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MEMORANDUM

To: James David, Acting Planning Director
Judi Birkitt, Interim Assistant Planning Director

From: Mark White, White and Smith, LLC

Date: December 3, 2021

Re: Sign Regulation Analysis (ZOAM-2020-0001 – Zoning Ordinance Rewrite)

Comment Due Date: No specific comments are required for this memo.

Loudoun County's existing sign regulations are codified at (Zoning Ordinance Art. 5, Div. C). We are proposing to codify the new sign regulations in Chapter 6 of the new Zoning Ordinance. This memorandum provides a Review and Summary of Loudoun County's Current Sign Regulations (Subtask Task 5.1) and Sign Regulation Diagnosis (Subtask 5.4).

The sign regulations have been in place in various forms since the 1972 Zoning Ordinance. The County is revisiting them to ensure that they keep up with best practices and changes in land development policy. In addition, there have been significant changes in the law in recent years. The most significant change is the United States Supreme Court's 2015 decision in *Reed v. Town of Gilbert*, which generally prohibits regulations that discriminate on the basis of a sign's content (i.e., what a sign says).

Plan Policies

The Loudoun County 2019 General Plan (2019 GP) establishes the following policies for signs:

1. The Quality Development chapter recognizes signs as an element of community character: “Foster places with distinctive identities through the use of high-quality design, siting, landscaping, architecture, signage, sustainability, and other design elements.”
2. The 2019 GP’s glossary recognizes signs as part of the County’s “built environment”: “Built Environment: Human-made surroundings that provide the setting in which people live, work, learn, and play on a day-to-day basis, and how they are interrelated as a complete and connected system in relationship to human activity. The built environment includes uses such as buildings and structures, parks, utilities and communication infrastructure, roads, paths, transportation infrastructure, streetscapes, signage, man-made landscapes, and open space.”
3. The Urban Policy Area Design Guidelines (Appendix-4) establish several policies relating to signs as part of building design:
 - “3. Use of architectural features, enhanced materials, fenestration, planting, lighting, and signage should contribute to a more pedestrian friendly streetscape.
 4. Reinforce the existing façade rhythm along the street with architectural elements, landscaping, signage, street lighting, and street furnishings.”

The Sidewalks, Streets Trees, and Plantings guidelines provide:

- “1. Create a continuous and predominantly straight sidewalk to support two-way pedestrian traffic with enough space for streetscape amenities such as street furnishings, street trees, ground cover plantings areas, street lighting, signage, and utilities.”
4. The Suburban Policy Area Design Guidelines (Appendix A-7) establish several policies relating to signs as part of building design:
 - “1. Buildings within larger multi-building developments should exhibit a unity of design through the use of similar elements such as rooflines, exterior materials, facade treatments, window/fenestration arrangements, sign location, and architectural styles and details.
 8. Retail development should avoid the appearance of strip commercial development which is commonly characterized by the following features to be avoided: multiple entrances serving individual uses, minimal setbacks

and landscaping, and multiple structures and signs without a unified design scheme."

The Street Furnishings and Lighting (Appendix A-8) policies provide:

"2. Signs for development will be developed as an integral part of the overall design. A unified graphic design scheme is strongly encouraged that is in conformance with an appropriate regulatory framework.

4. Both lighting and signs will be designed for pedestrians, bicyclists, and vehicles."

The Parking, Circulation, and Loading guidelines (Appendix A-8):

"2. Pedestrian traffic, internal to non-residential centers, should be provided with a safe travel route from the parking area to the building with a demarcated pathway and clear directional signage. Trees and other plantings should be provided along the walkway."

5. The glossary also addresses signs as part of transit stops: "Transit Stop: A location along the street or transit line that has simple facilities like signage and shelters."
6. QD Policy 8, Strategy 8.1., Action D provides: "Review and revise county sign regulations to facilitate signage and way-finding at appropriate heights that incorporate Braille, tactile markings, and other accessibility improvements." Note: this is a very unusual requirement for sign regulations, which address outdoor signs to minimize traffic distractions and to promote quality design. A search of 1,968 sign regulation files in our system turned up no sign regulations that address this issue. However, the Americans with Disabilities Act [Standards for Accessible Design](#) promulgated by the Department of Justice do require and establish standards for braille and tactile characters. The sign regulations can establish a link to those standards to assist applicants.

While the 2019 GP has few policies directly targeted to the sign regulations, it is clear that they are considered part of the County's built environment. Therefore, the sign regulations should integrate with the character of development prescribed for the policies areas, place types and associated zoning districts.

Current Sign Regulations (Subtask 5.1)

The Revised 1993 Zoning Ordinance codifies the sign regulations at Section 5-1200 of Article 5 (Additional Regulations and Standards). A sign requirements matrix (Table 5-1204(D)) (“sign matrix”) establishes sign categories, along with standards related to the type, size, setbacks, and design of signs. These are broken into seven categories: (1) Residential/Agriculture Signs, (2) Public/Quasi-Public Signs, (3) Commercial Development Entrance/Project Identification Signs in the PD, CLI, GB, and MR-HI Districts, (4) Signs for Commercial, Office, and Industrial Uses, (5) Temporary Signs, (6) Real Estate Signs, and (7) Miscellaneous Signs. These broad categories are summarized as follows:

- Two of these broad categories relate the use (Public/Quasi-Public and Commercial, Office, and Industrial). Some of the uses set out in the sign regulations do not match the use descriptions in the zoning district regulations or in the definitions. These include: auto dealer, farm, place of worship, private recreation parks, and public or quasi-public facility.
- For the first category (residential / agriculture), it is not clear whether the category refers to districts (i.e., residential districts) or residential/agricultural uses (such as farms, regardless of a farm’s zoning district).
- Two of the categories relate to a sign’s message (identification and real estate signs).
- The fifth and seventh categories (temporary and miscellaneous) categorizes signs based on their message (such as informational signs), location (such as entry signs), or time, design or dimensions (such as temporary signs, banners or de minimus signs).

There are two main sign categories, common to most sign codes: building (or attached) and freestanding. In the current Loudoun County sign regulations, “building mounted” signs are attached to the wall of a building or structure, while freestanding signs are not attached to a building. In addition to the two main sign categories (freestanding and building mounted), the sign regulations recognize 48 specific sign types for purposes of applying the dimensional standards (see Table 1), some of which are building, freestanding, or either category. Of these categories, over half (19) relate to the sign’s message and 18 relate to the sign’s use. Only 11 categories are based on physical parameters (timing, location or design). Fewer than half of the sign types are defined.

Some of these signs have several subcategories (i.e., rows in the sign matrix). For example, business signs have the following separate subcategories: (1) business in A-3, A- 10, AR, JLMA, TR, and CR Districts – building mounted, (2)

business in A-3, A- 10, AR, JLMA, TR, and CR Districts – freestanding, (3) business in R Districts¹ – lots of up to 10 acres, (4) business in R Districts – lots larger than 10 acres, (5) business in RC District– building mounted, and (6) business in RC District – freestanding. Combined with the sign categories, there are 93 subcategories.

Table 1 Current Sign Categories

Category	Defined?	Subcategories	Freestanding	Attached	Temporary	Incidental
Signs Defined by Physical Features, Location or Timing:						
Banner Signs	Cloth, paper, vinyl, bunting or the like, intended to be hung either with or without frames. (Does not include government or symbolic flags.)	1				
De Minimis Signs	Any sign with an area no greater than one (1) square foot.	1				
Entrance Signs	--		*			
Entry Sign	--	1		*		
Flag	--				*	*
Ground Mounted	Refers to graphics (Figure 1, Section 5-1200)		*			
Pole Mounted	--					
Pylon	--		*			
Sidewalk Sign	A movable sign not secured or attached to the ground or surface upon which it is located. May be freestanding, placed on an easel, or constructed in a manner to form an "A" shape.	1	*			
Temporary Signs	A sign of temporary duration or non-recurring nature that is associated with a special event [see Section 5-500(C) of the Revised 1993 Zoning Ordinance], or other event that lasts no longer than 48 hours and falls outside of the primary permitted use of the property upon which the event is located.	1	*		*	
Window or Display Sign	(Business): A sign within a window of a business relating to the business conducted within. (Non-Business): A sign within a window of a business not relating to the business conducted within; but to amusements or civic, religious, cultural, educational, or charitable activities.	2		*		*
Signs Defined by Message						
Building ID/Tenant Signs - Office Buildings	--	1		*		
Business	A sign which identifies a business or profession conducted, or a commodity or service sold, offered, or manufactured, or an entertainment offered on the premises where the sign is located.	6	*	*		
Church Bulletin Board	--	2	*	*		*
Community Directional	On-site or Off-site (within boundaries of approved PD-H district)	1	*			

¹ The sign regulations do not define what constitutes an "R" district. It is assumed for purposes of this discussion that this refers to "residential" districts other than those enumerated for the A-3 through CR category (R-1, R-2, R-3, R-4, R-8, R-16, R-24, PD-H, and PD-AAAR).

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Category	Defined?	Subcategories	Freestanding	Attached	Temporary	Incidental
Danger, Aviation, Railroad, Bridge, Ferry Transportation, Red Cross, and Other Similar Signs	See Code of Virginia 33.2-1204 (5), (6), (7), (8), (15), and (17). ²	6				*
Directional Signs, On- Site	Any sign providing directions to a specific use, which sign is located onsite of the same parcel or on-site within the same development as the use to which such sign provides directions.	1	*			*
Directory Sign	A sign on which the names and locations of occupants or the uses of a building or group of buildings is given.	2	*	*		*
Government / Official Notices	Sign erected and maintained by or under the direction of the Virginia Department of Transportation, other governmental authorities, or court officer in accordance with the law.	1				*
Historical Markers	Any sign or marker erected to identify a site, location, or landscape related to a person, structure, or event documented as historically significant at the local, state, or national level.	1				
HOA Activity Signs	--	2	*			
Informational Signs	Signs to identify such locations as restrooms, loading areas, parking areas, no parking areas, entrances, exits, and the like.	3	*	*		*
Movie Title Building Sign	--	1		*		
No Hunting, No Fishing, or No Trespassing Signs	--	3	*	*		*
Project Directional Signs - Non-PD District	Signs giving direction to new homes for sale or lease for non-Planned Development District projects, subject to the boundaries of a rezoning plat approved by the Board of Supervisors, which do not contain the names of specific builders.	1	*			

² These are defined as follows: "5. Notwithstanding the provisions of § 33.2-1224, danger or precautionary signs relating to the premises or signs warning of the condition of or dangers of travel on a highway erected or authorized by the Commissioner of Highways; forest fire warning signs erected under authority of the State Forester; and signs, notices, or symbols erected by the United States government under the direction of the U.S. Forest Service;

6. Notwithstanding the provisions of § 33.2-1224, notices of any telephone company, telegraph company, railroad, bridges, ferries, or other transportation company necessary in the discretion of the Commissioner of Highways for the safety of the public or for the direction of the public to such utility or to any place to be reached by it;

7. Signs, notices, or symbols for the information of aviators as to location, direction, and landings and conditions affecting safety in aviation erected or authorized by the Commissioner of Highways;

8. Signs of 16 square feet or less and bearing an announcement of any locality, or historic place, museum, or shrine situated in the Commonwealth advertising itself or local industries, meetings, buildings, or attractions, provided such signs are maintained wholly at public expense or at the expense of such historic place, museum, or shrine;

15. Notwithstanding the provisions of § 33.2-1224, signs erected by Red Cross authorities relating to Red Cross Emergency Stations, with authority hereby expressly given for the erection and maintenance of such signs upon the right-of-way of all highways in the Commonwealth at such locations as may be approved by the Commissioner of Highways;

17. Signs advertising only the name, time, and place of bona fide agricultural, county, district, or state fairs, together with announcements of related special events that do not consume more than 50 percent of the display area of such signs, provided the person who posts the signs or causes them to be posted shall post a cash bond as may be prescribed by the Commissioner of Highways adequate to reimburse the Commonwealth for the actual cost of removing such signs that are not removed within 30 days after the last day of the fair so advertised; ...

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Category	Defined?	Subcategories	Freestanding	Attached	Temporary	Incidental
Project Identification Signs	A sign that identifies the name of the development only, including any corporate typeface or logo.	2	*			
Real Estate	Sign pertaining only to the offering for sale or lease of the land or structures on the land upon which the sign is placed.	5	*			*
Residential Name Signs	Sign upon property displaying the name and/or address of the owner, lessee, or occupant of the premises.	3	*	*		*
Tenant Signs	--	2		*		
Theater Name Building Sign	--	1		*		
Signs Defined by Use						
Auto Dealer	--	2	*	*		
Auto Service Station (including convenience store, car wash & repair)	--	2	*	*		
Bed & Breakfast Inn and Homestay	--	2	*	*		
Childcare Home	--	2	*	*		
Country Inn, Guest Farm or Ranch, Rural Retreat, Rural Resort, and Rural Agricultural Corporate Retreat	--	2	*	*		
Farm Signs	Sign erected or maintained on any farm by the owner or tenant of such farm and relating solely to farm or horticultural produce, livestock, silviculture, or services sold, produced, manufactured or furnished on such farm.	2	*			
Flex/Industrial/Warehouse/Data Center	--	1		*		
Ground Floor Tenants in Office Buildings	--	1		*		
Home Occupation	Any sign upon property displaying the name and/or address of the occupant(s) of the premises and the nature of the home occupation(s).	2	*	*		
Hospital	--	3	*	*		
Hotel, Motel, and Conference Center	--	1	*	*		
Places of Worship	--	2	*	*		
Private Recreation Parks	--	1	*			
Public or Quasi-Public Facility	Sign identifying or locating a town, community center, public building or historical place situated in Loudoun County, Virginia, and also a sign for a use owned or operated by a nonprofit, religious, or charitable institution and providing educational, cultural, recreational, religious, or similar types of programs.	1	*			
Restaurant	--	4	*	*		
Restaurant/Car Wash Drive-Through Menu	--	2	*	*		
School, College, Library, and Publicly Owned Community Center	--	2	*	*		

Category	Defined?	Subcategories	Freestanding	Attached	Temporary	Incidental
Wayside Stands	Sign erected or maintained by any farm owner or tenant of such farm and relating solely to farm or horticultural produce or merchandise sold from said stand located on farm including Christmas trees, vineyards and wineries.	2	*	*		
Total:	48 total categories	93	34	27	2	11

The sign requirements matrix establishes, by sign category, a maximum aggregate and individual sign area, maximum number of signs, maximum height, minimum right-of-way setback, and whether illumination (backlight or white light) is permitted. Ground signs may include a bonus for the sign face and the sign's background structure. This bonus applies only to individual signs and does not expand the aggregate sign area permitted (Section 5-1204(B), Revised 1993 Zoning Ordinance). We prepared a summary of the sign dimensions by district, including ranges of dimensions for the freestanding, building and incidental categories and ranges of dimensions, in a spreadsheet available [here](#). The initial sign regulation draft attempts to maintain the overall allowances for projects based on these broad categories as discussed in Initial Sign Regulation Diagnosis (Subtask 5.4) beginning on page 11 below.

Off-Premise Signs and Billboards

Off-premise signs and billboards are separate, but related, concepts. On-premise signs are those that direct attention to uses or activities on the same premises. Off-premise signs direct attention to a use or activity located elsewhere. While any type of sign could relate to off-premise activities, the typical conduit for this is a billboard. Billboards are large, panel signs typically found along arterial roads and highways. While billboards are a type of physical structure, the off-premise category relates the sign's location. Loudoun County currently prohibits off-premise signs (Revised 1993 Zoning Ordinance, Section 5-1202(A)(1), with certain exceptions. These include:

1. Signs erected by government authorities, including the County or the Virginia Department of Transportation (VDOT).
2. PD-H – Community Directional Signs (within boundaries of the approved PD-H district) (Sign Matrix, Table 5-1204(D)(1)(b)).
3. Non-PD District Project Directional Signs (Sign Matrix, Table 5-1204(D)(6)(e)).
4. Wayside stands (Sign Matrix, Table 5-1204(D)(1)(f)).

Sign Design

Loudoun County's sign regulations does not allow some forms of sign design or features, except with a Sign Development Plan (SIDP) (discussed under Process beginning on page 10 below).

Animation

It is common for sign codes to prohibit animation, typically because it is considered a traffic distraction. The sign regulations do not explicitly address animation. County staff indicate that animation can be approved with an SIDP.

Banners and Attention-Getting Devices

Banners, balloons, streamers and similar devices are commonly found in commercial corridors but are often prohibited or regulated by sign codes. Loudoun County does not generally allow balloons, banners, pennants, or inflated devices (Section 5-1202(A)(5)). An exception is ornamental/seasonal banners are allowed on lamp posts in PD-CC, PD-SA, PD-TC, PD-TREC, PD-TRC, and PD-MUB (Sign Matrix, Table 5-1204(D)(7)(h)).

Illumination and Digital Signs

The sign matrix recognizes two kinds of illumination for certain signs: backlight or white light. Backlight is defined as illumination from the back of the sign or on the interior of an enclosed sign. An example would be "halo lit," "reverse channel" or "reverse lit" illumination that conceals the light source behind three-dimensional opaque letters, numbers, or other characters of a sign, resulting in the nighttime perception of a halo around the silhouette of each character. "White light" is not defined.

Several kinds of illumination are generally prohibited but allowed with approval of an SIDP: neon outlining of buildings or signs (Section 5-1202(A)(2)), and electronic message (including digital) signs (Section 5-1202(A)(6)). Examples of digital signs approved include NVCC-Sterling's digital sign on state property, and Dulles Town Center's Route 7 digital monument. For neon, building or sign outlines are prohibited, but the copy can be neon.

Illumination that reflects or casts glare, directly or indirectly, on public roadways or adjacent property is prohibited (Section 5-1202(A)(4)).

Process

Permits

Section 5-1203(A) generally requires sign permits issued by the Zoning Administrator, but exempts the following:

1. Government Signs/Official Notices
2. Historical Markers
3. Danger, Aviation, Railroad, Bridge, Ferry Transportation, Red Cross, and Similar Signs
4. No Hunting, No Fishing, or No Trespassing Signs
5. Residential Name Signs
6. Window or Display (Non-Business) Signs
7. De Minimis Signs.

The first three categories listed above are listed as “not regulated” in the sign matrix.

As is discussed in the Initial Sign Regulation Diagnosis (Subtask 5.4) beginning on page 11 below, the County can create sign categories for government signs differently, and the de minimus (defined as those smaller than 1 square foot) is a physical threshold. The other categories are triggered by the message, so the new sign regulations will fold those into broader incidental sign categories.

Modifications (Sign Development Plans and Variances)

An applicant may request alternative sign regulations for permitted signs through a Sign Development Plan (SIDP). These are processed as a special exception, but with considerations spelled out in the “state of justification” set out on Section 5-1202(E)(1) of the sign regulations rather than the special exception criteria. These include:

- (a) Assist motorists, bicyclists and/or pedestrians in finding a location without difficulty or confusion;
- (b) Clearly identify places of business or communities, while avoiding unnecessary redundancy;
- (c) Demonstrate compatibility with, and be subordinate to, the structures and land uses referenced by the sign;
- (d) Address impacts to the night sky;

- (e) Incorporate energy efficient measures, where possible; and
- (f) Provide a sufficient number of graphic messages or displays without creating competing demands for visual attention.

The SIDP allows for additional sign area or height, illumination or design features, and related standards for permitted signs. It does not allow the approval of signs that are not permitted.

County staff was not aware of any applicants for a sign variance for a sign. They seek approval for deviation from the sign regs through a SIDP.

The following section provides an initial diagnosis of the County's sign regulations.

Initial Sign Regulation Diagnosis (Subtask 5.4)

Signs are a pervasive element of the built environment. Signs serve important purposes, such as identifying places of business or institutions, directing traffic, and expressing opinions. Businesses rely on signs to create a street presence, and to generate sales from motorists or pedestrians who might not otherwise become aware of their presence. Politicians and activists rely on signs to get the word out about their campaigns or matters of public interest. Institutions (such as churches and schools) use signs to announce events, speakers, and inspirational messages. Some signs can also have a negative impact on the public. Signs are often identified with clutter along roadway corridors, driver distraction, and – when not properly maintained – blighting influences. Excessively bright signs can disrupt the quiet enjoyment of residential neighborhoods or distract drivers (while, at the same time, making those signs more visible to motorists). How can the County effectively regulate signs in a way that avoids potential negative impacts, while enabling freedom of expression and commerce?

As is discussed above, the County's current sign regulations establish, among other things:

- sign categories, some of which relate to a sign's physical features (such as ground signs), and other based on the sign's message (such as real estate signs) or user (such as an auto dealer),
- the districts where the sign categories are permitted,
- dimensional standards (i.e., maximum size and height, minimum setbacks),
- maximum number of signs and cumulative sign area, and

- design features such as illumination.

Signs are physical objects that communicate a message. The messages can be:

- Commercial, such as advertising a product or directing a motorist to a place of business, or
- Non-commercial, such as signs that express an opinion, promote a candidate, or display a religious belief.

The Revised 1993 Zoning Ordinance currently defines a “sign” as:

“Any visual display that comprises letters, words, numerals, figures, logos, trademarks, symbols, emblems, devices, or illustrations, or any combination thereof, which identifies a property, business, product, service, person, or entertainment, but not including, when standing alone, a flag, emblem, badge, or insignia of any governmental unit.”

Because signs are a form of expression, they are protected by the free speech principles of the United States Constitution. Sign regulations must comply with state and federal free speech protections. In nutshell, the First Amendment to the U.S. Constitution creates the following guiding principles for developing new sign regulations:

- 1. Avoid Regulating Content** (i.e., what a sign says). The County should avoid content-based regulations on noncommercial speech unless they are needed to promote a compelling public interest and are narrowly drafted to achieve that end. Regulation of content – or what a sign says – triggers a legal standard known as “strict scrutiny” and must further a “compelling” public interest. In other words, if the County’s zoning officials have to read the message written on a sign to determine what regulations apply, or a regulation is based on a sign’s function or purpose, the regulation is likely subject to strict scrutiny. The same principles can also apply to signs that preference or trigger a sign’s user. However, sign regulations that do not regulate what the sign says – i.e., regulations that are “content neutral” – are subject to more lenient review. Regulation of the “time, place and manner” of signs is given significantly more deference in the courts.

The recent United States Supreme Court decision in *Reed v. Town of Gilbert* (2015) illustrates the risk associated with regulating content. The Town of Gilbert, Arizona, established size and timing restrictions for temporary signs relating to events (such as church services). However, the Town’s sign regulations had different size and timing allowances for other kinds of temporary signs with different messages – such as political or opinion signs.

Finding the regulations content based and applying strict scrutiny, the court found that the directional message did not increase driver distraction or impair aesthetics more than other, more favorably regulated signs. Therefore, the regulations were ruled unconstitutional.

The fact pattern in *Reed v. Town of Gilbert* dealt with noncommercial speech, but it is not clear from the decision whether the same standards will now apply to commercial speech. In the past, content-based restrictions on truthful, non-misleading commercial speech receive intermediate scrutiny “with bite” where a court determines that (1) the expression is protected by the First Amendment; (2) the government interest is “substantial”; (3) the regulation directly advances the governmental interest asserted; and, (4) the regulation is no more extensive than is necessary to serve that interest. Therefore, the County has more leeway in regulating commercial speech (such as advertising), but that speech is still protected by the First Amendment.

Sign regulations that are “content-neutral” may permissibly impose reasonable time, place, and manner restrictions. Content-neutral regulations restrictions are valid if they (1) are narrowly tailored to serve a substantial government interest and (2) leave open ample alternative channels for communication of the information.

- 2. Allow Alternative Channels of Communication.** The sign regulations must allow reasonable avenues of communication by signs. Even if the regulations are content-neutral, they must leave adequate alternative channels of communication. In other words, they cannot choke off all methods of communication by signs. In regulating the size, height, and number of signs, or their design features, local governments typically have significant leeway in crafting the appropriate standards. People are not entitled to the largest, tallest, and brightest sign technology can support. Caps on total square footage are a reasonable, content neutral form of regulation. For example, regulation of signs in designated commercial districts that leave property owners the choice of displaying either a commercial or noncommercial message has been upheld. This type of regulation must allow noncommercial signs.
- 3. Establish Clear Standards.** The review of sign permit applications should include clear standards for the issuance of permits. Permit review should not be discretionary but should give the applicant a clear direction on what is expected from the written language of the ordinance. Regulations should not be vague or give decision makers unfettered discretion to deny or condition sign permits.

- 4. Establish Reasonable Dimensional and Design Standards.** Reasonable restrictions on the size, type or manner of display of both commercial and noncommercial signs are normally acceptable. Courts have upheld reasonable restrictions on size, height, setback, spacing, and the color of signs as well as bans on temporary, overhanging, free-standing, rooftop, windblown, moving, flashing, and illuminated signs.
- 5. Establish Time Limits for Permit Review.** Sign regulations may require permits for the establishment of signs. The permit review, however, must occur within a reasonable period of time. In addition, the sign regulations should spell out the time period for review.
- 6. Never Favor Commercial over Non-Commercial Speech.** The distinction between "commercial" and "noncommercial" signs must be reasonable and constitutionally valid. Regulation may not in any way favor "commercial" over "noncommercial" signs or permit commercial signs where noncommercial signs are prohibited. The ordinance should permit noncommercial speech in any instance where commercial speech is permitted. In addition, the ordinance should focus, as much as possible, on structural characteristics rather than the sign's message, advertisement, or content. Some communities use a general "substitution" provision that allows the substitution of a non-commercial message wherever a commercial message is allowed. After *Reed v. Town of Gilbert*, this should also allow any non-commercial message to substitute for another non-commercial message (for example, a sign with directions to Sunday church services could substitute for a political sign). A possible exception is hazard warning signs or traffic directional signs that comply with the Manual on Uniform Traffic Control Devices (MUTCD), which are needed for public safety (and recognized by the majority opinion in *Reed* as a potential compelling interest).
- 7. Avoid User Discrimination.** While Loudoun County can set different size and design metrics by district and context, it should not discriminate between speakers. This can be done by avoiding special treatment for signs related to public or semi-public agencies, nonprofit organizations, permitted clubs, or signs connected to limited and vaguely defined events.
- 8. On- Versus Off-Premise Advertising.** Sign regulations traditionally distinguish "on-premise" from "off-premise" signs. The current sign regulations specifically prohibit off-premise except in for certain uses (see Off-Premise Signs and Billboards, page 8 above). There are several different types of off-premise signs, but perhaps the most notable are billboards.

Regulation that prohibits all off-site commercial signs has been held constitutional and was recognized in the concurring opinion in *Reed v. Town of Gilbert* and some decisions after *Reed* as a constitutional form of regulation. However, several federal circuits have ruled traditional off-premise sign restrictions unconstitutional, and the issue is currently pending a decision from the United States Supreme Court on appeal from *Reagan National Advertising v. City of Austin*, 972 F.3d 696 (5th Cir. 2020), and was [argued on November 10, 2021](#).

- 9. Establish a Purpose Statement with Findings.** The sign regulations should include legislative findings to support ordinance provisions. Although ordinances regulating signs and billboards are not granted the usual "presumption of validity," courts generally will defer to a reasonably plausible and common-sense legislative judgment that regulation furthers aesthetic and other supporting public purposes. The current sign regulations include a purpose statement (Section 5-1201). The new regulations should include an expanded set of findings in the adopting ordinance, along with purpose statements and illustrations that accompany individual restrictions.

Location and Regulatory Structure

While the County should avoid distinguishing signs by their message or user, the County can set different sign type, dimensional and design standards by zoning district. This should reflect the district character, which in turn relates to the policy area and place types established by the Comprehensive Plan. The current sign regulations distinguish signs principally broader use categories (such as residential/agriculture), with some categories tying sign dimensional and design standards to districts (for example, there are several sign types identified for commercial development entrance / project identification signs in the PD, CLI, GB, and MR-HI districts).

Draft Sign Regulations: The revised sign regulations (section 6.02.E) consolidate the new district categories based upon their common plan area in character features. These include categories for urban/mixed use, neighborhood (principally residential districts), commercial, employment/industrial, and rural districts. This allows the County to develop a set of dimensional and design standards that are appropriate across districts. The County can revise the draft to call out regulations for individual sign types and categories for specific districts as needed as this process unfolds.

Using this district structure, the revised sign regulations create consolidated tables for individual types of freestanding (section 6.04), attached (section

6.05), and incidental (section 6.06) signs. For each family of districts, each section addresses the following requirements and criteria:

	Regulation	Meaning
1	Allowed?	Whether the sign type is allowed in the districts.
2	Permit required?	Whether a permit is required for that sign type in that district.
3	Number allowed (<i>max</i>)	The total number of signs in that category allowed on a lot or parcel
Dimensions		
4	Cumulative area (<i>max</i>)	The cumulative/aggregate area of signs of that type allowed on a lot or parcel.
5	Individual sign area (<i>max</i>)	The maximum area for an individual sign of that type in that district.
6	Height (<i>ft, max</i>)	The maximum height for that sign type.
Location		
7	ROW Setback (<i>ft, min</i>)	The sign's minimum setback from the public right-of-way
8	Spacing from other signs (<i>ft, min</i>)	Minimum spacing from other signs.
Design		
9	Digital	Whether digital technology is allowed, and any maximum that applies (e.g., 30 percent of the sign face)
10	Backlight	Whether backlighting is allowed
11	Illumination, External	Whether external illumination is allowed
12	Illumination, Halo Lit	Whether halo lit or reverse channel illumination is allowed
13	Channel Letters	Whether channel letters are allowed or required

	Regulation	Meaning
14	Animated	Whether animation is allowed

Sign Types and Categories

To keep the sign regulations content-neutral, integrate signs with the County's quality design and placemaking policies, and to allow a reasonable amount of speech, the sign regulations should include a revised category of sign categories based on their physical design instead of their message or user.

Many of the categories in the current sign regulations fall into a **functional** classification-i.e., they describe the sign's purpose rather than its physical characteristics. For example, a real estate sign may be attached to a building, or to a separate freestanding structure in the front yard. So long as the sign offers for sale or lease the land or structures on the land where the sign is located, it qualifies as a real estate sign. The physical, locational and temporal characteristics of signs, however, fall into three broad categories:

- 1. Freestanding or Detached Signs.** These are signs that are located on individual structures that are not attached to another structure or building. Examples include monument signs and pole signs.
- 2. Attached Signs.** These are signs that are attached to a building, fence, or other structure. Examples include wall signs and projecting signs.
- 3. Incidental Signs.** This category includes small signs that are either temporary in nature or subordinate to the main freestanding or attached signs on the property. Examples include "feather" signs that are typically used to advertise special events or sales, or to provide a secondary source of advertising or directional communications on a site. Others include small signs with panels attached to metal frames, and typically used as election signs, real estate signs, or similar temporary events.

Draft Sign Regulations: To coordinate with the Comprehensive Plan's placemaking policies, the draft sign regulations divide the sign categories into five district categories: Rural, Residential, Commercial, Employment / Industrial, and Urban / Mixed Use. These are assembled into tables that indicate whether a particular sign type is allowed in the districts, whether a permit is required, the number allowed, cumulative and individual sign area,

and design features (such as illumination types, digital, channel letters, etc.).

Freestanding

The sign regulations currently recognize freestanding signs as an overarching category, with many of the specific sign types having different dimensions and standards depending on whether they are freestanding or building mounted (see Table 1 on page 5 above). Freestanding signs include ground signs, pole mounted signs, pylon signs, and sidewalk signs. Ground mounted signs have a “bonus multiplier” that increases a sign’s sign face and structure area.

Draft Sign Regulations: Section 6.04 of the draft sign regulations establish three tables for freestanding signs – ground, pole and sidewalk signs. Each table includes discrete dimensional standards to simplify regulations, and to clarify what standards apply to each sign type.

Attached

Sign regulations typically include separate regulations for signs that are attached to buildings. Currently defined as “building mounted” signs, these can include wall signs, canopy or marquee signs, roof signs, and window signs. To avoid clutter, the sign regulations typically establish a maximum number and area for building signs. In Loudoun County, these can include a fixed number (such as 15 feet for church bulletin boards) or a portion of the building façade (for example, ½ square feet per linear feet of building frontage for flex/industrial/ warehouse/data center buildings and signs for businesses in MR-HI, PD-IP, and PD-GI districts).

Draft Sign Regulations: Section 6.05 of the draft sign regulations establish two tables for building signs – wall and window signs. The regulations could add standards for additional categories such as projecting signs, roof signs, murals, and canopy or marquee signs. Each table includes discrete dimensional standards to simplify regulations, and to clarify what standards apply to each sign type.

Incidental and Temporary

Institutional, commercial and industrial sites typically include a principal sign (such as a large monument sign at the entrance) and a number of smaller, subordinate signs that serve a variety of purposes (such as providing directions, leasing information, temporary sales information, or political speech). These subordinate sign types are referred to as “incidental signs.” The current sign regulations call these signs out in a variety of ways - either by their dimensional characteristics

(such as de minimus signs that are less than one square foot in size), or by their function (such as real estate signs) (see Table 1 on page 5 above). These signs can be building mounted or freestanding. To maintain content neutrality, we recommend setting an overall numerical and area allocation for the signs to provide adequate space for communication while controlling sign clutter, minimizing driver distractions and promoting placemaking.

Temporary signs are a form of incidental sign, but many communities regulate them separately. In other words, the County can regulate temporary and incidental separately, or fold what are currently temporary signs into one "bucket" for both incidental and temporary signs (which is easier because the practice of enforcing time limits can be time-consuming). The advantage of folding temporary signs into the incidental sign category is that it provides a flexible, overall sign allocation for the property owner while avoiding the need to track the number of days a sign is placed. It also avoids having to make content-based distinctions between signs that have clearly defined timing (such as 30 days before a grand opening, or 90 days before and 30 days after an election), and those where the timing is difficult to define (such as a real estate sign, where the time needed depends on how long it takes to sell a property). Some communities want to define temporary signs differently as a way to control sign clutter by having separate allocations for permanent incidental signs and those that remain temporarily.

The sign regulations currently allow an unlimited number of temporary signs up to 32 square feet per sign and eight feet tall. However, these are defined to relate only to special events of no more than 48 hours. This would not include longer events, such as an election, or temporary signs of indefinite duration (such as signs that express an opinion or involve the sale of real estate).

Draft Sign Regulations: Section 6.06 of the draft sign regulations establish four tables for incidental signs – banners, de minimus signs, temporary signs, and a general category for additional incidental signs. Each table includes discrete dimensional standards to simplify regulations, and to clarify what standards apply to each sign type.

Dimensional Standards

The sign regulations control the physical dimensions of signs – i.e., their size, height, number, and setbacks. A sign needs to have adequate area to host the sign's message – i.e. the shapes, logos, symbols, text, and numbers that express the sign's message. And a sign must be viewed by its intended audience to serve a viable purpose. At the same time, oversized signs can overwhelm a building's scale, and excessive numbers of signs can create visual clutter and bury a sign's

message amidst a forest of competing messages. How should the County develop metrics that balance these competing considerations? Some considerations include:

- 1. Vehicle Speeds.** According to the Center for Neighborhood Technology (CNT), Loudoun County households travel 23,129 miles annually by car, while only four percent (3%) of Loudoun County's workers commute by transit (CNT, [Housing and Transportation \(H+T®\) Affordability Index](#)). While Loudoun County is taking concerted action to reduce its reliance on motor vehicles, this remains the principal way that households and workers in the County travel. Therefore, sign messages have more impact if they can be seen by motorists. Empirical studies of signs have attempted to identify minimum sign sizes needed for visibility by motorists, taking into consideration sign size, font, setback, orientation, illumination, and vehicle speeds. As vehicle speeds increase, sign sizes must increase so that the motorist has time to read, absorb and react to the information. Mandelker, Baker, & Crawford, *Street Graphics and the Law: Fourth Edition* (American Planning Association, PAS Report 580, 2015), at 24-45; United States Sign Council (USSC), *Sign Legibility Rules of Thumb* (2006). Few sign regulations directly tie sign size to traffic speed – this depends on complex formulas that relate to all of the factors listed above and can result in signs that are out of scale with their context.
- 2. Pedestrian and Transit Users.** In addition to the relationship of a sign to vehicle speed, the signs can relate to the speed of pedestrians, cyclists, light rail and bus users. The author is not aware of studies that specifically address these additional modes of transportation and the appropriate sign size. This is because pedestrians tend to move at much slower speeds than motorists and have significantly more time to safely read and react to smaller signs. Therefore, sign size is less of a concern for pedestrians than it is for motorists.
- 3. Relationship to Building Size.** Signs can be scaled so that they are compatible with the size of the buildings where they are placed, or nearby buildings.
- 4. Context.** Signs can be scaled to the Comprehensive Plan policy areas and related zoning districts. This can provide for smaller signs that are oriented to pedestrians in higher density areas, and signs that are legible to motorists in automobile-accessible areas.

Considerations include:

- The County could consider tying the sign area allocation to gross lot or parcel size or to frontage, with reasonable time, place and manner restrictions for particular sign structures. This eliminates content-based sign distinctions and enhances flexibility, while avoiding sign clutter. The allocation could capture a size sufficient to include the main sign types on the property, including monument signs and wall signs with an additional allocation for incidental signs.
- Create an allocation specifically for attached signs that embraces all of the attached sign categories, including awnings, canopies, under canopy signs, projecting signs, and window signs. Murals can be subject to the wall sign allocation but limited to side or rear walls.
- Consider tying the sign area allocation for freestanding signs to address vehicle speeds. Vehicle speeds can be addressed either through general increases by traffic corridor, or through a modification or variance procedure where the applicant calculates the appropriate sign size based upon vehicle speed, the sign's distance and orientation from the street, the font type, and items of information. Some communities limit items of information, which would minimize distracting clutter and inherently limit sign size.
- Some sign codes limit the "items of information" that a sign can display. This is a flexible standard to ensure that the sign is quickly readable, which minimizes that time needed for motorists to read and absorb the information (*Street Graphics and the Law* (4th Edition, American Planning Association PAS report 580, August 2015), at 85). The code can also require the applicant to explain steps that were taken to make the sign readable – which depends on a variety of factors such as the sign's size, background, font, and related considerations (A. Weinstein, *A Framework For On-Premise Sign Regulations* (March 2009), at 3). For example, a recent sign code adopted by the Unified Government of Wyandotte County-Kansas City, Kansas provides:

In designing a sign, an applicant for a sign permit shall consider and explain the sign's readability and comprehension in terms of:

- The size of the copy, including the minimum size of the letters based on the distance that the viewer is from the sign.
- The relationship of the copy to the background area – often referred to as the "white space" or "negative space" - of the sign.

- The thickness and spacing of the letters.
- The number items of information that can be comprehended in the short period of time that the viewer (typically the motorist) likely has available. This is particularly relevant to wall signs that need to be seen and comprehended instantaneously.
- Color contrasts between the message and the background.
- Font or letter style.
- Lighting.

Each sign displayed on a premise, or by an occupant of shopping center or multiuse building, may contain up to 10 items of information. For purposes of this section, an "item of information" means a word, logo, abbreviation, symbol, or geometric shape (see Figure 1).



Figure 1 Items of Information

Draft Sign Regulations: For discussion purposes, Sections 6.04 - 6.06 of the draft sign regulations establish sign dimensional standards that attempt to replicate, as much as possible, the sign allowances achievable under the current regulations. The regulations do not tie sign size to traffic speeds or include items of information at this time, which would introduce additional complexity to the regulations. However, we could add these provisions if requested.

Illumination



Figure 2 Types of Sign Illumination

Ordinances restricting lighting levels are becoming increasingly common, with concerns ranging from the effect of lighting levels on the peace and tranquility of residential areas, to environmental concerns such as light pollution, ability to view stars and planets at night, and energy conservation. While the sign code is not a lighting code, the new draft should pay close attention to the illumination of signs. Preventing "light trespass" onto neighboring properties is a priority, as is causing unwanted illumination from signs into adjoining residential properties from commercial properties. Lighting standards can range from detailed "**dark sky**" ordinances that prescribe maximum illumination levels, to simple height and shielding requirements. Some modern lighting ordinances prescribe maximum lighting levels for by type of land use. The International Dark Sky Association (IDA) and the Illuminating Engineering Society of North America (IESNA) have published a "Model Lighting Ordinance" that reduces glare, light trespass, and skyglow (see <https://www.ies.org/product/model-lighting-ordinance-mlo-with-users-guide/>). The MLO establishes lighting zones that vary lighting intensity by future land use and establish a rating system for luminaires (i.e., lighting units or fixtures) to effectively control light trespass and glare. In addition, lighting levels should vary by development context. In rural or low-density residential locations, strict illumination levels could apply. In more intense areas, such as the Urban Policy Area districts, higher lighting levels are acceptable. If the County were to adopt a lighting ordinance, signs could simply comply with those standards instead of lighting requirements that are specific to signs.

Digital and Electronic Message Signs



Figure 3 Digital or Electronic Message Signs

Businesses, churches, schools, and other entities have constantly changing messages to communicate to the public. These can include religious events, speakers, gasoline prices, new products and services, and related items. Electronic message signs (EMSs) or Changeable Electronic Variable Message Signs (CEVMS) have grown in popularity because they provide an effective, dynamic displays of information. When are EMSs appropriate? How can they be designed in a way that is not distracting and unsafe for drivers?

In recent years, digital signs have become a trend in the sign industry, as well as a source of zoning controversy. These signs are increasingly popular because "[a]dvances in display technology and decreases in cost have created interest to expand the deployment of high resolution and dynamic imaging," along with the ability to quickly, flexibly, and cost effectively deploy changes in messages (Federal Highway Administration (FHWA), *Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction-Final Report* (Sept. 11, 2001)). Some communities regulate or ban these types of signs due to concerns about traffic safety (driver distraction) and concerns about the impact of the signs' brightness on community character. There are conflicting studies relating to the impact of these types of signs on driver safety. [FHWA, CEVMS and Driver Visual Behavior Study - Peer reviewed report \(FHWA-HEP-16-036, September 2012\)](#); Federal Highway Administration, *The Effects of Commercial Electronic Variable Message Signs (CEVMS) on Driver Attention and Distraction: An Update* (Publication No. FHWA-HRT-09-018, February 2009); for a critique of these studies arguing that electronic variable message signs contribute to driver distraction, see [Wachtel, Compendium of Recent Research Studies on Distraction from Commercial Electronic Variable Message Signs \(CEVMS\) \(Feb. 2018\)](#); [Digital Signs and Billboards: Crafting and Enforcing Local Regulations Evaluating Siting Issues, Environmental Concerns and Revenue Sharing Opportunities](#) (July 23, 2015); Wachtel, A Peer-Reviewed Critique of the Federal Highway Administration (FHWA) Report Titled: "Driver Visual Behavior in the Presence of Commercial Electronic Variable Message Signs (CEVMS)" (Jan. 2015).

An EMS can reduce the number and size of "static" signs would otherwise used in a given area. In areas with a high-density business concentration, an EMS can take care of the needs of each business involved. In most communities, there are three major areas of concern: 1) regulation of brightness and rate-of-change to prevent the sign from becoming a dangerous distraction and an eyesore; 2) if EMSs are allowed, providing for an EMS shared (in perpetuity) by all businesses in the complex, so that one business does not get to dominate/restrict the others, and each individual business does not get its own EMS, and 3) because the businesses get an EMS, prohibiting them from turning around and also seeking or employing additional "static" signs.

There are seven main issues involved in regulating digital signs (see Baker & Wolpert, "Local Regulation of Dynamic Displays: Bridging Research, Planning Policy, and Law," presented to Planning, Zoning and Eminent Domain for Lawyers, Planners and Public Officials, The Center for American and International Law (November 17-18, 2009):

1. The appropriate **duration** of dynamic messages. The "dwell" or "hold" time keeps a message static, minimizing driver distraction. Standards tend to range from six to ten seconds, although the Virginia outdoor advertising legislation permits a four-second hold time (Code of Virginia § [33.2-1216.2](#)).
2. Whether, and under what conditions, to permit **motion, animation, and video messages**. These are typically prohibited, except in pedestrian oriented or entertainment contexts.
3. The appropriate level of **brightness** of dynamic signs. Brightness can be measures in "nits" (candela per square meter, typically at the light source), or in foot candles (typically measured at a set distance from the light source) (Illuminating Engineering Society of North America, Lighting Handbook (9th ed. 2000)). Nits are a measure of luminance (perceived brightness or lighting intensity), as opposed to illuminance (lighting density, measured in footcandles or lux) (Illinois Coalition for Responsible Outdoor Lighting, " Digital Billboards: New Regulations for New Technology" (May 2010)). The Outdoor Advertising Association of America (OAAA), an industry association, recommends a standard of 0.3 footcandles over ambient light levels, using a footcandle meter from specific distances from posters and bulletins (OAAA Recommended Brightness Guidelines (undated); Lighting Sciences Inc., Report to Outdoor Advertising Association of America on Digital Billboard Recommendations (February 21, 2008). This technique has been criticized by at least one advocacy group because it is less accurate than using a luminance meter, which is more expensive (Illinois Coalition for

Responsible Outdoor Lighting). Brightness levels can also be set by the manufacturer and verified by the applicant. For example, San Antonio provides: "Prior to the issuance of a sign permit, the applicant shall provide written certification from the sign manufacturer that the light intensity has been factory pre-set not to exceed seven thousand (7,000) NITS and that the intensity level is protected from end-user manipulation by password-protected software or other method as deemed appropriate by the director."

4. The appropriate **placement and spacing** of signs. Some regulations establish minimum spacing between electronic signs on the same side of a street or highway. Some regulations also establish setbacks from residential districts, such as 100 feet.
5. **Whether to treat on-site and off-site dynamic signs differently.** The County currently bans new off-premise advertising. Some communities allow conversion to EMS's if existing billboards at other locations are removed. Whether the County can treat on- versus off-premise EMSs differently is currently subject to a case pending before the United States Supreme Court.
6. The appropriate **size** of EMSs. Some regulations limit dynamic displays to a percentage of the copy area, typically ranging from thirty to thirty-five percent (30-35%) (Baker & Wolpert, above; Morris, "Looking Ahead: Regulating Digital Signs and Billboards," *Zoning Practice* (April 2008)).
7. The appropriate **text size** for dynamic signs. One example is: "Every line of copy and graphics in a dynamic display must be at least seven inches in height on a road with a speed limit of twenty-five to thirty-four miles per hour, nine inches on a road with a speed limit of thirty-five to forty-four miles per hour, twelve inches on a road with a speed limit of forty-five to fifty-four miles per hour, and fifteen inches on a road with a speed limit of fifty-five miles per hour or more." A digital sign is not allowed if the text would not fit on the display.

Draft Sign Regulations: Sections 6.04 - 6.06 of the draft sign regulations address, for each sign type and zoning district, whether and what types of illumination or other design features are permitted. Section 6.08 consolidates general standards on brightness, along with standards for digital signs. This provides a predictable set of standards and does not rely on the discretionary SIDP process to decide whether and how digital signs are permitted. It also offers a more detailed set of standards for illumination categories than the current regulations.

Permitting, Enforcement and Modifications

The County sign permit process, which involves administrative approval by the Zoning Administrator, is very common and a recommended practice. Sign permits should not involve discretionary approval unless a modification is requested.

It is impossible for any set of sign regulations to capture the right set of standards for every project. Therefore, it makes sense to include reasonable standards for modification. These include traditional zoning variance standards along with the county's SIDP process, which allows modifications for signs based on site context. The SIDP is currently used to allow signage larger than permitted by the underlying regulations, but that make sense for a site based on its context.

Draft Sign Regulations: Section 6.09 consolidates the sign permit and administration procedures. A future draft will provide a specific workflow for both the sign permit and SIDP processes. To the extent possible, the new code attempts to codify recurrent modifications where they make sense for a policy area, while limiting the process to unusual sign types or situations in revising the standards to time more closely to the comprehensive plan. This would also capture large, monument type structures that are treated as signs.

Artwork

There is a common misconception that “art” is not a sign. Because artwork is a form of communication, it is treated as a sign and cannot be targeted for preference in the same way as any other kind of message. However, the County can define physical sign categories that are associated with artwork as a physical form rather than a message type. These include sculptural or three-dimensional signs and murals.

The sign regulations do not currently address sculptural signs or murals. The regulations could include an additional allowance for three-dimensional signs or continue to maintain SIDP review.

Loudoun County's sign regulations make no reference to murals. Murals are typically signs that are painted onto walls and are a common historic sign. Murals may be a helpful tool in efforts to generate interest and support revitalization efforts in parts of Loudoun County, and a separate mural program may be warranted. Murals are essentially painted wall signs. The County can limit them to certain wall planes, and either count them toward the applicable wall sign allowance or establish a separate size or percentage allowance for murals. The County could also establish a mural program that allows for the placement of publicly-owned murals on building walls. The sign regulations can also establish

maintenance requirements to avoid fading, peeling, or the removal of graffiti that is applied without the building owner's permission.

Draft Sign Regulations: to be addressed in future drafts, if requested.

Off-Premise Signs

See Off-Premise Signs and Billboards on page 8, above. As is discussed there, the County does not currently allow off premise signs except in limited situations based on a property's use or message type.

Draft Sign Regulations: pending further discussion, the current draft continues the county's general prohibition of off-premise signs. However, the exceptions are removed. If the general band were removed, the regulations would allow off-premise signs as part of a property's overall sign allowance, because the sign regulations do not regulate sign messages.