members.

“Awning sign” shall mean a sign located on a roof-like cover extending before a place as a shelter and which may be used in lieu of a wall sign.

“Billboard sign” shall mean any sign with a sign area exceeding 300 square feet.

“Double-faced sign” shall mean a sign which has two (2) display areas placed back to back against each other or where the interior angle formed by the display areas is sixty (60) degrees or less, where one face is designed to be seen from one direction and the other face from another direction.

“Flag” shall mean any fabric or bunting containing colors, patterns, or symbols used to signify a government or other entity or organization.

“Freestanding sign” shall mean a sign securely affixed to a support structure which is permanently attached to the ground and wholly independent of any building for support, such as monument or stanchion signs.

“Illuminated sign” shall mean a sign that has light cast upon the sign from a source either internal to the sign or from an external light source directed primarily toward such sign.

“Monument sign” shall mean a freestanding sign mounted directly upon the ground. Such sign may not be attached to or be a part of or supported by the building in or to which the sign applies.

“Non-conforming sign” shall mean any sign which does not conform to the provisions of this ordinance that was legal at the time of its erection.

“Parcel” shall mean a separate tax unit of real property on county real estate records.

“Roof sign” shall mean a sign attached to or supported by the roof of a building which extends above the immediately adjacent roof line of the building.

“Sign” shall mean a device or representation for visual communication which is used for the purpose of bringing the subject thereof to the attention of others.

“Stanchion sign” shall mean a freestanding sign mounted on one or more steel poles set in the ground and of sufficient strength and size to support the advertisement portion of such structure which rests upon or is supported by such poles.

“Wall sign” shall mean a sign fastened, placed or painted upon or parallel to the exterior wall of the structure itself, whether front, rear or side of the structure.

“Window sign” shall mean a sign installed flush with or on a window and intended to be viewed from the outside.

Section 3-Permits.

- (a) All signs allowed by this ordinance, except those exempted from obtaining a permit shall require a permit issued by the city prior to posting, displaying, substantially changing, or erecting a sign in the city.
- (b) Existing signs which conform to the provisions of this ordinance that would be required to obtain a permit under the regulations of this ordinance must register with the city within 90 days of the effective date of this ordinance. The information provided for registration will be the same information required in a permit application under Section 4. No permit fee will be required for the registration of existing signs.

Section 4-Application Information.

Applications for sign permits required by this ordinance shall be filed by the sign owner or the owner’s agent with the city clerk. The application shall describe and set forth the following:

- (a) The street address of the property upon which the sign is to be located and a plat map of the property, drawn to scale, showing all existing structures, including existing signage and which bears an indication of the proposed location of the sign.
- (b) The aggregate area for all signs on the parcel.
- (c) The name(s) and address(es) of all of the owner(s) of the real property upon which the subject sign is to be located.
- (d) Consent of the owner, or the owner's agent, granting permission for the placement or maintenance of the sign.
- (e) Name, address, phone number of the sign contractor.
- (f) The type of sign to be erected, the area of the sign, the height of the sign, the shape of the sign, and an explanation of how the sign is to be mounted or erected.
- (g) The distance of the sign from the closest adjacent sign in either direction.
- (h) The size of the parcel on which the sign is to be placed.

Section 5 - Time for Consideration.

The City shall process all sign permit applications within 30 business days of the City's actual receipt of a completed application and accompanying sign permit fee. The clerk shall give notice to the applicant of the decision of the City by hand delivery or by mailing a notice, by first class mail, to the address on the permit application on or before the 30th business day after the City's receipt of the completed application and fee. If mailed, notice shall be deemed to have been given upon the date of mailing in conformity with this section. If the City fails to act within the 30 business day period, the permit shall be deemed to have been granted.

Section 6-Denial and Revocation.

(a) *Procedure*

The City shall deny permits to applicants that submit applications for signs that do not comply with the provisions of this ordinance, are incomplete applications, or applications containing any false material statements. Violation of any provision of this ordinance will be grounds for terminating a permit granted by the city for the erection of a sign. Should it be determined that a sign permit was issued pursuant to an incomplete application or an application containing a false material statement, or that a permit has been erroneously issued in violation of this ordinance, the clerk shall revoke the permit. Should the city deny a permit, the reasons for the denial are to be stated in writing and mailed by first class mail or via hand delivery to the address on the permit application on or before the 30th business day after the City's receipt of the application. Any application denied and later resubmitted shall be deemed to have been submitted on the date of re-submission, instead of the date of the original submission. No permit shall be denied or revoked, except for due cause as hereinafter

defined, and the applicant is granted a public hearing before a hearing officer designated by the city. The applicant will be given ten (10) days written notice of the time, place and purpose of the hearing, with a statement of the reason for the denial of the permit application, or the revocation of a permit. "Due cause" is the violation of the provisions of this ordinance, state or federal law related to signage, or the submission of an incomplete application or an application containing false material statements.

(b) *Appeal.*

An individual whose permit application has been denied or a permittee whose permit has been revoked may appeal the decision of the hearing officer to the City Council upon filing of written notice of an appeal with the City Clerk within 10 business days of the hearing officer's decision. Such appeal shall be considered by the Council at the next City Council meeting held after the city's receipt of the written notice of appeal, provided that notice of appeal is received a minimum of five full business days before the meeting. If the appeal is not heard at such meeting, it shall be heard at the next regular meeting of Council thereafter. The Council shall make a final decision no later than 30 days from the date of the hearing.

- (c) In the event an individual whose permit has been denied or revoked is dissatisfied with the decision of the City Council, he or she may petition for writ of certiorari to the superior court as provided by law.

Section 7-Permit Expiration.

A sign permit shall become null and void if the sign for which the permit was issued has not been completed and installed in accordance with the permit application within six (6) months after the date of issuance. No refunds will be made for permit fees paid for permits that expired due to failure to erect a permitted sign. If later an individual desires to erect a sign at the same location, a new application must be processed and another fee paid in accordance with the fee schedule applicable at such time.

Section 8-Fees.

The cost of a permit shall be \$40.00 per sign.

Section 9-Prohibited Signs.

The following types of signs are prohibited throughout the city:

- (a) Roof signs;
- (b) Animated signs;
- (c) Signs on public rights of way other than publicly owned or maintained signs;
- (d) Window signs which exceed 30% of the window area;
- (e) Signs which contain words, pictures, or statements which are obscene, as defined by the Official Code of Georgia Annotated § 16-12-80;

- (f) Signs which simulate an official traffic control or warning sign or hide from view any traffic or street sign, signal or public service sign;
- (g) Signs which emit or utilize in any manner any sound capable of being detected on any traveled road or highway by a person with normal hearing;
- (h) Signs which interfere with road or highway visibility or obstruct or otherwise interfere with the safe and orderly movement of traffic; and
- (i) Signs erected by nailing, fastening or affixing the sign in any manner to any tree, post, curve, utility pole, or other structure except as set forth herein.

Section 10-Restrictions in Residential Zoning Districts.

Other than subdivision entrance signs allowed under Section 11, parcels located in residential zoning districts shall not contain signs having an aggregate sign area greater than fifteen (15) square feet. No individual sign shall exceed six (6) square feet in sign area in a residential zoning district. Signs having a height of greater than five (5) feet above the grade level of the center line of the adjacent street to which the parcel on which the sign is located shall not be located in residential zoning districts. Signs meeting the standards of this section are exempt from permitting requirements.

Section 11-Residential Subdivision Entrance Signs.

Platted residential subdivisions consisting of more than 2 parcels may erect one monument sign at each entrance to the subdivision. Such sign shall not exceed a height of five (5) feet above the grade level of the center line of the adjacent street and shall not have a sign area greater than twenty five (25) square feet. Such entrance signs shall not count toward the maximum allowable signage on a residential parcel.

Section 12-Height Requirements.

The following height requirements shall be applicable to signs located in non-residential zoning districts:

- (a) No stanchion sign shall exceed twenty four (24) feet in height at the highest point on the sign.
- (b) Monument signs shall not exceed six (6) feet in height.
- (c) All sign heights shall be measured from the grade level of the center line of the adjacent street to which the property on which the sign is located has access. The level of the ground shall not be altered in such a way as to provide additional sign height.

Section 13-General Size and Location Requirements in Non-Residential Districts.

- (a) No freestanding sign may be located within 30 feet of the intersection of street right-of-way lines extended.

(b) No sign shall be located on any building, fence or other property belonging to another person without the consent of the owner, and as permitted under the provisions of this ordinance.

(c) *Billboard signs.*

- (1) Billboard signs shall not exceed six hundred and seventy two (672) square feet of sign area. Billboard signs shall not exceed fourteen (14) feet in height or forty eight (48) feet in length.
- (2) Billboard signs shall only be located on parcels in commercial or industrial zoning areas.
- (3) Billboard signs shall only be located on parcels adjacent to designated state or federal highways and shall be oriented only towards those highways.
- (4) No billboard sign shall be located within 1,000 feet of another billboard sign.
- (5) No billboard sign shall be located within 500 feet of residential zoned parcels.
- (6) No billboard sign shall be located within 500 feet in any direction of a public park, public playground, public recreation area, public forest, scenic area, or cemetery; provided, however, that such sign may be located within 500 feet of a public park, public playground, public recreation area, public forest, scenic area, or cemetery when the sign is separated by buildings or other obstructions so that the sign located within the 500 foot zone is not visible from the public park, public playground, public recreation area, public forest, scenic area, or cemetery.
- (7) No billboard sign shall be erected to a height in excess of fifty (50) feet.

(d) *Stanchion signs.*

- (1) Stanchion signs for parcels exceeding three (3) acres shall not exceed a sign area of 150 square feet.
- (2) Stanchion signs for parcels less than three (3) acres, but equal to or greater than 30,000 square feet shall not exceed a sign area of 90 square feet.
- (3) Stanchion signs for parcels less than 30,000 square feet in size shall not exceed a sign area of 70 square feet.
- (4) Stanchion signs shall only be located on property in commercial or industrial zoning areas and shall be limited to one such sign per parcel per street frontage.

(e) *Monument signs.* Monument signs shall not exceed 60 square feet of total area, which shall include signage and structure, and shall be limited to one such sign per parcel per street frontage.

(f) *Wall and Awning Signs.*

- (1) Wall and awning signs shall not project above the parapet wall.
- (2) Wall signs shall not project beyond the building face. Awning signs shall not project beyond the building face by more than four feet.
- (3) Wall and awning signs shall not exceed a sign area of 300 square feet or ten percent of the wall face of the premises to which the sign relates, whichever is less, on each street facing wall.
- (4) The maximum wall or awning sign height shall be ten feet.

- (5) Wall signs shall only be located on property in commercial or industrial zoning areas.
- (6) Each building tenant shall be limited to one wall or awning sign on each street facing wall.

(g) *Maximum aggregate sign area.*

Parcels may contain more than one freestanding sign, provided that:

- (1) Parcels exceeding three acres shall be allowed a maximum aggregate sign area of 300 square feet for the entire parcel.
- (2) Parcels less than three acres but greater than 30,000 square feet shall be allowed a maximum aggregate sign area of 180 square feet for the entire parcel.
- (3) Parcels less than 30,000 square feet in size shall be allowed a maximum aggregate sign area of 100 square feet for the entire parcel.
- (4) These limits shall not include the area of any wall signs, window signs or billboard signs located on the parcel.
- (5) These limits shall include the area of all freestanding signs on the parcel.

Section 14-Construction Standards.

- (a) All signs for which a permit is required under this ordinance shall be constructed and maintained in accordance with the provisions of the city building code.
- (b) Signs for which a permit is not required under this ordinance that are constructed of degradable material may be posted for a maximum of 60 days unless replaced with another sign of the same material. Any such replacement signs may be posted for a maximum of 60 days.

Section 15-Nonconforming Signs.

- (a) Nonconforming signs, which met all legal requirements when erected, may stay in place, provided that within 90 days of the effective date of this ordinance the owner of the non-conforming sign or the owner's agent registers the sign with the city. Such registration shall contain the information listed in Section 4(a) and shall specify the sign being registered as non-conforming and shall state that the sign was completely installed before the effective date of this ordinance. The payment of a fee is not required for the registration of a non-conforming sign; however failure to register shall be considered an offense and may be punished as any other ordinance violation. Non-conforming signs shall be permitted until one of the following conditions occurs:
 - (1) The deterioration of the sign or damage to the sign makes it a hazard or unsightly;
or
 - (2) The sign has been damaged by circumstances beyond the control of the owner to the extent that more than minor repairs are required to restore the sign; provided that signs damaged by Act of God and not due to the owner's action may be restored to their pre-damaged condition, provided that the useful life of the signs is not extended.

- (b) No structural repairs except those permitted pursuant to Subsection (a)(2) above change in shape, size or design, shall be permitted except to make a non-conforming sign comply with all requirements of this ordinance.
- (c) A non-conforming sign may not be replaced by another non-conforming sign except where changed conditions beyond the control of the owner render the sign nonconforming or warrant the sign's repair.

Section 16-Variances.

Variations shall be limited to the minimum relief necessary to overcome the hardship. No variance shall be granted to allow a greater number of signs than would be allowed if the hardship did not exist. A variance from compliance with the sign regulations of this ordinance shall be limited to the following hardship situations:

- (a) Standards.
 - (1) Where visibility of a conforming sign from the public street and within 50 feet of the proposed sign would be substantially impaired by existing trees, plants, natural features, signs, existing buildings or structures on a different lot; and
 - (2) Placement of the sign elsewhere on the lot would not remedy the visual obstruction; and such visibility obstruction was not created by the owner of the subject property; and the variance proposed would not create a safety hazard to traffic.
- (b) Variance applications shall be submitted to the City Council and shall be heard under the same time frames and rules governing appeals under this ordinance.

Section 17-Exemptions from Permit Requirements.

- (a) The following types of signs shall be exempt from the permit requirements of Section 3 and shall not count towards the maximum aggregate sign area limits provided in Sections 10 and 13(g):
 - (1) Non-illuminated signs, having a sign area of less than fifteen (15) square feet, provided they are not located in the public right of way.
 - (2) Window signs installed for purposes of viewing from outside the premises. However, such signs shall not exceed thirty (30) percent of the available window space.
 - (3) Numerals displayed for purposes of identifying property location and not exceeding four (4) inches in height in residential districts and ten (10) inches in height in nonresidential districts.
 - (4) Seasonal displays located outside of the public right of way that are erected for a maximum period of thirty days no more than twice a year.
- (b) Every parcel may display no more than two (2) flags that shall not count toward the maximum aggregate sign area limits provided in Sections 10 and 13(g) without obtaining a permit. Flagpoles in residential zoned districts shall not exceed twenty-five (25) feet in height or the height of the primary structure, whichever is less. Flagpoles in commercial or industrial zoned districts shall not exceed sixty (60) feet

in height. The dimensions of any flag shall be proportional to the flagpole height such that the hoist side of the flag shall not exceed fifty (50) percent of the vertical height.

Section 18-Illumination.

Illumination for signs shall not cast light on adjoining property or shine in such a manner as to cause traffic interference. Illumination shall be constant and shall not change, flash, scroll or stimulate movement.

Section 19-Enforcement and Penalties.

- (a) All signs shall be maintained in good condition as to present a neat and orderly appearance. The city may, after due notice, issue a citation to any permittee for any sign which shows gross neglect or becomes dilapidated. Such due notice shall be in writing, shall specify the sign and location, and shall state that the sign has not been properly maintained. The city shall give the permittee ten (10) days to rectify the condition or remove the dilapidated sign before issuing a citation.
- (b) The city may issue a citation for violation of this ordinance by any sign erected, altered, converted, or used in violation of this ordinance.
- (c) Any person violating any provision of this ordinance shall be liable for a fine of one hundred fifty dollars (\$150) for each violation. Each day a sign is posted in violation of this ordinance shall constitute a separate violation.

Section 20-Severability.

In the event any section, subsection, sentence, or word of this ordinance is declared and adjudged to be invalidated or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this article, which shall remain in full force and effect as if such portion so declared or adjudged unconstitutional were not originally part of this article. The City Council declares that it would have enacted the remaining parts of this article if it had known that such portion thereof would be declared or adjudged invalid or unconstitutional.

Section 21-Effective Date.

The effective date of this ordinance shall be _____. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

IV. Model Sign Ordinance Commentary

Section 1-Purpose and Findings.

In this section, the city governing authority should state its reasons for adopting the sign ordinance. The city must articulate a “substantial governmental purpose”. Promotion of public safety and prevention of aesthetic nuisance have been held to be valid substantial governmental purposes. A city should not under any circumstances adopt verbatim the language of either of the examples listed in Section 1 of the model ordinance. It is important that the city consider their unique situations before enacting an ordinance in order for the findings to be valid. The city may wish to elicit testimony from police officers or traffic engineers at work sessions (open to the public and on the record, but not necessarily calling for public comment). The city may wish to commission a study to examine the effects of unregulated signage. The examples given in the model ordinance were adopted by cities that carefully considered their unique circumstances before issuing findings and enacting an ordinance. The city should codify the purpose and findings as part of the code in order to ensure its admissibility in a court of law.

Section 2-Definitions.

This section defines the terms used throughout the ordinance. Terms should be defined broadly enough to cover everything intended to be in the reach of the ordinance but not so broadly that they become vague.

Section 3-Permits.

The information requested in the application should be limited to what is necessary to enforce the ordinance. Existing signs that conform to the ordinance must register so that the city may keep track of the location and placement of existing signs.

Section 4-Application Information.

The information requested in the application should be limited to what is necessary to ensure compliance with the ordinance.

Section 5-Time for Consideration.

There must be a definite time frame specified for the city to render a decision on an application. Because the city must act promptly, applications on which the city does not act should be deemed approved.

Section 6-Denial and Revocation.

Applications not in compliance with the ordinance or which are incomplete or contain false material statements should be denied. The city should be clear in explaining denials. Denials should be sent in a timely fashion and through a reliable means. It is important that any re-submission be considered as new applications so that the city will have adequate time to consider the application. Should an application be denied, the applicant should be entitled to a hearing before a city official where the applicant and the city official making the denial determination may present evidence regarding their relative positions. There should be an appeal to the city council and then to the superior court from the decision of the hearing officer to ensure compliance with due process.

Section 7-Permit Expiration.

This section is designed to prohibit a sign owner from erecting a sign long after having obtained a permit since conditions material to the application may change over time.

Section 8-Fees.

A fee may be assessed for the processing of an application. These fees should be reasonable and reasonably approximate the actual cost of processing the applications and enforcing the ordinance.

Section 9-Prohibited Signs.

In this section a city chooses which signs it will ban outright. An outright ban on signage may be unconstitutional. Thus, the city should be careful in choosing which types of signs it bans. Signs that may interfere with traffic safety are the most legitimate subject of a total ban. The city will need to consider what, if any, regulations it wishes to place on window signs. It is not necessary to regulate them, however, they can create the same problems as other signs. Cities should be careful in attempting to regulate obscenity. A city may not prohibit signs which are “immoral” or “indecent”. “Obscenity” is a precise legal term with a specific legal meaning that has been held to meet a constitutionally defined standard.

Section 10-Restriction in Residential Zoning Districts.

In this section, cities may choose to tie specific size, shape, and design regulations to specific zoning classifications. A city may not prohibit non-commercial speech where commercial speech is allowed. A city may not ban all forms of signs in a residential district because to do so would eliminate political yard signs and other non-commercial message signs which are protected by the First Amendment. The allowance of signs that have an aggregate sign area of no more than fifteen (15) square feet is designed to allow for political signs, yard signs and real estate signs. It should be noted that commercial advertisement of an off-site business would also be permissible under this provision, but such advertisement in a residential area is unlikely and very difficult to regulate, given that standard realtor signs are commercial in character. Attempting to differentiate between political and non-political speech is hazardous because a city may unwittingly make an unconstitutional content-based restriction. A city that attempts to make such distinctions needs to be cautious.

Section 11-Subdivision Signs.

This section allows for signs at the entrances to subdivisions. The section is content neutral since it does not spell out what is allowable on the sign or its purpose. Since these signs are sometimes located on residential parcels, the sign area of these signs does not count toward the maximum allowable residential signage on a parcel, so that residential property owners living at the entrance to subdivisions where these signs are placed would still be able to place the same signage in their yard as their neighbors. Whether such signs must be permitted will depend on their size and precise location.

Section 12-Height Restrictions.

This section specifies the acceptable height for signs. Height restrictions ideally allow for both sign and traffic visibility, as well as prevent unattractive signs. A city contemplating an ordinance may wish to measure the height of existing signs to determine the appropriate height limits for their city. The city should be careful not to enact regulations so strict that they have the practical effect of banning signs.

Section 13-Size and Location Restrictions.

This section restricts total sign area in proportion to the size of the property on which the signs are located. For example, a commercial parcel sized between 30,000 square feet and three acres would be allowed to erect two 90 square foot stanchion signs because their total allowed freestanding signage is 180 square feet. A commercial parcel smaller than 30,000 square feet, however, would be limited to erecting freestanding signs, the total area of which did not exceed 100 square feet. In addition to freestanding signs, the businesses on those parcels would be allowed wall or awning signs as well as window signage that complied with the ordinance restrictions.

This section would also allow billboards to be placed on parcels containing other signs, provided that the billboard sign has been placed on the parcel in compliance with specific billboard regulations. The area of the billboard sign would not count towards the aggregate sign area of the parcel. For example, a commercial parcel of more than three acres, adjacent to a state or federal highway, would be allowed to have two 125 square foot stanchion signs, a fifty square foot monument sign, a 672 square foot billboard as well as wall signs, and up to 30% of the window space of each individual business could be filled with signage. A parcel of the exact same size not located on a state or federal highway could erect the stanchion signs, the monument sign, wall signs, and the window signage, but not the billboard sign. The model was drafted in this fashion so that billboards would not be totally regulated out of existence and to allow those areas most attractive for advertising to be utilized. The billboard restrictions contained in the ordinance closely mirror those imposed by state law. See O.C.G.A. § 32-6-75. Note that there is no requirement that the sign advertise or name the property on which it is located. Such a requirement would be a content-based restriction. As with height requirements, a city may wish to take measurements of existing signs, and should be careful not to regulate signs out of existence. Additionally, wall sign restrictions should be calculated to ensure that each tenant be allowed some signage. This section also prohibits signs in the public right of way, and near street corners, where signs pose a traffic hazard. Finally, the regulations are tailored to zoning districts. A city contemplating an ordinance should carefully consider its zoning classifications and take them into consideration in a sign ordinance.

Section 14-Construction Standards.

This section requires that permanent signs be built according to city code. Any city wishing to make sure that such signs are built and maintained in a safe manner will need to make sure that their building code adequately addresses appropriate regulations for such signs. Signs that do not require permits may be constructed of degradable material as these will be small in size and they usually do not pose a safety risk.

Requiring their replacement prevents such signs from becoming eyesores without requiring individuals to go through the permitting process for signs that are usually temporary in nature.

Section 15-Nonconforming Signs.

An ordinance must take non-conforming signs into account in some fashion. To simply require their removal has been held to be a taking and amortization clauses have been held to be inadequate compensation. The model ordinance grandfathers existing non-conforming signs, but requires that they register so that the city can keep track of which signs were erected before the new regulations went into effect. Although such signs may be maintained and repaired, they can not be replaced, enlarged, or improved absent an Act of God.

Section 16-Variances.

This section allows for variances based on hardship. Specific criteria should be established and followed in the granting of variances. It is insufficient to refer to the zoning ordinance, because lower courts have ruled that those standards and lack of time limits do not accord with First Amendment concerns related to signage.

Section 17-Exemptions.

We have eliminated an exemption for public signs erected by the government due to the fact that zoning does not bind the government. Any exemptions from the ordinance are suspicious and can lead to invalidation of the ordinance as a whole. However, exemptions from permit requirements for relatively minor signs are allowed with little concern. This section creates permit exemptions that would allow for political yard signs, real estate signs and window signs. Political yard signs may not be banned and no time limit may be placed on their removal. Temporary signs are also allowed in commercial and industrial areas. This allows businesses to advertise temporary promotions or, for example, local groups to advertise a charity car wash. Political and other non-commercial signs can be still be located on these types of properties simply by being placed in the window and counting towards a location's 30% of window area or placed as freestanding signs and be exempt from the calculation of the aggregate sign area. Thus, the ordinance complies with O.C.G.A. § 16-5-78 by not limiting the number of freestanding political signs that are less than fifteen (15) square feet in area. It is important to remember that non-commercial messages may not be excluded where commercial messages are allowed.

Section 18-Illumination.

This section forbids lighting that projects onto adjacent property or causes a traffic hazard. It also requires the illumination to be held steady. Should a jurisdiction wish to study the effects of LED signs and want to consider lighting variations, materials are available for study. (Animated signs are banned completely in Section 9.)

Section 19-Enforcement and Penalties.

This section requires signs to be maintained. It also makes failure to comply with the provisions of the ordinance a violation enforceable by citation. The violation can be adjudicated in municipal court.

Section 20-Severance.

This section preserves the portions of the ordinance if any part of the ordinance is found to be invalid or unconstitutional.

Section 21-Effective Date.

This section merely specifies the date that an ordinance goes into effect and repeals any conflicting ordinances.