
Coates' Canons Blog: Sign Litigation: A Brief Analysis of Reed v. Town of Gilbert

By Adam Lovelady

Article: <http://canons.sog.unc.edu/sign-litigation-a-brief-analysis-of-reed-v-town-of-gilbert/>

This entry was posted on July 21, 2015 and is filed under Constitutional & Statutory Limitations, General Local Government (Miscellaneous), Land Use & Code Enforcement, Zoning

Temporary yard signs are springing up all around town. Town council wants to reduce the clutter, but also wants to respect the free speech rights of the community. Council is considering new rules that will allow *campaign signs* during election season, *event signs* within a day of the event, and *ideological signs* anytime. It seems like a reasonable balance—allowing the signs but limiting them to a relevant time-frame. Can the town's regulations distinguish among signs this way?

A recent U.S. Supreme Court decision says no. Such distinctions are unconstitutional content-based regulation of speech.

To be clear, every sign ordinance distinguishes among signs. Ordinances commonly distinguish between locations (commercial property, residential property, public property, etc.), between types of signs (free-standing, wall signs, electronic signs, etc.), and between messages on the signs (commercial, safety, political, etc.). Reasonable distinctions concerning *location* and *types* of signs remain permissible.

The *Reed* decision, though, clearly invalidated some distinctions based on the message content of signs, and it will require adjustments to many local ordinances and some state statutes. The decision, with its four separate concurring opinions, also left open several legal questions.

This blog considers the decision of [Reed v. Town of Gilbert, 576 U.S. ___ \(2015\)](#), and its impact on local sign ordinances.

Context of Free Speech Caselaw

In thinking about the *Reed* decision it is helpful to recall a few key points about Constitutional protections of free speech and local government sign regulation. This area of the law is complex—far beyond the scope and space of this blog—but some context is helpful in understanding the impact of the new decision.

Content-Neutral Sign Regulations. Some sign regulations concern the form and nature of the sign, not the content of the message. These regulations—called *reasonable time, place, or manner restrictions*—include regulation of sign size, number, materials, lighting, moving parts, and portability, among other things. These regulations are allowed, provided they are “[1] justified without reference to the content of the regulated speech, [2] that they are narrowly tailored to serve a significant governmental interest, and [3] that they leave open ample alternative channels for communication of the information” (*Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753, 105 L. Ed. 2d 661 (1989)). Over the years the courts have allowed a variety of content-neutral sign regulations.

Content-Based Sign Regulations. Some sign regulations, however, restrict the content of the message. The Supreme Court requires that content-based regulation of noncommercial signs must meet strict scrutiny. As phrased in the *Reed* majority opinion, a regulation is content-based if the rule “applies to a particular [sign] because of the topics discussed or the idea or message expressed” (slip op., at 6). The strict scrutiny standard demands that the local government must show that the regulation is (i) designed to serve a *compelling* governmental interest and (ii) *narrowly tailored* to achieve that interest. That is a steep hill to climb, and in practice few, if any, regulations survive strict scrutiny review.

It is worth noting that commercial speech is subject to yet another test—a version of intermediate scrutiny outlined in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987). That test is described in David Owens' blog on [Offensive Signs](#), and as discussed below, the impact of the *Reed* decision on the *Central Hudson*

test is unclear.

Case Summary

The Town of Gilbert, Arizona, had a sign code requiring permits for signs, but outlining a variety of exemptions. The *Reed* decision focused on the exemptions for three types of signs: Political Signs, Temporary Directional Signs, and Ideological Signs. Under the local code, Political Signs were signs designed to influence the outcome of an election; they could be up to 32 square feet and displayed during political season. Temporary Directional Signs were defined to include signs that direct the public to a church or other qualifying event; they could be up to six square feet and could be displayed 12 hours before and 1 hour after the qualifying event. Ideological signs were defined to be signs that communicate a noncommercial message that didn't fit into some other category; they could be up to 20 square feet.

A local church—after being cited for violation of the rules for Temporary Directional Signs—challenged the sign code as abridging their freedom of speech. The Town argued (and the lower courts found) that its regulations were content-neutral. The distinctions among types of signs, they said, were based on objective factors not the expressive content of the sign. The distinctions did not favor nor censor a particular viewpoint or philosophy. And, the justification for the regulation was unrelated to the content of the sign.

Justice Thomas, writing for the Court, disagreed. He found that the distinctions were plainly content-based and thus subject to strict scrutiny. The distinctions—between Political Signs, Temporary Directional Signs, and Ideological Signs—“depende[ed] entirely on the communicative content of the sign” (slip op., at 7). “Regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints with that subject matter” (12). And, “an innocuous justification cannot transform a facially content-based law into one that is content neutral” (9).

In its failed attempt to meet the strict scrutiny standard, the Town offered two governmental interests to support its distinctions: aesthetic appeal and traffic safety. Even if these were considered compelling governmental interests (which the Court assumed without ruling), the Town's distinctions were not narrowly tailored. Justice Kagan noted in her own opinion (concurring in the judgment only) that the Town's distinctions did “not pass strict scrutiny, or intermediate scrutiny, or even the laugh test” (slip op., at 6, Kagan, J., concurring in judgment).

Impact of Local Ordinances

So what does this decision mean for local ordinances? In the end, some distinctions among signs clearly are allowed and will withstand judicial review. Some code provisions, though, must be revised. And then, there are the open questions.

The Court was unanimous in judgment: The particular provisions of the Town of Gilbert's sign code violate Constitutional protections for free speech. The Court was fractured, though, in the opinions, making it harder to discern the full scope of the decision. Justice Thomas offered the majority opinion of the court with five justices joining. Justice Alito offered a concurring opinion to further clarify the impact of Justice Thomas' opinion. He was joined by Justices Kennedy and Sotomayor. Three justices concurred in judgment only, and they offered two separate opinions to outline their legal reasoning and their concerns with the majority's reasoning.

So we have a split court. Three joined the majority only; three joined the majority, but also joined an explanatory concurrence; and three disagreed with the majority's legal reasoning. This three-three-three split, unfortunately, causes even more head-scratching for an already complex topic.

Content-Based Distinctions. In thinking about your sign ordinance, ask this: Does this regulation apply to a particular sign because of the non-commercial content on the sign? If yes, the regulation must meet strict scrutiny under *Reed*. The government must show that the regulation is designed to serve a *compelling* governmental interest and *narrowly tailored* to achieve that interest.

If your ordinance distinguishes among noncommercial sign types—political v. ideological v. religious—those distinctions are unconstitutional and must be changed.

Justice Thomas did offer some content-based regulations that may survive strict scrutiny if they are narrowly tailored to address public safety. These include warning signs for hazards on private property, signs directing traffic, or street

numbers associated with private houses.

Content-Neutral Distinctions. The several opinions of the court outline some valid distinctions for regulation. In his majority opinion, Justice Thomas noted that local governments still have “ample content-neutral options available to resolve problems with safety and aesthetics” (slip op., at 16). These include regulation of, among other things,

- size
- building materials
- lighting
- moving parts
- portability

Moreover, “on public property the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner” (slip op., at 16). A local ordinance or state statute can prohibit all signs in the public right-of-way. But, if signs are allowed, the regulations must not distinguish based on the content of the message. Regulations that allow some, but not all, noncommercial signs run afoul of the *Reed* decision.

For example, NCGS § 136-32 allows for “political signs” (as narrowly defined) in the public right-of-way of state highways during election season. That statute and similar ordinances will need to be revised to either, prohibit all signs in the right-of-way, or allow compliant signs with any noncommercial message in the right-of-way during election season.

Justice Alito, in his concurring opinion, provided further explanation (although not an exhaustive list) of what distinctions may be valid, content-neutral distinctions. He included:

- Size (including different sizes for different types of signs)
- Location, including distinguishing between freestanding signs and attached signs
- Distinguishing between lighted and unlighted
- Distinguishing between fixed message and electronic signs
- Distinguishing between signs on public property and signs on private property
- Distinguishing between signs on commercial property and signs on residential property
- Restricting the total number of signs allowed per mile of roadway
- Distinguishing between on-premises and off-premises signs*
- And time restrictions on signs advertising a one-time event*

* These last examples—distinguishing between on-premises/off-premises and restricting signs for one-time events—seem to conflict with the majority opinion in *Reed*. Here, we get back to the issue of the fractured court and multiple opinions (discussed below).

Open Questions

Content-ish Regulations

Justice Alito’s concurrence (discussed above) listed many regulatory distinctions that are clearly authorized. He listed two distinctions that do not clearly square with the reasoning of the majority opinion. But, if you consider the three justices concurring with Alito plus the three justices concurring in judgment only, there are six justices that took the question of content neutrality with more practical consideration than Justice Thomas’ hard line. Thus, Alito’s opinion may in fact hold the greatest weight of this case. Only time will tell—time and more litigation.

First, Justice Alito listed signs for one-time events. This seems to be precisely what the majority stuck down in this case. It is unclear how a local regulation could structure such regulation without relying on the content of the message itself. But the inclusion on Justice Alito’s list points to some room for defining signs based on function.

And second, Justice Alito listed the distinction between on-premises and off-premises signs. The enforcement officer must read the sign in order to determine if a sign is off-premises or on-premises. As such, these would seem to be facially content-based and subject to strict scrutiny. But, prior Supreme Court caselaw has upheld the on-premise/off-premise distinction and that precedent is not overruled by the majority opinion.

Commercial and Noncommercial Speech. In past decisions the Supreme Court has treated commercial speech to slightly less protection than noncommercial speech. Commercial speech regulation needs to meet a version of intermediate scrutiny, not the strict scrutiny applied to regulation of non-commercial speech (See, generally, *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987)).

Arguably, the *Reed* decision opened the door to challenge a sign ordinance that distinguishes between commercial and noncommercial speech. Justice Alito's concurring opinion noted that distinguishing based on the *type of property*—commercial or residential—would be valid. Regulating based on the *content of the sign*—commercial or noncommercial—arguably is undermined by the *Reed* decision.

Notably, though, the majority in *Reed* did not overrule its prior decisions. The *Reed* decision was focused on the Town code's distinctions among types of noncommercial speech. Presumably the long-held standards for regulation of commercial speech still apply.

Conclusion

In the wake of *Reed*, some things are clear. Governments still have an array content-neutral regulations to apply to signs. But, content-based distinctions such as the ones in the Town of Gilbert's code must survive strict scrutiny to stand. Because of mix of opinions from the Court, there are several open questions. We will not know the full scope and meaning of *Reed v. Town of Gilbert* until the federal courts begin to apply this decision to other sign litigation.

Links

- www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf

Ordinance No. 2016-____

TOWN OF BEECH MOUNTAIN

AN ORDINANCE TO AMEND SIGN REGULATIONS IN BEECH MOUNTAIN

WHEREAS, The Town of Beech Mountain has enacted a zoning ordinance in order to protect the safety and welfare of its citizens and the character of its community; and;

WHEREAS, The Town of Beech Mountain is committed to preserving the beauty of the mountain and to insure that it is provided with a means of developing qualitative and effective outdoor graphics for purposes of navigation, information and identity.;

WHEREAS, The Town of Beech Mountain desires that its regulations governing signage be clear, consistent and comprehensible; and;

WHEREAS, The Town has recognized several opportunities to improve upon the wording and content, and consistency of its sign regulations; and;

WHEREAS, A recent U.S. Supreme Court decision has determined that the regulation of signage based upon the content or message of such signage is a violation of the right to freedom of speech as provided for in the United States Constitution.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BEECH MOUNTAIN, NORTH CAROLINA, THAT:

SECTION I. The Town of Beech Mountain Code of Ordinances, Sections: §154.270- §154.287 -- 'Sign Regulations,' are hereby adopted by the Town Council and codified as follows:

§ 154.270 POLICY STATEMENT.

(A) The Town of Beech Mountain is committed to preserving the beauty of the mountain and to insure that it is provided with a means of developing qualitative and effective outdoor graphics for purposes of navigation, information and identity.

(B) Every business, organization and property owner has not only the right, but an obligation to identify itself well. It does not have the right to downgrade the environment.

(C) The purpose of this subchapter is, therefore:

(1) To provide the community with equitable sign standards, based on the values of fair competition and aesthetic standards acceptable to the community.

(2) To provide the motoring public with a safe and effective means of easily reaching and identifying businesses, services, areas, and points of interest on Beech Mountain.

§ 154.271 SCOPE OF THIS SUBCHAPTER.

This subchapter shall apply to all signs located within the Town of Beech Mountain unless excluded as per § [154.272](#).

(A) Definitions.

(1) Sign.

(a) Any display of letters, words, numbers, figures, devices, emblems, pictures or any means whereby the same are made visible for the purpose of making anything known, whether such display be made on, attached to, or as part of a structure, surface, or any other thing, including, but not limited to, the ground, a rock, tree, or other natural object.

(b) Signs do not include holiday decorations, the flag or emblem of any nation, state, city, religious, fraternal or civic organization; nor merchandise and pictures or models of products incorporated in a window display; nor works of art which in no way identify a product; nor scoreboards located on athletic fields.

(2) Entity. Any individual, group, or organization that occupies and utilizes a structure or a portion of a structure that is separate and distinct in purpose or function from other portions of a structure.

(3) Roof line. Roof line shall mean the edge of the roof around the building structure.

(4) Signable space. Signable space means the area of a building face on which a sign may be placed, including fronting wall or gable space. The size of this area shall equal the total square footage of the area from the ground to the roof line (not including the roof itself), of a building façade.

(5) Sign support structure. A structure, including uprights, supports, frames, display surfaces, and other appurtenances, intended to support or display one or more signs. If painted, sign support structures shall include one color of the supported sign(s).

(6) Normal maintenance. Normal maintenance shall include activities that keep the sign in safe, presentable, and sound condition, such as replacement of missing or defective parts, periodic cleaning, and re-painting with substantially the same colors as in the original sign. Normal maintenance does not include activities that alter the message, background, colors, dimensions, orientation, or location of a sign in any way or change the design of its support structure.

(7) Existing grade. The prevailing level of the soil at a given location, not to include any walls, raised flower beds, or other means of artificially modifying the level of the soil for the purpose of extending sign height.

(8) Historic signs. Signs greater than 20 years of age as of September 10, 2009.

(B) Types of signs.

(1) *Billboard/poster board.* Billboards or posterboards are hereby defined as off- premises signs of a permanent nature. Temporary off-site signs (displayed for not greater than 14 days), typically erected for providing directions to an event or occurrence, are not considered billboards under this definition.

(2) *Holiday decorations.* The decorations normally associated with the holiday season from November to January.

(3) *No trespassing/no loitering signs.* Such signs and similar ones, which are placed to inform the public of private regulations.

(4) *Obsolete signs.* Signs or parts of signs which advertise or pertain to a purpose which no longer exists.

(5) *Portable signs.* Any signs designed or intended to be readily relocated. This shall include signs on wheels, trailers, truck beds, or any other device which is capable of, or intended to be moved from one location to another.

(6) *Window signs.* Signs which are painted on or affixed to the windows.

(7) *Painted wall sign.* A sign painted directly on any exterior building wall or door surface, exclusive of window and door glass areas. Such signs shall comply with standards for “attached” signs.

(8) *Projecting sign.* A sign that is attached to a building wall with the face of the sign perpendicular to the building wall. Such signs shall not project into any street right-of-way and shall be at least eight feet above the ground. Such signs shall not project vertically above the building face to which they are attached, and shall conform with all other standards for “attached” signs.

(9) *Accessory Signs.* Signs intended for the recurring, periodic display of information. These signs are typically modified regularly, but are not necessarily temporary in nature. Examples of accessory signs include, but are not limited to, special advertisements for the advertisement of specials or features, open, closed, and vacancy signs. Accessory signs may be attached to permanent, detached signs, attached to buildings, or stand-alone.

(C) *Signs defined by method of attachment.*

(1) Attached signs are signs that are mounted to a building and include the following:

- (a) Signs attached throughout their whole length that are mounted flush to a building face that do not extend above the highest vertical point of the building face
- (b) Signs attached throughout their whole length to the top of a canopy or a cantilevered roof with the face of the sign parallel to the wall which do not extend vertically above the highest point of the canopy or cantilevered roof.
- (c) Painted wall signs as defined above
- (d) Projecting signs as defined above.

Commented [FE1]: Having this as a special category probably meets the compelling interest standard, but we will need to include a statement as to why it's a compelling need for this category.

(2) *Detached sign.* A sign supported by a sign structure placed in the ground and which is wholly independent of any building, fence, vehicle, or object other than the sign structure for support.

(D) *Signs defined by duration of display.* Signs shall be categorized based upon their intended duration of display as follows. If a sign exceeds the duration of display for a category, it must comply with all requirements and obtain a permit for the appropriate category of duration.

(1) *Permanent Signs.* Signs which are intended to be displayed continuously for a period of greater than one year. Signs (such as real estate signs) which are erected prospectively with the goal of being removed in less than one year do not constitute permanent signs.

(2) *Accessory Signs.* Signs intended for the recurring, periodic display of information. These signs are typically modified regularly, but are not necessarily temporary in nature.

(3) *Semi-Temporary Signs.* Signs of a temporary nature that are erected for an intended or presumed duration of less than one year but typically greater than fourteen (14) days. Examples of signs in this category commonly include, but are not limited to, signs erected to advertise the sale of real estate and signs erected during a construction project. Semi-temporary signs may be erected for periods of greater than one year, provided that required permits are obtained. Signs intended to be erected permanently do not qualify for this category.

(4) *Temporary Signs.* Temporary signs. Signs or advertising display intended to be displayed for a short period of time (not greater than fourteen (14) days), often to inform the public of an unusual or special event. These signs are often in the form of "Banners". Signs erected for longer than 14 days do not qualify for this category.

(5) *Short Term Signs.* Signs erected for less than 48 hours.

(6) *Transitional Signs.* Signs erected for a maximum of 6 months while a permanent sign is being created.

(D) *Area of sign defined.*

(1) The area of a sign excluding wall or window signs shall be considered to include all lettering, wording, and accompanying design and symbols, together with the background on which they are displayed, any frame around the sign, and any cutouts or extensions, but shall not include any supporting or bracing. In the case of a multi-faced sign, the area of the sign shall be considered to include all faces visible in any one direction.

(2) The area of a wall or window sign consisting of individual letters or symbols attached to or painted on a surface, building, wall, or window, shall be considered to be that of the smallest rectangle or triangle which encompasses all of the letters or symbols.

(3) Signs that are contiguous (touching) or are separated by a divider, frame, or portion of the sign support structure less than 6 inches wide shall be considered one sign for the purposes of this subchapter.

(a) Exception. Signs of different types as defined by their duration of display as set forth above shall be considered separate signs, even if they are contiguous.

§ 154.272 EXEMPTIONS AND EXCEPTIONS.

(A) Exempt Signs. The following signs and/or displays shall be exempt from the regulations of this subchapter:

- (1) Signs not visible beyond the boundaries of the property on which they are located.
- (2) Signs erected by a duly-constituted governmental body.
- (3) Signs erected within a residential home.

(4) Historic signs as defined in this ordinance, provided that the message, background, colors, dimensions, orientation, location and design of the support structure of such signs shall not be altered in any way. Normal maintenance, however, is permitted.

(B) Exceptions. Particular features or concerns regarding the following types of signs provide compelling reasons for their regulation in a different manner from other signs of similar duration of display or located within a common zoning district.

(1) Private traffic directional signs located on private property not to exceed three square feet. The Town of Beech Mountain finds there is a compelling need for private property owners to be able to control aspects of traffic on private property in order to avoid damage to property and inconveniences and potential dangers caused by the restriction of ingress and egress to a property by methods such as designating parking spaces and restricting “no parking” areas, identifying “one-way” driveways and the like with the standard, commercially available signage commonly associated with these purposes. Therefore, these signs need not comply with material and style requirements, limitations on number, and other requirements and are exempt from this ordinance.

(2) Signs erected to prohibit trespassing displayed in accordance with NC State law. The Town of Beech Mountain finds that there is a compelling need for private property owners to be able to avail themselves of the protection from liability offered by NC State law in the manner prescribed in such laws or statutes. Therefore, these signs need not comply with material and style requirements, limitations on number, and other requirements and are exempt from this ordinance, provided that the number, size, or other features of such signs is not in excess of that prescribed by State Law.

(3) Non-illuminated trade names and graphics which are customarily painted on newspaper and soft drink dispensers and similar outdoor amenities. The Town of Beech Mountain finds there is a compelling interest in exempting these signs from regulation due to their ubiquitous nature and the impracticality or inability to obtain soft drink dispensers and the like without such trade names or graphics. Therefore, these signs are exempt from the requirements of this ordinance.

Commented [FE2]: Likewise, we'll need a compelling reason.

(4) Street Addresses. The Town of Beech Mountain finds that there are compelling needs for the street address (or "911 Address") for each property to be visibly posted in order to better provide for emergency services to the Town's Residents. The following regulations apply to street addresses:

(a) The street address of each residence must be displayed and visible from the road, as required by the North Carolina State Building Code.

(b) Where buildings are not visible from the road, the street address shall be posted to a monument, post, mailbox, or other means that is visible from the road and clearly identifies the building. It is recommended that these numbers be located near the driveway or access to the building.

(c) Numbers posted on mailboxes or other monuments that are across the road from the building concerned or are otherwise located off of the property concerned are not adequate for the purpose of this section.

(d) For new buildings or buildings under construction, address numbers must be posted within a reasonable time after the permit is issued and must be posted prior to any inspections on the building.

§ 154.273 PROHIBITED SIGNS.

The following signs are prohibited in the Town of Beech Mountain:

(A) *Signs that imitate official highway sign; signs obscured.* No sign shall be erected which imitates or in any way approximates official highway signs, nor shall any sign be erected which obscures a sign displayed by a public authority.

(B) *Flashing, blinking interment signs.* No sign shall be erected which displays flashing, blinking, or intermittent lights or lights of changing intensity. No moving parts shall be allowed.

(C) *Portable signs.*

(D) *Facsimiles; three-dimensional structures.* Displays of letters, logos, trademarks, emblems, pictures, and the like, on such items as oversized facsimiles or three dimensional structures of chicken buckets, human figures, tin cans, and the like, shall be prohibited.

(E) *Obstruction of driver vision.* No sign shall be erected or placed in such a manner as to obstruct driver vision of any vehicle entering a roadway from any street, alley, driveway, or parking lot.

(F) *Public utility poles, telephone poles, trees, parking meters, benches and the like.* Signs are prohibited on public utility poles, telephone poles, trees, other natural objects, parking meter poles, benches, and refuse containers.

(G) *Pavement markings, other than traffic control.* Pavement markings of any kind other than for traffic control are prohibited.

(H) *Public morals, decency.* Signs, flags, or other decorations which contain statements, words, or pictures of obscene, indecent or immoral character such as will offend public morals or decency are prohibited.

(I) *Intentional denial of visual access.* Any sign located in such a way as to intentionally deny visual access to an existing sign is prohibited.

(J) *Billboards.* No billboards as defined in § 154.271(B)(1), shall hereafter be erected within the Town of Beech Mountain.

(K) *Floodlights, signs; impairment of vision of roadway.* No floodlights or signs shall be erected or placed in such a manner as to impair driver vision on a roadway.

(L) *Public rights-of-way.* No sign shall be placed in a public right-of-way, except as set forth in § 154.272(B) or § 154.278.

(M) *Fire escapes, means of egress, ventilation.* No sign shall be erected, constructed, or maintained so as to obstruct any fire escape or any window or door or opening used as a means of egress or so as to prevent free passage from one part of a roof to any other part thereof. No sign shall be attached in any form, shape, or manner as to interfere with an opening required for legal ventilation.

(N) *Interchangeable letters.* Any sign with interchangeable letters, movable or removable, used for the intent of advertising, information or any other use.

(O) *Law of State of North Carolina; violation.* No sign that violates any provision of any law of the State of North Carolina relative to outdoor advertising shall be erected or permitted.

(P) *Other signs; prohibited.* Any other sign which does not comply with the regulations of this subchapter shall be prohibited.

(Q) *Information boxes.* Information boxes in residential areas are not to be visible from the roadway.

(R) Signs on the roof of any building, with the exception of signs attached to canopy or cantilevered roofs in accordance with § 154.271(C)(1).

§ 154.274 PERMANENT SIGNS,

(A) STANDARDS FOR SIZE, NUMBER, AND DURATION OF DISPLAY PERIOD

The following table shall govern the number and size of permanent signs, both attached and detached.

District	Permanent Sign Size Permitted	Number of Permanent Signs
CS1	See 154.274(B) and (C)	See 154.274(B) and (C)
R1	6 sq ft	1

Commented [FE3]: There was legislation recently limiting our ability to restrict billboards. I think this restriction is ok, but know we can't stop them from replacing old billboards.

R2	6 sq ft	1
R3a	See 154.274(D)	1
PS	25 sq ft	1
CS2	See 154.274(B) and (C)	See 154.274(B) and (C)
MP	20 sq ft	1
MH	6 sq ft	1

(B) Attached, Permanent signs in the CS1 and CS2 Districts:

(1) Shall not occupy more than 10% of the space on any one facade of a building with the maximum size of any single sign limited to 35 square feet.

(2) Window graphics including stained glass lettering or logos are in addition to the number of allowable signs set forth above, but shall not cover more than 10% of the total window area of the facade of the building in which the window signs are located.

(C) Detached, Permanent signs in the CS1 and CS2 Districts.

(1) Shall be limited to a maximum of 60 square feet per sign.

(2) Number of detached signs in the CS1 and CS2 Districts:

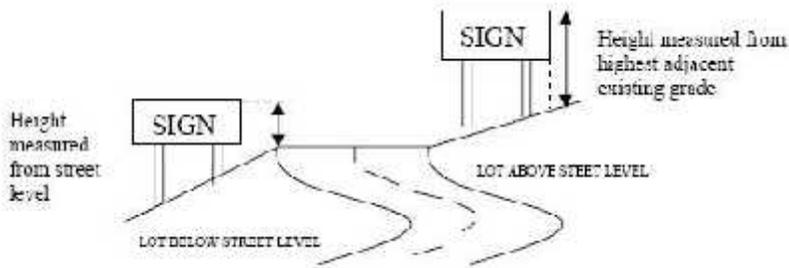
(a) The number of Detached, Permanent Signs in the CS1 and CS2 Districts shall be based on the total front footage of a single piece of property on each public road fronted upon:

1. One to 200 feet: one sign.

2. Two hundred and one feet and above: A maximum of two signs are permitted on any single road having road frontage adjoining the premises in excess of 201 feet. The two signs shall not be closer than 100 road frontage feet, with the exception that a sign is permitted at each of two separate drive entrances to said road. In the event the tract of land constitutes a corner lot which is adjacent to two separate public roads, signs are permitted for each public road according to the criteria set forth above.

(E) Detached Permanent Signs in All Districts.

Sign height for Detached, Permanent Signs, including support structure, shall not exceed 12 feet. For lots that lie above street level, height shall be measured from the highest adjacent existing grade. For lots that lie below street level, height shall be measured from street level. See illustration below.



(D) Permanent Signs in the R3(A) District.

The maximum size of permanent signs in the R3(A) district shall be based upon the size of the complex or entity to which the sign pertains. Such sizes are governed by the following table:

Number of Dwelling Units	Allowable Sign Size
5 or less	20 sq. ft.
6 – 15	25 sq. ft.
16 – 20	30 sq. ft.
21 and up	35 sq. ft.
* When two or more complexes or entities share a sign support structure, each sign may be as large as their allowable limit, up to a maximum of 50 combined square feet.	

§ 154.275 ACCESSORY SIGNS

(A) STANDARDS FOR SIZE, NUMBER, AND DURATION OF DISPLAY PERIOD

The following table shall govern the number and size of accessory signs:

District	Accessory Sign Size	Number of Accessory Signs
CS1	6 sq. ft.	2
R1	0	0
R2	0	0

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R3a	0	0
PS	6 sq ft.	2
CS2	6 sq ft.	2
MP	0	0
MH	0	0

§ 154.276 SEMI-TEMPORARY SIGNS

(A) STANDARDS FOR SIZE, NUMBER, AND DURATION OF DISPLAY PERIOD

The following table shall govern the number and size of semi- temporary signs:

District	Semi-Temporary (< 1yr) Sign Size	Number of Semi-Temporary (<1yr) Signs
CS1	2 sq ft.	1
R1	2 sq ft.	1
R2	2 sq ft.	1
R3a	2 sq ft.	1
PS	2 sq ft.	1
CS2	2 sq ft.	1
MP	2 sq ft.	1
MH	2 sq ft.	1

§ 154.277 TEMPORARY SIGNS

(A) STANDARDS FOR SIZE, NUMBER, AND DURATION OF DISPLAY PERIOD

The following table shall govern the number and size of temporary (not greater than 14 days) signs.

District	Temporary (<14 days) Sign Size	Number of Temporary Signs
CS1	See 154.277 (B)	See 154.277 (B)

R1	N/A	0
R2	N/A	0
R3a	See 154.277 (B)	See 154.277 (B)
PS	See 154.277 (B)	See 154.277 (B)
CS2	See 154.277 (B)	See 154.277 (B)
MP	See 154.277 (B)	See 154.277 (B)
MH	N/A	0

(B) Banners or temporary signs as defined by § 154.271(D)(4), being signs intended for display of a duration of not greater than fourteen (14) days may be erected provided that:

- (1) The size of any such sign shall not exceed 50 square feet in area.
- (2) The signs may not be illuminated.
- (3) The signs may be displayed for a period not to exceed fourteen (14) days.
- (4) A permittee may display only one banner or temporary sign at a time.
- (5) Banners or temporary signs may not be erected more than four separate and distinct times per year on a single property.

§ 154.278 SHORT-TERM SIGNS

(A) STANDARDS FOR SIZE, NUMBER, AND DURATION OF DISPLAY PERIOD

The following table shall govern the number and size of short-term (not greater than 48 hours) signs.

District	Short Term (<48 hours) Sign Size	Number of Short Term Signs
CS1	See 154.278	See 154.278
R1	See 154.278	See 154.278
R2	See 154.278	See 154.278
R3a	See 154.278	See 154.278
PS	See 154.278	See 154.278

CS2	See 154.278	See 154.278
MP	See 154.278	See 154.278
MH	See 154.278	See 154.278

(1) Such signs must be located such that they in no way hinder driver visibility or otherwise create hazards to driver or pedestrian safety.

(2) Signs shall not exceed two square feet in size.

(3) No temporary small scale event sign shall be higher than four feet above the adjacent road surface.

(4) If off-site signs are located in the town right-of-way, they may be no closer than four feet from the edge of the pavement or gravel roadway and shall not be spaced such that more than one sign is visible from any given point along the roadway. In no event may these signs be located in such a manner as to impair public safety by blocking visibility or access. The town reserves the right to move or remove any sign that is located in such a manner as to create a dangerous situation as determined by the town.

(5) If off-site signs are located on private property, only one sign per property is permitted. Written permission of the property owner must be obtained.

(7) Short term signs may not be erected on a single property more than once every seven days.

(8) Short term signs remaining erected longer than 48 hours or otherwise not meeting the criteria of this ordinance may be removed by the town and a civil penalty in the amount of \$25 per sign may be assessed to the owner of the property to which the sign refers.

(9) Short term signs complying with these regulations may be erected without a permit.

§ 154.279 TRANSITIONAL SIGNS

(A) STANDARDS FOR SIZE, NUMBER, AND DURATION OF DISPLAY PERIOD

The following table shall govern the number and size of transitional signs (signs erected for a maximum of a 6 month time period while permanent signs are being created).

District	Transitional Sign Size	Number of Transitional Signs
CS1	35 sq ft	2
R1	0	0

R2	0	0
R3a	0	0
PS	0	0
CS2	0	0
MP	0	0
MH	0	0

- (1) Transitional signs may be permitted for a maximum time period of 6 months.
- (2) The applicant for a transitional sign permit must provide proof that permanent sign(s) are being created to qualify for a permit.

§ 154.280 MATERIAL AND STYLE.

(A) Permanent Signs.

- (1) Colors shall be natural and subdued (muted earth tones are recommended) and shall blend in well with the natural surroundings. “Gold leaf” lettering is permitted. The Beech Mountain Color Chart, which shall be maintained in the office of the Town Manager or his or her designee, shall serve as a guideline.
- (2) Fluorescent sign lettering and fluorescent background colors are prohibited.
- (3) Signs shall not have light reflective backgrounds.
- (4) A multi-faced sign shall have the same name and same message on all faces that are being used.
- (5) Attached signs shall be routed, carved, sandblasted, shaded (painted), recessed or raised to provide a three-dimensional appearance.
- (6) Detached signs shall be structurally self-supporting, and shall be routed, carved, sandblasted, recessed or raised to provide a three-dimensional appearance.
- (7) All exposed surfaces shall be constructed of wood, stone, hammered copper, or high density urethane.
- (8) All signs shall meet the standards for wind loads for the Beech Mountain area as contained in the North Carolina State Building Code.

(B) Accessory Signs

- (1) Accessory Signs shall comply with the following:
 - a. Accessory Signs may be attached to buildings, attached to permitted Permanent, Detached Signs, or Stand-Alone.
 - b. Stand-Alone Accessory Signs shall have a frame or support structure made of wood or material of similar strength and durability. “A-Frame” type signs are permitted.

- c. The message-bearing portion of Attached Signs shall be composed of chalkboards, markerboards, or other mediums of a permanent and durable nature that facilitate changeable messages.
- d. If situated within a building and subject to this ordinance by virtue of its visibility from beyond the boundaries of the property on which it is located, it is permissible for an accessory sign to be neon or internally lighted, provided that such signs are limited in size to two square feet and shall not have blinking or flashing lights, lights of changing intensity, or moving parts. No more than one internally lighted sign per property is permissible.

(C) Semi Temporary Signs

- (1) Semi-Temporary signs shall meet the same requirements for material and style as Permanent Signs as specified above, with the exception that Semi-Temporary signs need not meet the criteria as specified for wind loads.

(D) Temporary Signs

- (1) Temporary signs may be constructed of cloth, canvas, fabric, plastic, paper, vinyl, or other material.
- (2) Fluorescent sign lettering and fluorescent background colors are prohibited.

(E) Short-term Signs

- (1) Short Term signs may be constructed of cloth, canvas, fabric, plastic, paper, vinyl, or other material.
- (2) Fluorescent sign lettering and fluorescent background colors are prohibited.

(F) Transitional Signs

- (1) Transitional signs may be constructed of cloth, canvas, fabric, plastic, paper, vinyl, or other material.
- (2) Fluorescent sign lettering and fluorescent background colors are prohibited.

§ 154.281 LIGHTING.

(A) No sign shall contain any moving, flashing, or animated lights, or visible moving or movable parts.

(B) No sign shall have lighting from within the interior of the sign, with the exception of 154.279(B) above.

(C) If illuminated, signs shall be illuminated by a white or amber light of reasonable intensity shielded and directed solely at the sign.

§ 154.282 MAINTENANCE OF SIGNS.

(A) All signs, supports, braces, poles, wires and anchors thereof shall be kept in good repair. They shall be maintained in clean and safe conditions, free from deterioration, missing parts and peeling paint. All signs must stand plumb and level. It shall be the responsibility of the sign owner to ensure that all commercial signs and all components thereof be kept in a state of good repair. Any sign not in accordance with these standards shall be deemed a nuisance and the following action may be taken: ¹

(1) The Town Manager or his or her agent shall give written notice to the owner, specifying the sign indicated and telling what needs to be done to bring the sign into compliance.

(2) The owner of the sign shall respond to the notice within two weeks and shall have 30 days to complete said repairs. Additional time may be granted by the Town Manager when it has been clearly shown a hardship exists. ²

(3) When an emergency situation exists creating a public hazard, the town may remove or rectify the hazard at the owner's expense.

(4) In the event a sign is damaged in excess of 60% of its reproduction value, such sign shall be restored or repaired only in compliance with the provisions of this subchapter.

(B) The owner of each sign shall be responsible for maintaining the area around such sign, including cutting of weeds.

(C) All paint on a sign should blend together. When one item on a sign is painted over, sufficient paint shall be used so that the original item cannot be seen. ³

(1989 Code, Title V, Ch. 51, Art. XIX, § 1911) (Ord. passed 12- -1983; Ord. passed 12-6-1983; Ord. passed 11-12-1996; Ord. passed 10-13-2009)

Editor's note:

¹ Division (A) amended November 12, 1996, and October 13, 2009.

² Division (A)(2) amended December 6, 1983.

³ Division (C) amended December 1983.

§ 154.283 OBSOLETE OR ABANDONED SIGNS.

(A) Signs or parts of signs which advertise or pertain to a purpose which no longer exists shall be deemed to be an abandoned sign.

(B) Obsolete or abandoned signs are prohibited and shall be removed by the owner or his or her agent within 30 days of notice by the Town Manager or his or her agent.

§ 154.284 NON-CONFORMING SIGNS.

(A) *General.* Signs that are erected and are in place prior to the adoption of this subchapter and which do not conform to the provisions of this subchapter are declared non-conforming signs. A sign that is erected and that is in place and which conforms to the provisions of the sign subchapter at the time it is erected, but which does not conform to an amendment of this subchapter enacted subsequent to the erection of said sign is declared a non-conforming sign. Any sign erected after the passage of this subchapter must meet all the criteria within this subchapter including all amendments thereto. ¹

(B) *Time frame.* Within the time frame for removal of non-conforming signs set out in this section, such signs:

- (1) Shall not be changed or replaced with another non-conforming sign or copy;
- (2) Shall not be expanded or relocated;
- (3) Shall not be re-established after damage or destruction in excess of 60% of the value at the time of damage or destruction; and
- (4) Shall not be modified in any way which increases their degree of non-conformity.

(C) *Removal of non-conforming signs.*²

(1) All signs not conforming to all sections of this subchapter on the date of the enactment of this subchapter shall be removed, changed, or altered to conform to this subchapter within three years of the original enactment of this subchapter.

(2) All signs which are conforming at the time this subchapter is enacted, and which are made non-conforming as a result of an amendment to this subchapter, shall be removed, changed, or altered to conform to this subchapter within three years of the date said amendment was enacted.

(3) All signs which are located on property brought into the town pursuant to the voluntary annexation procedure set forth in G.S. Ch. 160A, Art. 4A, Part 2, and which are non-conforming, shall be removed, changed, or altered to conform to this subchapter within three years from the effective date of the annexation, unless otherwise specified as terms of the annexation. ³

(1989 Code, Title V, Ch. 51, Art. XIX, § 1913) (Ord. passed 10-12-1982; Ord. passed 12-6-1983; Ord. passed 10-8-1996; Ord. passed 10-13-2009)

Editor's note:

¹ Division (A) amended December 6, 1983.

² Division (C) amended December 6, 1983, and October 13, 2009.

³ Division (C)(3) added by amendment October 8, 1996, amended October 13, 2009.

§ 154.285 SIGN PERMIT.

(A) All signs erected within the town limits of Beech Mountain, with the exception of short-term signs and signs exempted from this ordinance shall require a sign permit. Each application for a sign permit shall be accompanied by all applicable fees, as shall be established by the Town of Beech Mountain Town Council. Sign permits shall be issued by the Town Manager or his or her designee for signs in compliance. If a sign permit is denied, the decision may be appealed to the Town of Beech Mountain Board of Adjustment by submitting an application for administrative review together with the applicable fee within 30 days after the decision. ^{1,2}

(B) Permits for Semi-Temporary Signs are valid from the time obtained until the next April 1, but in no event shall such permit be valid for a time period of greater than one year. During the time period permitted, such sign may be transferred from property to property.

(C) Permits for Temporary Signs are valid from the time obtained for 14 days.

(1989 Code, Title V, Ch. 51, Art. XIX, § 1914) (Ord. passed 6-8-1982; Ord. passed 12-6-1983; Ord. passed 10-13-2009)

Editor's note:

¹ 1989 Code, section 8-15 amended June 8, 1982 and replaced entirely December 6, 1983.

² Amended October 13, 2009.

§ 154.286 SEVERABILITY.

If any section of this subchapter is held to be invalid or unenforceable, all other sections shall continue in full force and effect. ¹

(1989 Code, Title V, Ch. 51, Art. XIX, § 1915) (Ord. passed 6-8-1982; Ord. passed 10-13-2009)

Editor's note:

¹ 1989 Code, § 8-16 title and text replaced June 8, 1982.

§ 154.287 EFFECTIVE DATE.

This subchapter is effective November 19, 1981.

(1989 Code, Title V, Ch. 51, Art. XIX, § 1919) (Ord. passed 10-13-2009)

SECTION II. CODIFICATION. The provisions of Section I of this Ordinance shall be published as appropriate in the Town of Beech Mountain Code of Ordinances as soon as practicable.

Ordinance No. 2016-_____

SECTION III. SEVERABILITY CLAUSE. If any section, part or provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the Town Council in passing this Ordinance that its parts shall be severable and all other parts of the Ordinance shall not be affected thereby and they shall remain in full force and effect.

SECTION IV. PUBLICATION AND EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and publication according to law.

READ, CONSIDERED, PASSED AND APPROVED at a regular meeting of the Town Council of Beech Mountain, North Carolina, at which a quorum was present and which was held on the ___ day of ____, 2016.

This Ordinance Adopted the ___ day of _____, 2016.

E. 'Rick' Miller, Mayor

Attest:

Jennifer Broderick, CMC
Clerk to the Board