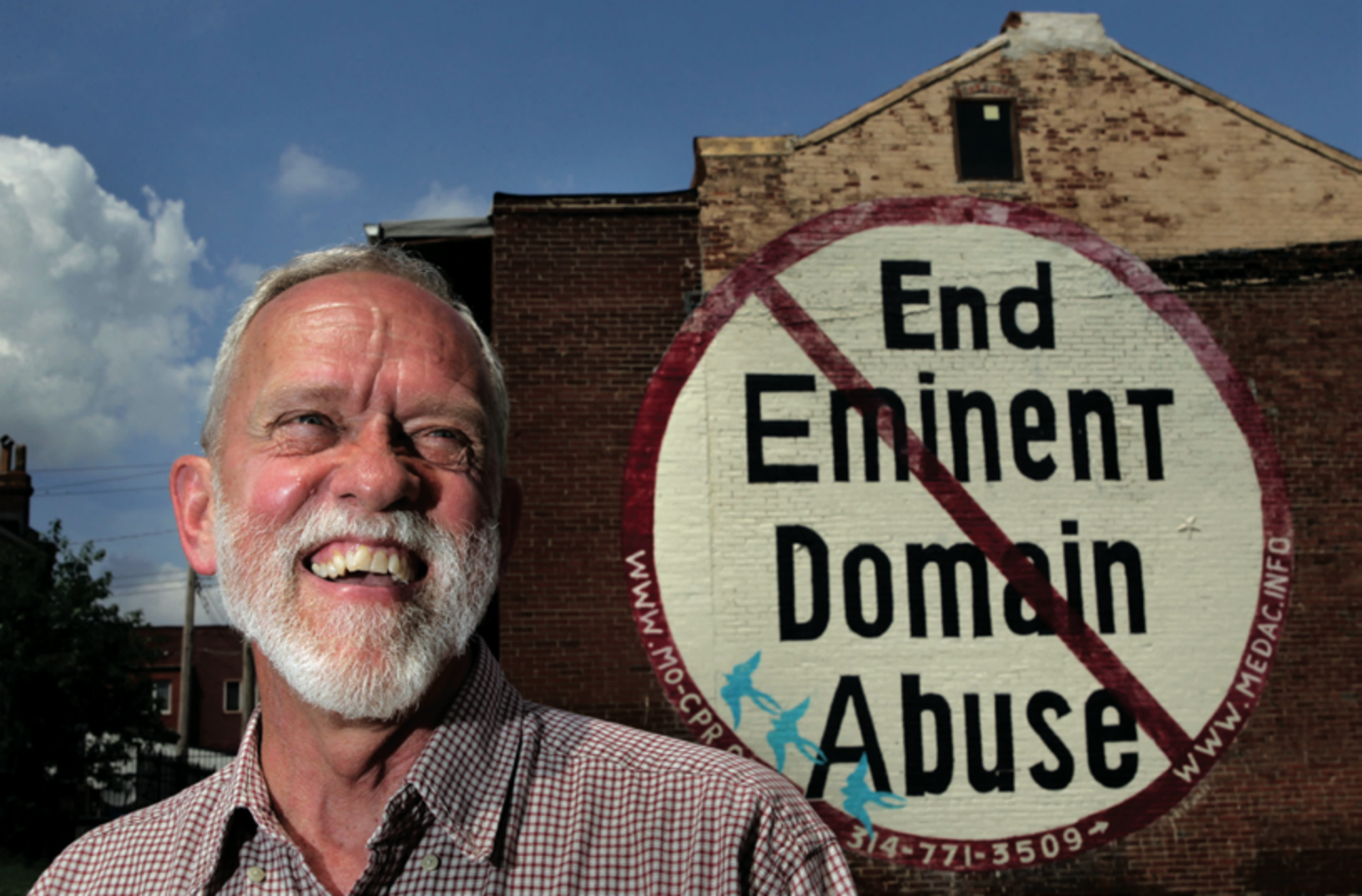


The Institute for Justice's MODEL SIGN CODE



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<http://ij.org/activism/legislation/model-legislation>

Many municipalities want to do the right thing and bring their sign codes into constitutional compliance but are overwhelmed as to how to proceed. The Institute for Justice wishes to help. This model sign code reflects best practices in the world of signs and has been thoroughly vetted by attorneys with extensive experience in both consulting and litigating on the issue.

Rather than completely replace existing sign codes, this model serves as a template for those sections of sign codes that most often raise constitutional concerns. These include select definitions (such as the definition of “sign”), regulations for temporary signs, permit exemptions, and restrictions on murals. These portions of many current sign codes make distinctions based on subject matter, message, or “purpose,” and, as a result, have repeatedly subjected municipalities to costly and lengthy litigation. The model thus shows how these provisions can instead regulate signs’ structural characteristics, rather than their content.

This model also recognizes that municipalities are not all alike, and that many towns and cities will want some flexibility to customize their sign codes. So rather than demand a one-size-fits-all approach, this model instead leaves certain criteria (such as certain sign’s maximum size and how long those signs may stay up) open, so that local officials may insert restrictions that they believe best make sense in light of the unique needs of their communities. IJ, however, strongly encourages municipalities to be as accommodating as possible to its citizens and businesses when it chooses these restrictions.

IJ additionally urges municipalities to be reserved in any additional customization. In our experience, local officials often give in to the temptation to play favorites with certain types of speech—yet even one content-based restriction in a code can make the municipality vulnerable to a lawsuit.

I. Model Definitions:

Definitions in sign codes play a large role in determining whether someone's proposed sign will be unregulated or instead subject to the code's requirements and restrictions. To ensure that cities do not privilege some messages over others, IJ suggests that municipalities incorporate the following definitions into their sign ordinance.

Sign: Any device, display, or structure that is visible from a public place and that has words, letters, figures, designs, symbols, logos, illumination, or projected images. This definition does not include architectural elements incorporated into the structure or facade of a building. For the purposes of this sign code, "signs" do not include those only visible from the inside of a building or athletic field/stadium; nor do "signs" include those held by or attached to a person.

Temporary sign: A sign constructed of cloth, canvas, vinyl, paper, plywood, fabric, plastic, or other lightweight material that is neither permanently installed in the ground nor permanently affixed to a building or structure that is permanently installed in the ground. The term "temporary sign" includes, but is not limited to, A-frame signs, lawn signs, banners, inflatable signs, and window signs. The term "temporary sign" does not include flags, and signs that are intended to regularly move, such as motorized signs.

Mural: A painted image or design on a building, which may or may not include words. The definition of "mural" does not encompass architectural elements that are incorporated into a building's structure or facade.

Flags: A sign made of cloth, vinyl or a similar pliant material that is attached on one side to a flagpole and is designed to flow in the wind.

Window sign: A sign that is applied or attached to or suspended from the exterior or interior of a window or located within the interior of a structure so that its message can be read from the exterior of the structure.

A-Frame sign: A sign consisting of two (2) sign faces placed together at an angle to form an "A" shape structure which tapers from a wide base to a narrow top. A-frame signs are sometimes referred to as sandwich board signs.

Nonconforming sign: Any sign which was lawfully erected in compliance with the applicable regulations of the zoning ordinance prior to the effective date of this chapter and which fails to conform to the current standards or restrictions, the use of which has not been discontinued for longer than two (2) years.

Dubious definitions: Sign codes' definitions of a "sign" often exempt favored displays like government flags and religious symbols—allowing these displays to be unregulated while other displays are strictly governed. Such content-based exemptions have been repeatedly struck down by courts and should be immediately removed from sign codes.

II. General Provisions:

Because the government cannot constitutionally dictate what content may be displayed on a sign, and because the purpose of a sign code is to safeguard citizens from the structural elements of signs, residents and businesses should be able to change the message on their approved signs as they see fit. Moreover, because the freedom to speak freely is fiercely protected under the U.S. and State Constitutions, municipalities should take care that their sign codes do not inadvertently restrict speech.

- A. Any ambiguity in this sign code should be resolved in favor of allowing the display of a proposed sign.
- B. Any person who displays a sign in compliance with this code may substitute the message on that sign without first securing any additional approval, permitting, or notice, provided that any such substitution would not result in the sign becoming noncompliant.
- C. Nothing in this code is intended or shall be construed so as to prevent the strengthening or restoration to a safe condition of a nonconforming sign for purposes of the public health and safety.

IJ client **Bob Wilson** was being blocked by the city of Norfolk, Va., from displaying a banner protesting eminent domain abuse.



III. Permitting:

Just as with the definition of "sign," many jurisdictions' permitting regimes impermissibly play favorites with the First Amendment by exempting certain subjects and messages from either having to secure a permit or from paying otherwise applicable fees. The better approach is for municipalities to require permits for signs whose physical characteristics raise potential health and safety concerns, while exempting innocuous temporary signs and murals from the permitting process.

In addition, signs are a valuable means of communication because they are cheap and can be quickly deployed. Municipalities should make sure that their permitting regime does not frustrate those key advantages by imposing numerous steps, high fees, and substantial delays.

The primary purpose of the City's permitting process is to protect the public's health and safety by ensuring that signs with structural elements that could pose a health and safety risk are properly installed.

- A. All signs not otherwise exempted from the permit requirement must obtain a permit prior to display.
- B. All permit applications that comply with this sign code shall be granted.
- C. Time for permit application approval:
 - 1. If this sign code does not require a requested sign to have an inspection, permit applicants should receive a decision on their permit application within two business days of submitting the application.
 - 2. If the code does require a requested sign to have an inspection, permit applicants should receive a decision on their permit application within [insert number of days] business days of submitting the application.
 - a. The permit shall be issued conditional to inspection passage.

The inspection shall be conducted after sign installation.

D. Permit Noncompliance:

- 1. If a sign lacks a required permit but is otherwise permitted under the sign code, the sign's continued display shall be allowed as long as the sign owner applies for a permit within 7 business days.

E. Permit Not Required

- 1. In addition to signs exempted from the permitting requirement in [insert section], permitting shall not be required for the following:
 - a. Changing sign content.
 - b. The customary maintenance of any sign.

Permit Headaches: Municipal officials frequently cause unnecessary conflict when they insist that signs must be removed because they lack a permit. This has led to community strife and even litigation. Both are easily preventable by allowing unpermitted signs to remain on display (as long as they are otherwise legal) until their owners secure permits.

IV. Signs Exempted from Permit Requirement:

Because the purpose of regulation is to safeguard the public's health and safety from the structural elements of signs, persons who wish to communicate using temporary signs should not be required to go through the arduous process of securing a sign permit.

The signs in this section do not require a sign permit, shall not be counted against any maximum sign allotment for a particular property, and are not subject to other restrictions in the sign code, except the Prohibited Sign section at [insert section]. These exempted signs are:

- A. All temporary signs on private residential property that are smaller than [insert size] square feet.

All temporary signs on private commercial property.

- B. All temporary signs on private industrial property.

- C. All temporary signs on private agricultural property.

- D. All flags, subject to the following:

- 1. Residential zones

- a. Flags shall not exceed [insert size] square feet in area.

Flag poles shall not exceed [insert size] feet in height, as measured from the ground.

- 2. Commercial zones

- a. Flag poles in commercial zones shall not exceed [insert size] feet in height, as measured from the ground.

- 3. Industrial and Agricultural zones

- a. Flag poles in industrial zones shall not exceed [insert size] feet in height, as measured from the ground.

- 4. Flag poles may be erected vertically or, alternatively, may be attached to buildings horizontally or at an angle.

All inflatable signs that are safely attached to the ground or a building.

- E. All lightweight signs, decals, stickers, or paint placed on vehicles, with the permission of the vehicle owner.

Numb to the Numbers: Several courts have struck down sign codes that restrict the number of political campaign signs in a person's front yard. As a result, the Institute strongly recommends against imposing quantity restrictions on temporary signs in residential areas and on other private property.

Large Signs and Lengthy Litigation: One issue that municipalities have struggled with is individuals and businesses who wish to display large protest signs on their private property regarding important political issues. These large signs are often prohibited under sign codes, leading to long and expensive lawsuits, and ultimately losses for the government. Size matters and the government can't force citizens to reduce their shouts to a whisper. The Institute strongly suggests that cities freely allow temporary signs with little or no size restrictions to allow a content-neutral avenue for citizens to adequately express themselves. Accordingly, the model sign code recommends only limiting temporary signs in residential areas.

V. Signs on public property:

Because often the most effective way to communicate with the public is by using the public right-of-way, cities and towns should allow temporary signage to be erected on public property to the extent it does not compromise public safety, such as by blocking or obscuring sightlines.

- A. Temporary Signs may be erected on utility poles, traffic medians, and along roads and sidewalks subject to the following conditions:
 - 1. Signs must be under [insert size] square feet and may only be displayed for up to [insert number of days/weeks/months].
 - 2. The signs must clearly indicate the date of their posting.
 - a. The signs are subject to removal without notice after their time limit has lapsed or if they otherwise fail to indicate the date of their posting.
 - 3. The signs are not permitted to be placed on property containing government buildings or in public parks. Nothing in this provision however, should be construed as prohibiting the government from placing its own signs on its own property.
 - 4. Any individual or business that has its signs removed on three separate occasions for violations of this exemption, [insert section], may be fined a maximum of [insert amount] for each subsequent sign that is illegally in the public right of way.
- B. A-frame signs in commercial and industrial zones may be erected on public sidewalks without the need of first securing a sign permit, and without counting against any maximum sign allotment for the speaker, provided:
 - 1. A-frame signs should not exceed 4-square feet for each sign face.
 - 2. An establishment may display one A-frame sign on each sidewalk that it abuts.
 - 3. Each A-frame sign may be displayed during that establishment's hours of operation.
 - 4. Pursuant to [insert section] there is no quantity limit on A-frames erected on private property.

Autocorrect: Sign codes frequently distinguish among vehicle signs based on their purpose. For example, sign codes often ban signs on a vehicle that have a "primary purpose" of advertising a product or business—such as a parked vehicle with a "for sale" sign or advertising a nearby store—but exempt signs on vehicles that are driven for business purposes, such as a delivery car displaying a business decal. Not only are such regulations vague and difficult to apply, but distinguishing among signs by their purpose is an unconstitutional content-based distinction and should be immediately eliminated from sign codes. Sign codes should instead freely allow all one-dimensional vehicle signs.

VI. Prohibited Signs:

The following are prohibited:

- A. Any sign which is structurally unsafe, unsafely installed, or otherwise hazardous to physical safety.
- B. Any sign that obstructs free ingress to or egress from a fire escape, door, window, or other required access way to or from a building or site.
- C. Any sign not maintained in good condition.
- D. Any sign that blocks a driver's clear line of sight of traffic or pedestrians.
- E. Any sign that interferes with the view of, or is confused with, any traffic control sign or device, and any sign that misleads or confuses traffic flow. A sign's position, size, shape, color, and illumination, but not its content, shall be considered when making such a determination.
- F. Any sign with obscenities, as defined by federal court precedent.
- G. Any sign nailed, fastened, or affixed to any tree.
- H. Any sign located on private property against the wishes of the property owner.
- I. Any sign that otherwise violates this sign code.
- J. Enforcement against Prohibited Signs
 - a. If, upon inspection, the sign inspector determines that a sign violates this section, the sign inspector should give notice to the sign owner specifically stating the nature of the violation and requiring them to repair, remove, or modify the sign within *[insert number of days]* business days after receipt of notice.
 - b. In cases of emergency, meaning cases where a sign presents an imminent hazard to public safety, the sign inspector may cause the immediate removal of a dangerous or defective sign, at the owner's expense.

VII. Murals:

- A. Murals may include graphics, design, or text.
- B. Murals shall be allowed on any building in areas zoned as commercial or industrial with permission from the building owner.

Colorful Clashes: Cities frequently ban murals that contain text or that relate to a specific business. But such restrictions are blatantly content-based and are vulnerable to litigation. Murals should thus be allowed, regardless of content.

Kim Houghton's crime was painting a piece of art that—in the eyes of Arlington officials—was “too related” to her business.

