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# Sign Control on Rural Corridors: Model Provisions and Guidance

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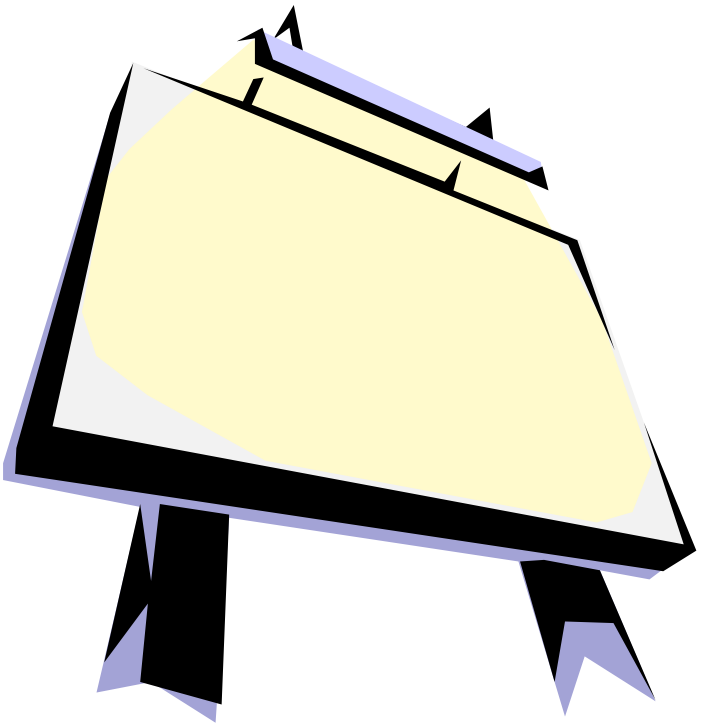
# Sign Control on Rural Corridors
## Model Provisions and Guidance



**Created by the**
**University of Georgia Land Use Clinic**
**School of Law and**
**College of Environment & Design**

***For the***
***Regional Five Advisory Council***
***and the***
***University of Georgia Carl Vinson Institute of Government***

**June 26, 2003**



*This guidance document is a product of the Regional Growth Management Initiative: Region 5 Advisory Council, Georgia Department of Community Affairs, and the University of Georgia Institute of Government*

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# Sign Control on Rural Corridors
# Model Provisions and Guidance

## Introduction

Due to Georgia's population growth and the continuing expansion of development into once rural areas, the existence of outdoor advertising along rural roads and highway corridors is an increasing problem. Outdoor advertising can obstruct scenic vistas, visually encroach on neighboring properties, and distract drivers. Slow economic growth and lower property values are also negative effects that may be caused by clusters of signs. Other problems include:

- Many municipalities do not have firm ordinances in place that adequately restrict the number of outdoor advertising signs along rural corridors.
- There is an organized campaign by billboard companies to attack sign ordinances in Georgia, which can result in expensive litigation.
- Communities using model ordinances can still encounter legal problems.
- The just compensation requirements of the Georgia Outdoor Advertising Act (O.C.G.A. § 32-6-70, *et. seq.*) and the Federal Highway Beautification Act (23 U.S.C. § 131, *et. seq.*) are not supported by adequate funding, thus providing loopholes in the law that allow new construction of outdoor advertising signs and the continued existence of non-conforming and illegal signs.

This document was commissioned by the Regional Advisory Council of State Service Delivery Region Five, Northeast Georgia and the Carl Vinson Institute of Government to assist jurisdictions that wish to protect their scenic rural corridors from an excess of billboards. Written by the attorneys and students of the University of Georgia Land Use Clinic, this document provides ideas and suggestions to protect rural corridors through effective legal controls of outdoor signs. Though not guaranteed to prevent legal challenges, these approaches will assist you in deciding which provisions might best serve your community. Use this document and the guidance of knowledgeable attorneys to help build a scenic rural corridor overlay zone that will protect and preserve the natural beauty of rural areas.

## Scenic Overlay Districts

This document recommends a scenic overlay district, which is specifically designed to control billboards. Overlay districts are special zones placed "on top" of existing zoning and planning regulations. The overlay district contains requirements that either supplement or replace the underlying regulations. This approach allows municipalities to maintain current codes while addressing the special needs of particularly sensitive areas. The mapped boundaries of the overlay district do not necessarily coincide with other zoning district boundaries, and may not follow parcel boundaries. Instead, natural features, roads, etc. often define the perimeter of the overlay district. The overlay district is a tool that is widely used by local jurisdictions in Georgia. No additional statutory authority beyond state-granted zoning and planning powers is required.

When enacting a scenic overlay district, consider the language of the jurisdiction's comprehensive plan. Well-written comprehensive plans should provide the goals, objectives, and policies that substantiate the need and public purpose of overlay districts. It may even be advisable to amend the comprehensive plan to further reflect the desire to protect scenic corridors and control signs.

**How to Use This Document**[1]

An effective sign ordinance is a foundation for the application of a scenic overlay district. Therefore, while suggesting the strategy of an overlay district, this document also discusses effective sign ordinances in general. Each section of this document discusses an important provision in a scenic overlay for sign control, and has an introductory section, which outlines the importance of the section and issues to consider when drafting. Following the introduction (and formatted in italics) are sample ordinance sections drawn from Georgia jurisdictions and other model ordinances. **It is crucial that jurisdictions not simply cut-and-paste these provisions to make a "one size fits all" ordinance.** These samples are only suggestions based on the best thinking on outdoor advertising control in Georgia today. Not all conceivable types of billboard control are discussed in this document, or every type of provision that might be included in an ordinance. It is very important for each community to consider its particular situation and obtain advice from attorneys knowledgeable about billboard regulation when drafting any ordinance regulating signs.

Also, building community support for a new sign ordinance is important to establish a community stake in the sign ordinance process and raise awareness in the community about billboards. The "Additional Guidance" portion of this document suggests a list of possible tools and processes that a jurisdiction might use to build community support for its new sign ordinance. The "Additional Guidance" section also contains practical advice on steps to take when regulating signs, along with a summary of state and federal law, a review of potential claims in litigation, and other information on billboard control. It also has a bibliography of helpful resources that expand on the information in this document.

Finally, a word regarding process: the Georgia Zoning Procedures Law (ZPL; O.C.G.A. § 36-66-1 *et. seq.*) establishes a notice and hearing process for actions resulting in a zoning decision. Some Georgia courts have held that sign ordinances qualify as zoning decisions under the ZPL. Therefore, jurisdictions should follow these procedures when passing any new sign ordinance (including an overlay with sign regulation). The ZPL also applies to subsequent permitting decisions under the sign ordinance. Additionally, it may be necessary to pass a temporary moratorium before passing a new sign ordinance. Generally, hearings and meetings are not necessary before passing a temporary moratorium City of Roswell v. Outdoor Systems, Inc., 548 S.E.2d 90 (Ga. 2001). See the "Additional Guidance" document for more information on these issues.

**Purpose and Intent**

It is imperative to place a purpose and intent section in the ordinance. This section explains why the jurisdiction has the right and power to regulate signs and, therefore, free speech. It also explains why regulating signs is important to the community. Other portions of the ordinance must relate back to this section. It also is a good idea to include a section on the importance of protecting freedom of speech, focusing on balancing constitutional rights and the need for sign regulation. This shows that the jurisdiction is aware of the constitutional issues and is not attempting to limit or "chill" constitutional rights. While adding this language does not guarantee the ordinance will be upheld if challenged, it can be an important tool in protecting the ordinance.

[1] The format of this document is based on Scenic America's "Model Billboard Ordinance Provisions," available at www.scenic.org, a resource for jurisdictions wishing to enact a general sign ordinance.

**Police Power**

In the billboard ordinance, context, purpose and intent sections will invoke the police power of the city or county via the general welfare clause. Generally, 'promotion of highway safety' is an important justification for the exercise of this police power. Aesthetic considerations may also be adequate justification. However, the state of this law is in some flux in Georgia. In City of Smyrna v. Parks, 242 S.E.2d 73 (1978), the Georgia Supreme Court stated that aesthetic purposes alone could be sufficient justification for exercise of the police power. Other considerations may be sufficient to justify the enactment of these ordinances, including the convenience and enjoyment of public travel; the attraction of tourists, settlers and industries to the jurisdiction; the free flow of interstate commerce; the protection of the public investment in the interstate highway; the right of the state to limit highways from commercial use; and the protection of property values. Therefore, as many of these justifications as possible should be listed where applicable. Stronger ordinances will link their purpose and intent section to concerns that are articulated in their comprehensive plans. This is evidence of a strong link between the ordinance and the goals of the community. With this in mind, a county or city should include specific concerns of their community within their purpose and intent section.

**Free Speech**

In litigation, the purpose and intent section will be examined carefully by the court to determine the reasonableness of the regulation as a restriction on free speech. Billboard companies often use the purpose and intent section as the focus of their litigation strategy. They are quick to argue that a sign ordinance restricts or prohibits far more speech than can be justified by the purpose and intent section. It is important that a court be able to see that the jurisdiction has thoroughly considered how the ordinance will further the purpose and intent that they articulate. Many ordinances simply list traffic safety and aesthetics as goals of the ordinance, and while those are good purposes, some courts will demand evidence that the restrictions of the ordinance actually address those issues. Read the accompanying guidance document section on potential challenges to better understand how to construct a strong purpose and intent section.

This first example is from Snellville, Georgia:

*It is hereby declared that the aesthetic and safety interests of this municipality are reasonably promoted by the provisions of this article. Accordingly, it is the intent and purpose of this article to provide for the orderly and harmonious display of signs within the community; to aid in the identification of properties and enterprises for the convenience of the public; to avoid the erection of displays which produce deleterious and injurious effects to adjacent properties and to the natural beauty of the environment; to provide for the safety of the traveling public by limiting distractions, hazards, and obstructions; to minimize visual clutter and encourage a positive visual environment; and to promote the mental and physical health, safety, and welfare of the public.*

Another option is to include findings, as in this example from Barrow County, Georgia:

*The commission has considered the aesthetic and safety reasons for limiting signage in the unincorporated areas of the county. The commission has determined that signs can detract from the aesthetic beauty of the county. Further, unregulated sign proliferation may contribute to a lowering of commercial and residential property values. Lastly, signs can be detrimental to the safety of motorists in the county. It is found by the commission that limiting the number, type, and dimension of signs in accordance with the following regulations will serve these substantial governmental and community interests.*

*The commission is well aware that signs are a means by which the county's residents, organizations, institutions, and businesses may convey constitutionally protected commercial and noncommercial messages. The following regulations provide an appropriate balance between the right to communicate via signs and the protection of the community interests stated above.*

Finally, some jurisdictions, such as Roswell, Georgia, commission studies to support their findings.[2] This is a response to a litigation tactic of sign ordinance challengers, who extrapolate from First Amendment case law a claim that only studies, well supported by evidence, can withstand legal challenge. While there is serious argument whether that is a correct reading of the law, the strongest ordinances will include such evidence because it clearly shows the government interest in regulating billboards. Studies can be used to show the negative impact that signs can have on traffic safety, aesthetics, nearby properties, public investments, and property values.[3]

Following is an amendment to Roswell's ordinance based on their study:

*The Mayor and Council of the City of Roswell are enacting this amendment in light of a study conducted by the City's Community Development Department. The results of such study are summarized in a paper attached hereto as Appendix "A" entitled The Public Purposes of Roswell's Sign Ordinance and the Implications of Doing Without It by Jerry Weitz, Ph.D., Planning Director. Such findings are expressly made a part of this ordinance and incorporated in their entirety.*

*In accord with the recommendations found in Dr. Weitz' paper, the Mayor and Council are enacting this Ordinance to ensure that noncommercial messages are authorized with restriction only as to the size of such signage and to establish reasonable regulations for signage containing commercial messages. The Mayor and Council find that signs provide an important medium through which individuals may convey a variety of noncommercial and commercial messages. However, left completely unregulated, signs can become a threat to public safety as a traffic hazard and detriment to property values and the City's overall public welfare as an aesthetic nuisance.*

*By enacting this amendment, the Mayor and Council intend to:*

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

*(b) Further the objectives of the City's comprehensive plan;*

*(c) Protect the public health, safety, and welfare;*

*(d) Reduce traffic and pedestrian hazards;*

*(e) Maintain the historical image of the City;*

*(f) Protect property values by minimizing the possible adverse effects and visual blight caused by signs;*

---

[2] Roswell's study can be viewed at: http://www.jerryweitzassociates.com/Signordinancejustification.doc. The document has a good list of sources that a jurisdiction can use to bolster their purpose and intent section.

[3] A study can also be used to support amendments to the comprehensive plan, as discussed in the "Additional Guidance" section.

*(g) Avoid the harmful aspects of the unrestricted proliferation of signs identified by the City's Planning Director in his position paper entitled The Public Purposes of Roswell's Signs Ordinance and the Implications of Doing Without It;*

*(h) Promote economic development; and*

*(i) Ensure the fair and consistent enforcement of sign regulations.*

## Definitions

Sign ordinances must contain a definitions section. This not only increases the clarity of the document but also protects it from challenges that it is vague or overbroad. All words with a meaning particular to the context of the ordinance should be defined. The following list contains definitions used in the sample ordinance provisions of this document.

*Abandoned sign:* A sign shall be considered abandoned when the business activity or firm, which such sign advertises, is no longer in operation, or does not have a current occupation tax certificate in effect.

*Advertising sign (billboard):* Any structure or portion thereof, situated on private premises, on which lettered, figured, or pictorial matter is displayed for advertising purposes, except for the name and occupation of the user of the premises or the products primarily sold or manufactured on the premises or noncommercial messages, and having an area of 100 square feet or more. Any signboard carrying a message excepted in this definition that also carries extraneous advertising of 100 square feet or more shall be considered a billboard.

*Non-conforming Sign:* A non-conforming sign is a sign that was lawfully erected and maintained prior to the adoption of this ordinance, and which by reason of such adoption fails to conform to all applicable regulations and restrictions of this ordinance.

*Off-premises sign:* A permanent advertising device that advertises goods, products, services or facilities or displays information not related to the site on which it is located or that directs persons to a different location from where the sign is located.

*On-premises sign*: An advertising device relating in its subject matter to the property on which it is located or to products, accommodations, services or activities on the property.

*Radial spacing:* A measurement with the sign forming the center of a circle and measurements taken in all directions from the sign.

*Sign:* A structure or device designed or intended to convey information to the public in written or pictorial form.

*Sign, freestanding:* A sign supported by one or more upright poles, columns, or braces placed in or on the ground and not attached to any building or structure.

*Sign height:* The distance in vertical feet from the elevation of the adjacent dedicated public street, at the edge of the pavement, to the highest point of the sign structure. For property with an elevation higher than the adjacent public street, the height shall be measured from ground level at base of sign to the highest point of the sign structure. The ground shall not be altered for the sole purpose of providing additional sign height.

## Applicability – Delineating the Overlay Zone

The applicability section delineates the overlay zone. Normally, this is done either by reference to a zoning map or by reference to natural features, roads, etc. In the case of a corridor overlay, reference to linear feet along the right of way of the protected road or highway within the jurisdiction (or subsection thereof) should be sufficient. The Georgia Outdoor Advertising Control Act generally regulates signs within 660 feet of the nearest edge of the highway. A jurisdiction may choose to use that number or may use a higher number. Measurement may be made from the highway's centerline, or from the edge of the right of way.

The following example is from Jefferson, Georgia's proposed overlay:

*The Gause Corridor Overlay District shall include all lands within one thousand (1,000) linear feet of each side of the Gause Corridor Overlay District right-of-way. All buildings, structures, and uses of land located within the Gause Corridor Overlay District shall be subject to the provisions of this Ordinance. The following standards shall apply to properties located within 1,000 linear feet from the outer edge of the right-of-way.*

This example is from Kootenai County, Idaho's Highway 41 overlay:

*A zoning district is hereby established for all unincorporated land lying within 1320 feet of the centerline of State Highway 41, South of Lancaster Avenue and North of Poleline Avenue, and as identified on the Kootenai County Zoning Map. If a parcel is partially or entirely within the 1320 feet overlay, the rules of this Article shall apply.*

## Options for Controlling Billboards

There are many possibilities for controlling billboards. Listed below are several options ranging from a ban on new construction to limiting the size and height of new billboards. Remember, when adopting billboard control options, link all restrictions to the purpose and intent section of your ordinance and maintain an overall level of reasonableness within the restrictions. (For more information on possible legal claims against billboard ordinances, see the "Additional Guidance" section.)

### Ban on New Signs

While a jurisdiction cannot remove existing signs without compensating the sign owner (see section below on non-conforming signs), it is theoretically acceptable to ban new signs. While nothing in the Georgia Code prevents a community from prohibiting the construction of new billboards, Georgia courts are currently split on this issue. It is important to note that billboard companies have successfully overturned some bans by arguing that they are unconstitutional constraints on free speech.

Prohibition of new construction has several advantages. First, it is a simple mechanism with little need for interpretation. Second, a ban on billboards will be the most effective means of protecting the scenic vistas along a rural corridor. There are a number of ways to phrase the ban, but it is important to link the purpose and intent section to the prohibition.

Here is one of the most straightforward examples, taken from the Chattahoochee Hill Country Overlay District, which covers a portion of South Fulton County, Georgia:

*Pole signs, roof signs, billboards, and inflatable signs are prohibited within the overlay district.*

Some jurisdictions use an off-premise/on-premise distinction.[4] There have been First Amendment claims made against ordinances using this distinction. Sign owners argue that since on-premise signs advertise goods and services directly connected with the on-site business, then any noncommercial and political signs are necessarily off-premise and therefore unconstitutionally restricted. If using an off-premise distinction, a local government should study the language of Roswell's Signs and Advertising Ordinance.

Be aware that categorical distinctions made between signs will likely be a point of litigation. While off-premise/on premise distinctions have held up when well-written, commercial/non-commercial distinctions are much less likely to withstand scrutiny. The best way to restrict billboards is by using size, height, area, and zone restrictions.

**Size Restrictions**

Standard sizes for billboards are 20'x 60', 14'x 48', and 10'6"x36'. Regulation of signs by size varies greatly, but a range can be established from six square feet to 672 square feet. When limiting signs to smaller sizes, the city or county should allow for reasonable exceptions, either through an "exempt signs" section or a variance section (see below for guidance on both).

No sample language is included here because the language used in this section will vary greatly depending on the goals established by the jurisdiction and whether the restrictions are applied based on existing zoning districts. It is best to obtain the ordinances of communities with restrictions similar to the type desired, and review those options with an attorney expert in zoning and sign regulation. Also, reasonableness is the standard that courts look to when deciding whether ordinances are legitimate. Therefore, it is important for a city or county that is interested in strictly limiting the size of signs to address their motivations for the restrictions in their purpose and intent section.

**Height Restrictions**

In Georgia there are no height limitations placed on signs by state or federal statute or regulation. Therefore, municipalities and counties are the only jurisdictions to regulate the height of signs. It is important to include a height provision in your sign ordinance. Height restrictions often vary by zone from 12 feet up to 100 feet. In keeping with the overall goal of scenic preservation, it is wise to limit height to the lowest height that still allows for reasonable viewing.

Here is sample language from Greene County, Georgia:

*The maximum height of any free-standing sign shall not exceed twelve (12) feet above the average elevation of the nearest public highway. The bottom edge of the sign face shall not exceed four (4) feet in height from average grade.*

In deciding upon sign height, include an explanation about how to measure sign height, as in this example from Athens-Clarke County, Georgia:

[4] Off-premise signs are signs not located upon the premises of the business or entity indicated by or advertised on the sign. On-premise signs advertise the business or entity upon the premises where the sign is located.

*This height shall be measured from the grade at the right-of-way boundary line or the grade of the billboard site if such grade is higher than the grade at the boundary line of the street right-of-way to the uppermost part of the billboard face, base or structure. If the sign is located below the grade at the boundary line of the street right-of-way, sign height shall be measured from the edge of the right-of-way to the uppermost part of the billboard face, base or structure.*

**Distance Between Signs**

Many districts require that signs be no closer to one another than 1,000 feet. However, a county or municipality could decide to use a larger spacing requirement (within the bounds of reasonableness) to limit the number of signs obstructing the scenic vista. Whatever size a jurisdiction decides upon should further the goals set out in the purpose and intent section of the ordinance.

Here is sample language from Barrow County:

*Each sign allowed under this section of the article shall be located not less than 1000 feet (measured by radial spacing) from any other sign allowed pursuant to this section of the article and not less than 100 feet from a residential or agricultural zoning district. Distance measurement shall be made horizontally in all directions from the nearest edge of the sign face*

**Exempt Signs**

It is permissible to exempt certain signs from the ordinance. It is advisable, however, to make these exemptions as narrow as possible. Care must be taken not to regulate using terms that suggest content regulation (e.g. “real estate signs,” “election cycle signs”). Also, avoid giving discretion to the ordinance administrator to give case-by-case exemptions, as this has been successfully challenged as giving excessive discretionary power to the administering official.

It is also important to have strong, clear language on the size and number of exempt signs allowed. (Governmental signs can also be included in the exempt signs section. It should be made clear in the purpose and intent section that allowing the government to place its own signs is for the benefit of the public.)

Here is sample language from Barrow County:

*The following signs are exempt from all provisions of this article except those provisions addressing structural requirements:*

*(1) One sign smaller than five square feet in area may be posted on any parcel of land.*

*(2) Signs posted by authorized government officials on public land or right of way.*

*(3) Up to three signs on private property directing traffic movement, each not exceeding three square feet in area.*

(4) *Signs not visible from public thoroughfares or signs within a business, office, ma[l]l, or other enclosed area.*

**Non-Conforming Signs**

A non-conforming sign is a sign that was lawful before enactment of the ordinance, but is no longer allowed by the new ordinance. These signs must be "grandfathered in," meaning that they will be allowed to remain, even though they are not in conformance with the ordinance. This provision is necessary because, under Georgia law, when a jurisdiction acquires a non-conforming sign by "purchase, gift, or condemnation," the jurisdiction must "pay just compensation." O.C.G.A. § 32-6-83 (2002). For jurisdictions without the funds to compensate, this section allows non-conforming signs to remain. This section further mandates that the non-conformance cannot be changed or increased in any way. (Unfortunately, amortization[5] is not available as a tool in Georgia for removing a non-conforming sign.)

While non-conforming signs cannot be increased in any way, they can be regularly maintained or repaired when damaged. The Georgia Supreme Court has held that if forces beyond the owner's control damage a sign, the owner must be allowed to rebuild the sign. State v. Hartrampf 273 Ga. 522 (Ga. 2001). However, it is not clear whether the owner must be allowed to rebuild in non-conformance or if the owner can be required to repair or rebuild the sign to comply with the ordinance. The safest route a jurisdiction may choose, therefore, would be to allow all repairs and necessary rebuilding so long as the non-conformance is not increased. In the alternative, the jurisdiction could allow the owner to repair a non-conforming sign if the damage to the sign is less than 50% of the replacement value of the sign. If the damage equals or exceeds 50% of the sign's replacement value, the jurisdiction could choose to require rebuilding of the sign in conformance with the ordinance. This option is untested. Both sample provisions are provided here.

The following sample was developed using ordinances from Suwanee, Georgia, Oconee County, Georgia, and Roswell, Georgia:

*Non-conforming Signs*

*A. The [county/city] finds that non-conforming signs may adversely affect the public health, safety and welfare. Such signs may adversely affect the aesthetic characteristics of the [county/city] and may adversely affect public safety due to the visual impact of said signs on motorists and the structural characteristics of said signs.*

*B. Grandfathered Non-conforming Signs*

*1. A non-conforming sign that is permanently affixed to the ground or to a building may continue to be used, except that the non-conforming sign:*

*a. Shall not be replaced, except in conformity with the provisions of this ordinance;*

*b. Shall not be enlarged, altered or rebuilt except in conformance with this ordinance, but it may be repaired to the extent necessary to maintain it in a safe and sanitary condition; and*

[5] Amortization is a grace period before the sign must be removed. Amortization allows non-conforming sign owners to recoup their investment through a reasonable period of use. The argument for allowing amortization is that there is no takings claim because the sign owner was allowed to recoup a reasonable profit before being made to remove the non-conforming sign. However, Georgia law preempts this tool. Please refer to the Guidance Document for further discussion of amortization.

*c. Shall not be replaced, expanded or modified by another non-conforming sign, except that the substitution or interchange of poster panels, painted boards or dismountable material on non-conforming signs shall be permitted.*

**Option 1:**

*C. Damage to Non-conforming Signs*

1. *Any non-conforming sign shall not be rebuilt, altered or repaired after damage exceeding 50% of its replacement cost at the time of destruction. Such sign shall be deemed to be "destroyed." The owner of such sign must apply for a new sign permit in accordance with the permitting procedures in order to rebuild a conforming sign. Application for a new sign permit must be made within 30 days of damage to the sign.*
2. *Any non-conforming sign may be rebuilt or repaired after damage not exceeding 50% of its replacement cost, provided that the non-conformity is not increased in any way.*

**Option 2:**

*C. Any non-conforming sign that is damaged due to circumstances beyond the owner's control shall be allowed to be rebuilt, provided that the non-conformity is not increased in any way. The owner of a damaged sign must apply for a new sign permit in accordance with the permitting procedures in order to rebuild a conforming sign. Application for a new sign permit must be made within 30 days of damage to the sign.*

*D. Whenever the [Administrator] finds that any non-conforming sign is not maintained in good repair and has not deteriorated more than 50% of its replacement value, the [Administrator] shall notify the owner thereof and order the billboard repaired within 14 days.*

*E. If the [Administrator] finds that the sign has deteriorated more than 50% of its replacement cost, or is not repaired within the time specified in the repair notice, the [Administrator] shall notify the owner of the billboard and the owner of the real property within a specified time. Failure to comply shall require the authorization of the [Executive] to use the police authority of this provision to declare the sign a nuisance and to require removal of any sign or advertisement in violation of this provision.*

*F. Temporary signs to be removed: Any non-conforming sign that is temporary in nature and not permanently affixed to the ground or to a building, such as a streamer or pennant, shall be removed within 60 days of becoming a non-conforming sign.*

*G. Treatment of illegal signs:*

1. *A sign that was not lawfully existing under the [county's/city's] regulations prior to adoption of this ordinance shall, within 60 days of adoption of this ordinance, either (a) be removed or (b) be brought into conformance with all provisions of this ordinance. Failure to remove such illegal sign or bring it into conformance shall authorize the [county/city] to remove the sign at the expense of the owner or occupant of the property.*
2. *Any unsafe, abandoned or damaged sign is declared a public nuisance, which*

*shall be abated by the owner within forty-five (45) days of receiving notice from the [county/city]. Any sign that is being rebuilt due to destruction is declared a public nuisance if the sign is not rebuilt within forty-five (45) days of receiving a sign permit. Failure to remove such illegal sign shall authorize the [county/city] to remove the sign at the expense of the owner or occupant of the property.*

*H. Any [county/city] that acquires any sign, conforming or non-conforming, under this article shall pay just compensation as required under O.C.G.A. § 32-6-83 (2002).*

**Maintenance of Conforming Signs**

It is a good idea to include a general provision on the upkeep of conforming signs. This will ensure that any allowed signs will not become eyesores.

This sample language is from Athens-Clarke County:

*Sign maintenance. Any signs not meeting the following provisions shall be repaired or removed in accordance with the specifications of this article:*

*(1) The area on private property around the sign on which it is erected shall be properly maintained clear of brush, trees, and other obstacles so as to make signs readily visible.*

*(2) All burned-out bulbs or damaged panels must be replaced.*

*(3) All sign copy shall be maintained securely to the face and all missing copy must be replaced.*

*(4) All signs shall be designed, constructed, installed and maintained so that public safety and traffic safety are not compromised.*

*Owner responsibility. It shall be the responsibility of the sign owner to maintain and insure conformance to the provisions of this article.*

**Permitting and Appeals**

There should be a permitting process section in a general sign ordinance. It is strongly suggested that the section include the list of subsections below. All the legislative language is taken from the Georgia Department of Community Affairs Model Code, except as indicated. Although the following sections refer to a scenic overlay, they are also suitable for a general sign ordinance.

Usually, the jurisdiction's planning department or a comparable agency will review and issue local permits. The jurisdiction needs to determine which agency will be in charge of the sign permit process. The sign ordinance must give this agency the proper authority to review permit applications and also establish some expressly detailed objective review criteria for the applications to meet before they are approved. With these criteria in place, government officials will not be viewed to have unbridled discretion in the permit process but rather to operate under objective criteria.

**Permit Procedure**

This section is a general statement made at the beginning of the permitting procedure section clearly and expressly stating the permit requirement for all billboards. Existing signs that conform to the ordinance must be registered with the city, so that the city may keep track of the location and placement of existing signs. For example,

*All billboards, except as otherwise provided in the exemptions section or allowed through variances, shall require a billboard permit before being constructed, reconstructed, erected, moved, altered, modified, placed, or repaired. Billboard permits shall be issued by the [Administrator].* (City of Suwanee Sign Ordinance; GMA Legal Report: A Guide to Regulating Signs, hereinafter GMA Guide)

*No sign permit of any kind shall be issued for an existing or proposed sign, unless such sign is consistent with the requirements of this Ordinance, including those protecting existing signs, in every respect.*

*The following procedures shall govern the application for, and issuance of, all sign permits under this Ordinance.*

**Permits to Remain Current and in Force**

This section establishes the requirement to have a sign permit for property with signs.

*The owner of a lot containing signs requiring a permit under this Ordinance shall, at all times, maintain in force a sign permit for such property. Sign permits shall be issued for individual lots.*

**Initial Sign Permit**

This establishes the authority for the local government to issue permits.

*This jurisdiction shall issue an initial sign permit covering the completed sign installation, construction, or modification.*

**Permit Submission**

It could be useful to state permit submission requirements so that there is an express submission requirement for permit applicants to meet.

*(1) Sign permit applications must be delivered to the [Agency].*

*(2) All permit applications must be stamped by the [Administrator] or his designated representative indicating the submission date. (*Henry County Outdoor Advertising Ordinance)

**Assignment of Sign Permits**

Often, sign permits are assigned to a subsequent person or entity. This section allows a jurisdiction to keep a record of the assignment so it can continue to monitor the sign and ensure it remains in compliance with the permit.

*A current and valid sign permit shall be freely assigned or transferred to a successor as owner of the property or holder of a business license for the same premises, subject only to filing such application as the jurisdiction may require and paying any applicable fee. The assignment shall be accomplished by filing and shall not require approval.*

**Permits to Construct or Modify Signs**

The process to construct and build a billboard sign location should be separated from the process to permit a billboard. This permit should be issued by the agency that is generally responsible for issuing all building permits.

*It shall be unlawful for any person to post, display, substantially change, or erect a sign in the jurisdiction without first having obtained a building permit, if required by the Standard Building Code as adopted by the jurisdiction, for said sign. The applicant for a building permit shall submit the application materials as specified by the Building Inspector, including a sketch or print drawn to scale showing pertinent information, such as wind pressure requirements and display materials, in accordance with the Standard Building Code. Such permits shall be issued only in accordance to the Standard Building Code requirements and procedures.*

**Application**

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

*All applications for sign permits of any kind and for approval shall be submitted to the [Administrator] on an application form or in accordance with the application specifications established by the [Administrator].*

Alternative:

*All applications for sign permits must be complete and contain all required information. If either the [Administrator] or the [director of the building department] shall determine that the application does not contain all required information as set forth in this section, or if such information is not sufficient to determine whether the permit should be issued or denied, or if such information is inaccurate or untrue, the application shall be denied by the [Administrator].* (Henry County)

**Fees**

A fee may be assessed for the processing of an application and the enforcement of the sign ordinance. These fees should be reasonable and related to the cost of processing the applications and enforcing the ordinance.

*Each application for a sign permit or for approval shall be accompanied by the applicable fees, which shall be established by the [Administrator].*

Alternative:

*Each application for a sign permit must be accompanied by payment of the application fee. The fee for sign permit applications shall be $50.* (Henry County)

*The cost of a permit shall be $40.00 per sign.* (GMA Guide)

**Completeness**

By providing a definite time frame after submitting a completed permit application, the jurisdiction provides the applicant with a known and specific time period to issue a permit decision and eliminates the possibility of indefinitely delaying a decision.

*Within five working days of receiving an application for a billboard permit, the [Administrator] shall review it for completeness. If the [Administrator] finds that it is complete, the application shall then be processed. If the [Administrator] finds that it is incomplete, he or she shall, within such five day period, send to the applicant a notice of the specific ways in which the application is deficient, with appropriate references to the applicable sections of this Ordinance.*

**Time for Consideration**

There must be a definite time frame specified for the city to render a decision on an application. Because the city must act promptly, applications on which the city does not act should be deemed approved. This can help avoid legal challenges based on "unreasonable discretion" of the permitting authority, and due process challenges due to a lack of a definite time period during which permitting decisions must be made. (See the "Additional Guidance" section for more on these issues.)

*The jurisdiction shall process all sign permit applications within thirty business days of the City's actual receipt of a completed sign application and a sign permit fee. The [Administrator] shall give notice to the applicant of the decision of the jurisdiction by hand delivery or by mailing a notice, by Certified Mail, Return Receipt Requested, to the address on the permit application on or before the thirtieth business day after the [county/city's] receipt of the completed application. If mailed, notice shall be deemed to have been given upon the date of the mailing in conformity with this section. If the jurisdiction fails to act within the thirty-day period, the permit shall have been deemed to have been granted.* (GMA Guide)

**Permit Issuance/Denial Action**

The Administrator should be directed to deny any applications that are not completed properly and to notify the applicant.

*In the event the [Administrator] determines or learns at any time that the applicant has not properly completed the application for the proposed sign, he shall promptly notify the applicant of such fact and automatically deny the application.* (Henry County)

*Provided that the sign application is complete and approved, all fees have been paid, and the proposed sign and the lot upon which the sign is to be placed are within all the requirements of the Ordinance and all other ordinances and laws of the jurisdiction, the Administrator shall then issue the permit.* (Henry County)

*In the event the [Administrator] determines that all requirements for approval have not been met, he shall promptly notify the applicant of such fact and shall automatically deny the permit.* (Henry County)

**Denial and Revocation**

To avoid possible "as applied" challenges to the sign ordinance, it is wise for the jurisdiction to provide an applicant with a written denial, indicating the reasons for the denial. "As applied" means that the party challenging the denial will claim that the Administrator issued the denial in an arbitrary and/or unreasonable manner.

The jurisdiction should be clear in explaining denials. Denials should be sent in a timely fashion and through a reliable means. It is important that any re-submission be considered as a new application so that the city will have adequate time to consider the application. Should an application be denied, the applicant should be entitled to a hearing before a city official where the applicant and the city official making the denial determination may present evidence regarding their relative positions. There should be an appeal to the city council from the decision of the hearing officer to ensure compliance with constitutional due process.

*All permits for which application is made shall either be issued or denied within thirty days of the application completion date. If the application is denied because it does not contain the required information or the information is inaccurate or false, a new application must be submitted with all of the required information and such application shall be assigned a new submission date. Upon the expiration of the thirty-day period without a decision being made on the application, the applicant shall be permitted to erect and maintain the sign under this statutory provision unless and until such time as the [Administrator] notifies the applicant of the denial of the application and states the reason(s) for the denial. No person erecting a sign under this provision shall acquire any vested rights to continued maintenance of such signs, and if the [Administrator] later denies the application, the sign must be brought into compliance with this article.* (Henry County)

*Upon making his final decision, the Administrator must stamp each application and, if applicable, the permit with a decision date.* (Henry County)

**Appeal**

If there is an appeal, it is wise for the appeal to go before an already established body familiar with the appeals process, such as the Board of Zoning Appeals. The applicant should be required to file a notice of appeal with the director of the agency within a specified time of the written notice of the permit denial. The notice should state the reasons for the appeal. The appeals body should be required to take action on the appeal within a specified period of the notice (e.g. 60 days). Should the appeals body vote to uphold the denial, the body should issue a written confirmation of its decision, indicating the reasons, to the applicant.

For this section, it is important to tie this permit procedure to the jurisdiction's existing zoning ordinance procedures and appeals procedures as well as the Zoning Procedures Law.

In case of an appeal, the applicant could first appeal to the County Commission/City Council and, if denied at that level, would have the option to petition for a writ of certiorari to the superior court as provided by law and file the writ within a specified time (usually 30 days).

*An individual whose permit application has been denied or a permittee whose permit has been revoked may appeal the decision of the [Administrator] to the [County Commission/City Council] provided that they file written notice of an appeal with the City Clerk within [fifteen] business days of the hearing officer's decision. Such appeal shall be considered by the [County*

*Commission/City Council] at the next [County Commission/City Council] meeting held after the [county/city's] receipt of the written notice of appeal, provided that notice of appeal is received by the [County Commission/City Council] a minimum of [five] full business days before the meeting.* (GMA Guide)

*In the event an individual whose permit has been denied or revoked is dissatisfied with the decision of the [County Commission/City Council], they may petition for writ of certiorari to the superior court as provided by law.* (GMA Guide)

Alternative:

*The denial of a permit under this section may be appealed to the Board of Zoning Appeals under the procedure set forth below:*

*(1) The [Administrator] shall notify the applicant of the denial of a sign permit application within ten business days (i.e. days that the Administrator's office is open to the public for regular business) of the decision date. Notice shall be made in writing and sent to the applicant's address listed on the sign permit application. Upon the expiration of the ten-day period without the [Administrator] notifying the applicant of the denial of a sign permit application, the applicant shall be permitted to erect and maintain the sign under this provision unless and until such time as the [Administrator] notifies the applicant of a denial of the application and states the reason(s) for the denial. No person erecting such a sign under this provision shall acquire any vested rights to continued maintenance of such signs, and if the [Administrator] later denies the application, the sign must be brought into compliance with this article.*

*(2) Any appeal of the [Administrator's] decision relating to the sign permit application must be made within [fifteen] business days of receipt of notice of the denial. In the event that no appeal is made with the [fifteen] day period, the decision of the [Administrator] shall become final.*

*(3) The Board of Zoning Appeals shall hold the hearing on any such appeal no more than thirty business days after receipt of the appeal. Upon expiration of the thirty-day period without a hearing being held on the appeal, the applicant shall be permitted to erect and maintain the sign under this provision unless and until such time as the Board of Zoning Appeals holds the hearing. No person erecting a sign under this provision shall acquire any vested rights to continued maintenance of any such sign, and if the Board of Zoning Appeals later denies the appeal, the sign must be brought into compliance with this provision; and*

*(4) Upon appeal there is a presumption of correctness of the Board of Zoning Appeals decision, which must be overcome by the appealing applicant.* (Fulton County)

*(5) The Board of Zoning Appeals shall make its final determination on the appeal not more than thirty business days after the hearing. Upon expiration of the thirty-day period without a decision being made on the appeal, the applicant shall be permitted to erect and maintain a sign under this provision unless and until such time as the Board of Zoning Appeals notifies the applicant of a denial of the appeal and states the reason(s) for the denial. No person erecting a sign under this provision shall acquire any vested rights to continued maintenance of any such sign, and if the Board of Zoning Appeals later denies the appeal, the sign must be brought into compliance with this provision.* (Henry County)

**Notice and Hearing**

The Georgia Zoning Procedures Law (ZPL; O.C.G.A. § 36-66-1 *et. seq..*) establishes a notice and hearing process for jurisdiction actions resulting in a zoning decision. This may also include actions to change the comprehensive plan and add the overlay zoning, but not a temporary moratorium. City of Roswell v. Outdoor Systems, Inc., 549 S.E.2d 90 (Ga. 2001). The act requires public notice of all actions taken through the zoning process. Under the ZPL, jurisdictions are to adopt policies and procedures, which govern the calling and conducting of public hearings, required by O.C.G.A. § 36-66-4.

**Inspection on Completion**

This section provides the authority the agency requires to inspect after approving a permit to make sure the sign complies with the permit.

*The [Administrator] shall inspect each lot for which a permit for a new sign or for modification of an existing sign is issued on or before six months from the date of issuance of such permit. If the construction is not substantially complete within six months from the date of issuance, the permit shall lapse and become void. If the construction is complete and in full compliance with this Ordinance, other ordinances, and with the building and electrical codes, the jurisdiction shall affix to the premises a permanent symbol identifying the sign and the applicable permit, by number or other reference.*

*If the construction is substantially complete, but not in full compliance with this Ordinance, other ordinances, and applicable codes, the [Administrator] shall give the applicant notice of the deficiencies and shall allow an additional thirty days from the date of inspection for the deficiencies to be corrected. If the deficiencies are not corrected by such date, the permit shall lapse and become void. If the construction is completed, the [Administrator] shall affix to the premises the permanent symbol as described above.*

**Permit Expiration**

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

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

**Variances**

Variance sections are very tricky. On the one hand, it is important to have a variance section in the ordinance to protect the due process rights of applicants. In some cases, billboard companies have used the lack of a variance section to argue that they need not apply for the permits and go through the administrative appeals process before suing to overturn the ordinance. They argue that it would be “futile” to make the application because there is no variance provision. On the other hand, if a variance is granted, future applicants will argue that their variance must also be granted or their due process rights are being violated. While there is

no way to avoid contention over this issue, it is best to include a variance section to ensure the ordinance can be enforced in a reasonable fashion.

The following provision is based on the usual variance test in Georgia zoning ordinances, but it is particularly tailored to billboard applications. The specific language is drawn from Roswell, Georgia's sign ordinance, and from the Department of Community Affairs' Model Code (http://www.dca.state.ga.us/planning/ModelCode/3-7Signs.doc).

There should be an express set of criteria to be met before granting a variance, creating a record of the decision, and specifying the reasons when a variance is denied or granted for the applicant. Just as with permits, there should be a definite time frame for jurisdictions to decide variance applications, after which the permit will have been deemed to be granted. (See "Time for Consideration" under the "Permitting and Appeals" section of this document.)

*A variance may be granted upon application if an individual case of unnecessary hardship is placed upon the applicant, when such variance will not be contrary to the public interest or the purposes of this ordinance. The request for a variance must meet all of the following conditions:*

*(a) There exist extraordinary and exceptional conditions pertaining to the property in question resulting from its size, shape, or topography that are not applicable to other lands or structures in the area.*
*(b) A literal interpretation of the provisions of this Resolution [Ordinance] would deprive the applicant of rights commonly enjoyed by other similar properties.*
*(c) Granting the variance requested would not confer upon the property of the applicant any significant privileges that are denied to other similar properties.*
*(d) The requested variance will be in harmony with the purpose and intent of these regulations and will not be injurious to the neighborhood or to the general welfare.*
*(e) The special circumstances are not the result of actions of the applicant.*
*(f) The variance is not a request to permit a type of sign which otherwise is prohibited by this Resolution [Ordinance].*
*(g) The mere existence of a non-conforming sign or advertising device shall not constitute a valid reason to grant a variance.*
*(f) The variance requested is the minimum variance, which will make possible the logical use of the land and sign.*

## Violation and Penalties

While some ordinances in Georgia do not contain a penalty section, it is a good incentive to keep billboard operators from violating the law. There are certain provisions that should be included in a violation and penalties section. First, a provision on how notice is given to a violator who is in violation of the ordinance and how long he has to correct the problem should be included to ensure that the requirements of due process are met. Second, the type of penalty that shall be imposed should be included. This can be in the form of a criminal offense, usually a misdemeanor, but can also include imprisonment for a certain amount of time. Fines are also a common form of penalty. Usually, every day of the violation constitutes a separate offense. Monetary fines can be in the form of one set amount per day or can increase daily according to a penalty schedule. When imposing fines, be sure that the imposition of fines is permissible under the city or county charter. Another alternative form of penalty is revocation of the sign permit upon a violation of the ordinance. This may also include provisions for revoking the permit if the permit application was incomplete or contained a false statement, or if the permit was issued erroneously.

Below is sample ordinance language as three examples:

***Example 1:***

*(a) Notice: Any person who shall violate any provision of this ordinance shall receive notice by hand delivery, fax, or mail indicating that they must correct the violation within five calendar days of the hand delivered or faxed notice or within seven calendar days of the mailed notice.*

*(b) Penalties: If the violation is not eliminated within the required five or seven calendar days as provided for above, any person violating this ordinance shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by fines in the amount of $150 per offense. Each day in which the violation shall occur shall constitute a separate offense. Such persons shall also be liable for court costs and reasonable attorney fees incurred by the local jurisdiction. (Scenic Wisconsin Model Ordinance, Scenic America Model Ordinance)*

***Example 2:***

*(a) Notice: Any person who shall violate any provision of this ordinance shall receive notice by hand delivery, fax, or mail indicating that they must correct the violation within 5 calendar days of the hand delivered or faxed notice or within 7 calendar days of the mailed notice.*

*(b) Penalties: Violation of any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, be punished by fines according to the schedule shown below. Each day in which the violation shall occur shall constitute a separate offense with the total penalty being the summation of all the individual penalties incurred.*

*(c) Penalty Schedule:*

*First offense: $50*
*Second offense: $100*
*Third offense: $150*
*Fourth offense: $200*
*Fifth offense: $250*
*Sixth offense: $300*
*Seventh offense: $350*
*Eighth offense: $400*
*Ninth offense: $450*
*Tenth offense: $500*

*(City of Burlington Sign Ordinance)*

***Example 3:***

*Violation of any provision of this ordinance will be grounds for terminating a permit granted by the city for the erection of a sign. Should it be determined that a sign permit was issued pursuant to an incomplete application or an application*

*containing a false material statement, or that the permit has been erroneously issued in violation of this ordinance, the clerk shall revoke the permit. (Georgia Municipal Association, A Guide to Regulating Signs)*

**Violations**

Sample Language:

*The [Administrator], upon finding that any provision of this Ordinance or any condition of a permit issued under this Ordinance is being violated, is authorized to institute legal proceedings to enjoin violations of this Ordinance*.

**Severability and Conflict**

Many ordinances also have specific language addressing what happens if part of the ordinance is struck down or comes in conflict with other ordinances or laws. In general, it is a wise idea for an ordinance to be severable. This means that if one part of the ordinance is struck down, the rest of it remains in effect. Conflict provisions generally state that, if the ordinance comes into conflict with any other law, the more restrictive provisions take precedence unless the other law is a state or federal law, which supersedes the local law.

Always place a severability clause in the ordinance. Courts are not required to uphold these clauses. However, the clause is taken into account if it will avoid the jurisdiction being temporarily left without a sign ordinance. Billboard companies often try to get the entire ordinance struck down, because it results in a window of time in which the companies are free to construct billboards without limits. It is wise to relate the severability section to the purpose and intent section at the beginning of the ordinance.

For this sample section, the introduction paragraph is taken from the Scenic America website. The first section is largely adopted from the Suwanee ordinance. The conflict section is from Scenic America.

*Severability and Conflict*

A. *This Ordinance and its parts are declared to be severable. If any section, subsection, clause, sentence, word, provision, or portion of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, this decision shall not affect the validity of the Ordinance as a whole. All parts of the Ordinance not declared invalid or unconstitutional shall remain in full force and effect as if such portion so declared or adjudged unconstitutional or invalid were not originally part of this Section, even if the surviving parts of the Ordinance result in greater restrictions after any unconstitutional or invalid provisions are stricken. The (City Council/County Commission) declares that it would have enacted the remaining parts of the Section if it had known that such portion thereof would be declared or adjudged unconstitutional or invalid. The (City Council/County Commission) declares its intent that should this ordinance be declared in part or in whole unconstitutional or invalid, signs are to be subject to regulations applicable to "structures" contained in the Zoning Ordinance.*

B. *If any part of this Ordinance is found to be in conflict with any other Ordinance or with any other part of this Ordinance, the most restrictive or highest standard shall prevail. If any part of this Ordinance is explicitly prohibited by federal or state statute, that part shall not be enforced.*

## Additional Guidance

### The Importance of Community Support

Billboard regulation is a contentious issue in many communities. Billboard companies have a huge economic stake in their signs and will often vigorously oppose regulation. In addition, small business owners often feel dependent on billboard advertising to draw customers. Therefore, it is important to have the support of the community for billboard regulations. Following are some suggestions in that regard. While these suggestions are written specifically to help generate support for a rural corridor overlay, many could also be used in any sign regulation effort.

Holding a series of public hearings and meetings throughout the community with proper public notice could be a good opportunity to build support and a community stake in the sign ordinance process, as well as establish a public record for the sign ordinance process in case there are any future legal challenges. This could also help meet the notice and hearing requirements of the Zoning Procedure Law.

Many citizens wish to be more engaged in the aesthetic and land use policies of their jurisdiction. A sign ordinance is an important component of the jurisdiction's land use regulations and is likely to be a concern for citizens, especially if the jurisdiction makes their citizens aware of the number of signs or billboards that exist throughout the community by conducting an inventory of existing signs and billboards.6 Once citizens are aware of the numbers of sign and billboards that exist and the possibility of their proliferation along scenic rural corridors, they may be more supportive of efforts to limit signs or at least their size and placement.

### The Comprehensive Plan

After holding public hearings and meetings, and establishing a community stake in the sign ordinance process, the jurisdiction may wish to amend its comprehensive plan to show its interest in limiting signs and billboards. It could also be helpful to establish a statement of reasons or findings of fact, including an economic impact assessment, for the change in the comprehensive plan. Establishing the jurisdiction's land use priorities in a comprehensive or master plan will help it establish a rational basis for the scenic overlay and/or sign ordinance and the subsequent permit process. By doing this, the jurisdiction can later establish that its scenic overlay and/or sign ordinance is integrated with its other planning goals and regulations.

### Temporary Moratorium

Once a jurisdiction has decided to adopt the scenic overlay or other sign ordinance, it should consider passing a temporary moratorium on erection of new billboards. This step will prevent billboard operators from flooding a permitting agency with applications in anticipation of stronger restrictions. The period for the moratorium should reflect the best-estimated time it will take to complete the process of writing a new ordinance. (Scenic America, Model Billboard Ordinance Provisions.)

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[6] It is suggested that there be no pictures taken, as this could be taken as evidence that the jurisdiction wishes to suppress free speech.

The moratorium is an interim measure designed to maintain the status quo for a limited period of time while the jurisdiction works in good faith to pass a new regulation or ordinance. Billboard companies have challenged moratoria on the basis that they are a prohibition on land use designed to skirt the procedural requirements a jurisdiction must meet pursuant to the Zoning Procedures Law and jurisdiction's own procedural requirements. However, the Supreme Court of Georgia has held that a temporary moratorium on applications for billboards was not final legislative action and therefore was not deemed a zoning decision that was subject to the ZPL's notice and hearing requirements. City of Roswell v. Outdoor Systems, Inc., 548 S.E.2d 90 (Ga. 2001).

## Outdoor Advertising Sign Legislation and Guidance at the Federal and State Level

Outdoor advertising signs are regulated at the federal, state, and local level. These laws are designed to control outdoor sign proliferation by protecting the scenic characteristics of communities along highways. However, these laws are not always successful in prohibiting the erection of signs. Examining both the state and federal statute allows communities to understand the structure of the current laws governing outdoor advertising signs.

Federal Control – The Highway Beautification Act

- The Federal Highway Beautification Act (HBA), 23 U.S.C.A § 131 et seq., was established to control outdoor advertising in areas adjacent to federal-aid interstate highways, primary U.S. highways, and the National Highway System Highway in order to "protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty." The Act provides for the effective control of "the erection and maintenance along the interstate system and primary system of outdoor advertising signs, displays and devices which are within 660 feet of the nearest edge of the right of way and visible from the main traveled way of the system" and the control of those signs, displays or devices "if located beyond 660 feet of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way."

- Under the HBA, each state is required to exercise "effective control" of outdoor advertising signs along federal-aid highways, or face a penalty in the form of a 10 percent loss of the state's federal highway funds.

- The HBA allows for five types of signs on federal-aid highways: directional and official signs, on-premise real estate signs, on-premise business signs, landmark signs, and free coffee signs.

- The HBA has failed to protect the scenic beauty of the nation's highway system because of significant loopholes in the law. First, while states are allowed to remove non-conforming signs, they must pay "just compensation" for the costs of removal. Under the statute, the federal government must pay 75 percent of the costs of just compensation. However, sign removal is not required if federal funds are not available. This compensation requirement applies to any sign removed by federal, state, or local laws. Due to limits on funding, thousands of nonconforming billboards still stand today. Second, the HBA allows for the construction of billboards in commercial or industrial areas. Billboards have proliferated in these areas, some of which are zoned for the particular purpose of allowing billboards. Finally, although the HBA created a 660 foot protected

corridor and visibility protection in rural areas, new structures have been developed that can be placed outside the protected area and still seen from the road in urban areas, resulting in oversized signs along federal highways.

State Control – The Georgia Outdoor Advertising Control Act

- The Outdoor Advertising Control Act (OACA) was passed under the authority of the Highway Beautification Act. It seeks to regulate the erection and maintenance of outdoor advertising in areas adjacent to the rights of way of primary and state highways. Signs not conforming to the requirements of the act are considered a public nuisance. The Act follows the public policy established in the Federal Highway Beautification Act.

- The OACA regulates signs both within and beyond 660 feet of the nearest edge of the highway. Signs within 660 feet are only allowed for providing directional and official information, advertising sale of property on which the sign sits, signs about an activity within 100 feet of that activity, signs in commercial and industrial areas with information in the specific interest of the traveling public, or signs providing directional information about goods and services in the specific interest of the traveling public. Signs beyond 660 feet of the right of way which are outside of an urban area, and visible to travelers, are allowed if the sign is directional or official, advertises the property on which it sits, advertises an activity within 100 feet, or is a directional sign about goods and services in the specific interest of the traveling public.

    - The "specific interest of the traveling public" is defined in O.C.G.A. § 32-6-71(23) as "information regarding places offering lodging, food, motor vehicle fuels and lubricants, motor vehicle service and repair facilities, or any other service or product available to the general public, including, but not limited to, publicly or privately owned natural phenomena; historic, cultural, scientific, educational, or religious sites; and areas of natural scenic beauty or areas naturally suited for outdoor recreation." These guidelines provide some direction as to what types of signs are allowed on interstates. However, even with provided definitions, the requirements are somewhat vague.

- The Act also provides for obtaining state permits and renewals, how to deal with nonconforming signs, and revocation of permits.

- The Department of Transportation or a municipal corporation or county is authorized to acquire by purchase, gift, or condemnation and to pay just compensation for any property rights in outdoor advertising signs, displays, and devices which were lawfully erected in compliance with the applicable law in effect at the time of erection, but which no longer conform to the statute or no longer conform due to changed conditions beyond the control of the sign owner. The department is limited to $5 million for the state's portion of just compensation and the department may only pay up to 25% of any just compensation award, with the federal government providing the other 75% (see above section on HBA). In either case, compensation is to be paid only for the taking from the owner of all property rights in a sign, the taking of the right to erect and maintain the sign from the owner of the property on which the sign is located, or the actual financial loss suffered under a written lease for the erection and maintenance of a sign because of refusal by the department to issue a permit for the sign. However, if federal funds are not available, then sign removal is not required. Since the Georgia Act encompasses federal action, compensation is not always readily available, thus creating a loophole in the law allowing

construction of new signs and the continued existence of non-conforming signs along highways.

- The Act also creates a Roadside Enhancement and Beautification Council to regulate tree trimming and removal for the viewing of outdoor signs.

- Any person who erects or maintains a sign without a permit or who maintains an illegal sign is guilty of a misdemeanor.

- Local governments can pass any ordinance that is reasonable under its police power, which is derived from the state to protect the public. The ordinances must be at least as strict as the Federal Highway Beautification Act and the Outdoor Advertising Control Act.

- The Georgia Supreme Court found that O.C.G.A. § 32-6-75(b) violated the First Amendment, declaring that portion of the Act unconstitutional and thus invalid. That section restricted off-premises outdoor advertising of commercial establishments where nudity was exhibited. State v. Café Erotica, Inc., 507 S.E.2d 732 (1998).

- Please refer to the Appendix for a complete summary, including citations, of the Georgia Outdoor Advertising Control Act.

## Litigation by the Outdoor Advertising Industry

### Pitfalls to Avoid in Legislative Drafting

Many billboard companies attempt to have sign ordinances struck down through litigation. A favorite strategy in Georgia is to look for local ordinances that are slightly out of step with current case law and apply for permits. When the sign permits are denied, the company attacks the entire sign ordinance on freedom of speech grounds. Because some county and city attorneys are unfamiliar with this sort of litigation, either the billboard company wins and the entire ordinance is struck down, or the company offers to settle for half the permits for which they originally applied. Small billboard companies then sell those permits to larger billboard companies for significant sums of money.

Litigation by the billboard industry will focus either on various constitutional claims or on weaknesses of certain provisions of the ordinance. Provisions that are most commonly attacked include the purpose and intent sections, permit application process, the appeals process, and the severability clause. Refer back to the discussion of those various provisions in the Model Provisions and Guidance document for further guidance on those issues.

### Common Claims against Sign Ordinances[7]

[7] For a comprehensive and helpful look at the many legal issues surrounding billboard regulation, please consult Chapter 6, "Legal Issues in the Regulation of On-Premise Signs," from Marya Morris et. al, Context-Sensitive Signage Design, American Planning Association Advisory Service, www.planning.org/signs/Login.asp. (Provide contact information to log in.)

Below is a list of the most common claims made against sign ordinances, with a brief description of the claim, and drafting suggestions to help avoid such claims.

- Free Speech claims

  Billboard regulation opponents often invoke the First Amendment free speech clause against sign ordinances. To avoid this type of litigation, a jurisdiction should try not to regulate billboards based on the content of the sign. This will almost always be struck down as unconstitutional. If the ordinance speaks to specific information on a sign, it regulates content. Limit discussion to construction materials, allowable sizes in each zoning area, prohibited "extras" (smoke, flashing lights banners, etc), and permissible size of signs. Attempt to eliminate phrases describing signs as "election-cycle," "weekend," "real estate," "holiday," etc. because these suggest content restrictions.

Generally, it is wise not to distinguish between commercial and non-commercial signs. Both types of speech are covered by the First Amendment. However, commercial speech is less protected. Those seeking to limit commercial signs should carefully examine the following cases. The U.S. Supreme Court decided that commercial speech was protected by the First Amendment in Virginia Pharmacy Bd. v. Virginia Consumer Council, 425 U.S. 748 (1976). However, the 1980 case of Central Hudson Gas v. Public Service Commission, 447 U.S. 557, created a four part test to determine if a regulation of commercial speech violates the First Amendment. First, the court determines if the speech is protected at all, in that it is not misleading or concerning an unlawful activity. Second, the defendant must prove that the regulation supports a substantial government interest. Third, the court decides if the regulation directly advances the purported government interest. Lastly, the court determines if the regulation is reasonably tailored (i.e., not overbroad) to achieve that government objective.

The Supreme Court specifically addressed the issue of billboard regulation in Metromedia, Inc. v. San Diego, 453 U.S. 490 (1981). This case has been difficult to interpret since it is a plurality opinion.[8] However, the implications of the case are that in an outright ban of billboards, the government must leave ample alternative media channels for communication of the information. This case also addressed the issue of distinguishing between on-premises and off-premises signs. The rule is that commercial speech can be restricted more than non-commercial speech; likewise, off-premises signs can be regulated more than on-premises signs. Making those distinctions can be tricky. Those seeking to do so should do so only with great caution. Risk- and litigation-adverse jurisdictions should avoid making the distinctions entirely, if possible. Many billboard experts suggest restricting by size rather than by content. Even though the U.S. Supreme Court has made the distinction between commercial and non-commercial speech relative to permissible regulation, some courts have problems with any category that even addresses the message on signs. The bottom line on content is to be sure categories are content neutral. Do not favor or disfavor signs based on a particular message. Whether or not the intent is to restrict speech based on content, a court may see any regulation based on what signs say as evidence of such an intent.

Another First Amendment issue to consider is overbreadth. Billboard regulation opponents frequently argue that ordinances are overbroad – that the statute has a valid government purpose, but the actual provisions are more restrictive than necessary to accomplish that

[8] A plurality decision is one where a majority of the nine Justices may agree on the *outcome* of a case, but there is no majority who are all in favor of the same *rationale* for their conclusion.

purpose. Statutes subject to an overbreadth attack are said to be written so broadly they inhibit constitutionally protected speech. Because the right of free speech is so important, under the overbreadth doctrine, parties are allowed to sue even if they have not suffered any specific injury. Lawyers representing billboard companies often use this doctrine to make a "facial" challenge to the ordinance, attempting to get the ordinance (or sections thereof) struck down completely without ever having to apply for the permit. This circumvents the usual requirement that a plaintiff must apply for a permit and exhaust all administrative appeals and remedies before turning to the courts for relief.

The overbreadth doctrine is frequently used in conjunction with other arguments discussed in this document, including excessive discretion of administrators of the ordinance, impermissible restriction of speech based on content distinctions, and equal protection violations. Billboard companies also use this doctrine with the argument that to require any permit for a sign is an unconstitutional "prior restraint" on speech.[9] See Granite Outdoor Advertising Inc., v. City of Clearwater, FL, 2002 U.S. Dist. LEXIS 13791 for an example and in-depth analysis of an overbreadth challenge to a sign ordinance.

- Takings Claims

Takings claims are a very common basis for challenging a sign ordinance. Takings law is very technical, complicated and largely misunderstood. It is an unsettled area of law. This section is intended to provide a basic understanding of takings law as it applies to sign ordinances.

Takings law begins with the Fifth Amendment to the U.S. Constitution, which states in part, "…nor shall private property be taken for public use, without just compensation." Most people are familiar with takings law in context of the eminent domain. In eminent domain, a municipality physically "takes" land for public purposes (i.e., roads and other public works projects) and pays the landowner the value of the land. However, takings claims also extend to regulations that "go too far" and result in a destruction in the value of the property such that the land has effectively been "taken" from the owner. Pennsylvania Coal Co. v. Mahon, 272 U.S. 365 (1922).

Takings claims also arise under state law. Georgia's constitution contains a provision that parallels the U.S. Constitution. Ga. Con. Art. 1, Sec. 3, Par. 1. Takings challenges to ordinances are frequently brought under both the federal and state constitutions.

Under federal takings law, a seminal case applying to regulations is Penn Central v. New York City, 438 U.S. 104 (1978). The first rule under Penn Central is that government can enact regulations in the public interest. This is similar to the presumptive validity of zoning ordinances in the Georgia test. The second rule is that to determine whether an ordinance violates the Fifth Amendment, several factors must be analyzed. The factors are (1) the economic impact of the regulation on the claimant, (2) the degree to which the regulation interferes with "distinct investment-backed expectations," and (3) the character of the governmental action. Id. In some ways, this Penn Central test is similar to the balancing test under state law.

[9] Freedman v, Maryland, 380 U.S. 51 (1965) contains the standards for when a permitting scheme may be considered overly broad. Freedman requires time limits on the appeals process so there is no effective censorship. Additionally, the permitting process must offer expeditious judicial review and, once in court, the "censor" bears the burden of showing the "suppression" of speech is necessary.

Under state law in Georgia, in order to assert a takings claim, a plaintiff must first overcome the general legal presumption of the validity of an ordinance. In order to do this, the plaintiff must prove (1) "Significant detriment" caused by the challenged regulation, and (2) "Insubstantial relationship" between the challenged regulation and the public interest that the regulation purports to protect. Gradous v. Richmond County, 256 Ga. 469 (1986). If both parts of this test are met, the Court will then balance the economic detriment to the property owner against the public interest advanced by the regulation. Id. This "detriment" does not have to destroy all the property's value to meet the state test and result in a taking. Unfortunately, there is no set percentage of diminution in value that results in a taking. Therefore, each case turns on its own specific facts.

One way communities in other states have tried to get around takings claims against their sign ordinances is through the incorporation of amortization provisions. Amortization is a grace period before a sign ordinance affects existing signs. Amortization allows nonconforming sign owners to recoup their investment through a reasonable period of use (usually 7-10 years). Thus, there is no takings claim because the sign owner was allowed to recoup a reasonable profit from her investment. Some states have even gone so far as to say that amortization provisions constitute "just compensation" under takings law. Therefore, even if a "taking" occurs, the sign owner is justly compensated.

Unfortunately, amortization is not considered a viable tool in Georgia. Lamar Advertising of South Georgia v. City of Albany, 389 S.E.2d 216 (Ga. 1990) is widely understood to eliminate amortization as compensation for forced removal of nonconforming signs. Also, O.C.G.A. § 32-6-83 states that if a municipality causes a nonconforming sign to be taken down the municipality must "pay just compensation."

A final note on takings in the permitting context: Jurisdictions should be sure to set a time limit for permit application review and an application appeal process. If there is no set time limit on application review, it can be argued that governments can eliminate billboards by "sitting" on applications. This can be seen as a taking, and therefore the applicants will be entitled to just compensation for the loss suffered during the application review period.

- Due Process Claims

Other avenues for attack on a sign ordinance are substantive and/or procedural due process claims. For a substantive due process claim, a claimant will assert the ordinance is too vague or overbroad. Union City Bd. of Zoning Appeals v. Justice Outdoor Displays, Inc., 467 S.E.2d 875 (Ga. 1996). The ordinance must be consistent with substantive due process by setting appropriate, reasonable and clear standards in balancing public and private interests. It must also set explicit standards to provide fair warning for determining what is prohibited in the permit process. O.C.G.A. § 36-66-2; Simmons v. Department of Transp., 484 S.E.2d 332 (Ga. App. 1997); Union City Bd. of Zoning Appeals. If the ordinance's administrator is given too much discretion in the permitting decision, a court is likely to determine there has been a substantive due process violation if the decision is arbitrary and capricious. A jurisdiction can overcome this issue by having the administrator adhere to specific, non-arbitrary, and reasonable criteria and guidelines.

To avoid procedural due process claims, the ordinance should be considered after posting proper notice, and holding hearings and meetings, which afford the public a role

in the process and comply with the Georgia Zoning Procedures Law (ZPL) as well as the jurisdiction's own zoning procedure. City of Roswell v. Outdoor Systems, Inc., 548 S.E.2d 90 (Ga. 2001), held that one of purposes of the ZPL's notice and hearing requirements is to afford due process to the public when local governments regulate the use of property through the exercise of their zoning power. O.C.G.A. §§ 36-66-2(a), 36-66-4. Another portion of City of Roswell held that a temporary sign permit moratorium did not violate the notice and hearing requirements of the ZPL. By following the ZPL and being consistent with its own zoning ordinance, a jurisdiction is likely to meet procedural due process requirements.

- Equal Protection Claims

  Ordinances that regulate billboards separately or more stringently than other signs necessarily create a classification and can at times treat that class differently from other types of signs (e.g. size restrictions). The equal protection clause of the Fourteenth Amendment is sometimes invoked by sign owners who claim the billboard ordinance is unconstitutional insofar as it creates a discriminatory classification. The Georgia Supreme Court in Union City Bd. of Zoning Appeals v. Justice Outdoor Displays, 467 S.E.2d 875 (1996), stated that so long as the regulation bears a rational relation to a legitimate governmental interest, the ordinance will be upheld. This is another instance where a well articulated purpose and intent section is necessary. There do not appear to be any Georgia cases that have found a sign ordinance to be in violation of the Equal Protection clause. Another illustration is in Corey Outdoor Advertising, Inc. v. Board of Zoning Adjustments, 324 S.E.2d 178 (1985).

- Claims of Unauthorized Power by the Local Government in Regulating Billboards

  In addition to the problems related to free speech, billboard companies often make a general challenge to the jurisdiction's power to regulate billboards. These claims can include both an unauthorized delegation of legislative power to the individual municipalities by the state legislature and an unauthorized exercise of legislative power by the municipalities themselves (i.e., exceeding the scope of the power granted to them by the state legislature).

  As to the first issue of unauthorized delegation or absence of statutory power, there is no real controversy over the legislature's authority to delegate the power to regulate billboards. Courts consistently hold that it is within the general inalienable police power of a local government to regulate the size and placement of billboards and other freestanding signs. City of Doraville v. Turner Communications Corp., 223 S.E.2d 798 (1976). Furthermore, many city charters will give an express grant of power to the city to regulate businesses or signs.

  Concerning unauthorized exercise of municipal power, local law varies among jurisdictions, based on the powers given to them in their individual charters. Therefore, it will be very important to check which grants of power the charter contains.

  Additionally, a claim can be made that the jurisdiction is exercising an otherwise reasonably delegated power in an unreasonable way or to an unreasonable extent. Although most municipalities and counties have a general or specifically-granted right to regulate billboards, many suits are brought that claim a specific regulation is an

unreasonable exercise of that police power. In these cases, courts usually find in favor of the local government. The various cited reasons for upholding the ordinance as a valid exercise of police power includes the jurisdiction's legitimate concerns for traffic safety, aesthetics, obstruction of light and air, etc. (See the "Purpose and Intent" sub-section of the "Model Provisions and Guidance" section for more on public purpose rationales.) Thus it seems, so long as a city government can tie the ordinance into one of these concerns, the ordinance is likely to be upheld as a valid exercise of a state's police power. City of Smyrna v. Parks, 242 S.E.2d 73 (1978).

**Scenic Byways Program/Scenic Easements**

The Georgia Byways Program was created in 1992 by the Georgia Department of Transportation. The program encourages local citizens, businesses, environmental organizations, and government agencies to work together to protect special scenic, historic, natural, cultural, recreational, and archaeological resources. "The purpose of the Georgia Scenic Byways Program is to display the historic character and natural beauty of Georgia, and to allow communities to take an active role in protecting their resources, while at the same time creating new economic development opportunities along the designated routes." www.byways.org.

The difficulties with using the Georgia Scenic Byways Program as a tool for rural corridor protection include the complicated nature of the process and the lack of billboard protection. The Federal Highway Administration (FHWA) mandates in its description of the National Scenic Byways Program that "as provided at 23 U.S.C. § 131(s), if a State has a state scenic byway program, the State may not allow the erection of new signs not in conformance with 23 U.S.C. § 131(c) along any highway on the Interstate System or Federal-aid primary system which before, on, or after December 18, 1991, has been designated as a scenic byway under the State's scenic byway program." Federal Register/ Vol. 60, No. 96 / Thursday, May 18, 1995 / Notices. This should limit signs within viewing distance of the Interstate to directional and official signs and notices and on-premise signs. However, the reality is that frequent gaps or fragmentations of a scenic byway are allowed, particularly in commercial or industrial areas. This loophole allows properties zoned commercial or industrial to remain outside of the designation and therefore not be subject to the ban on billboards. Beyond this major flaw, there is also the reality that the designation process is lengthy. It requires that a local sponsor complete a multi-stage process that includes submitting an application, developing a Corridor Management Plan, and obtaining approval by the Georgia Department of Transportation.

Another important reality of the Georgia Byways Program is that the billboard control only applies to Interstates, the National Highway System, and former federal-aid primary roads. All other road types can establish billboard control through local, county, or state laws. Generally, the zoning that affects outdoor advertising is controlled by local units of government. Many of the areas counties seek to protect will require an ordinance even if they achieve a Scenic Byway designation.

One positive thing to come out of a Scenic Byway designation is the access to grants governed by the Federal Highway Administrator. The grants provide funds for corridor management planning, purchasing conservation and scenic easements, and billboard removal. A scenic easement is "the acquisition by purchase, dedication, or other means of the right to an unhindered view at a particular location or over a certain area of land." Rural Environmental Planning for Sustainable Communities, 98. However, the grants are discretionary and are awarded in a highly competitive application process. While the likelihood of a county receiving these funds is not strong, it would be one way to fund the purchasing of scenic easements along the corridor.

For counties and cities interested in purchasing scenic easements as a tool for preserving the rural character of their corridor, an explanation of the process and possible funding sources can be found on the National Transportation Enhancements Clearinghouse website, http://www.enhancements.org/factsheets/fs3.pdf.

## Contacts and Web Resources

- **Scenic Georgia** – An organization assisting communities with billboard control. Board Member Kent Igleheart, kigleheart@ci.roswell.ga.us
- **Scenic America** - www.scenic.org
- **Outdoor Advertising Association of America, Inc**. The trade association for billboard companies - www.oaaa.org
- **"Context-Sensitive Signage Design,"** American Planning Association Planning Advisory Service – www.planning.org/signs/Login.asp. (Provide name and company information to log in.) An excellent resource on all aspects of sign regulation, including community involvement, the history of sign regulation, the economic value of signs, and legal issues.
- **"Palmetto Conservation Foundation Citizens Guide to Billboard Control"** - www.palmettoconservation.org/citguide_billboards.pdf An excellent guide for encouraging community involvement in billboard regulation.
- **www.signlaw.com** – a source for sign regulation of all types of jurisdictions across the U.S.
- **www.municode.com** – a source for municipal codes from cities and counties across the U.S.
- **An example sign study** - http://jerryweitzassociates.com/Signordinancejustification.doc
- National Transportation Enhancements Clearinghouse website, http://www.enhancements.org/factsheets/fs3.pdf.
- **Georgia Scenic Byways Program** - Jordan B. Hoffman, State Scenic Byways and Public Lands Highways Coordinator, Georgia Department of Transportation, Office of Planning – Special Projects Division, Number 2 Capitol Square, Atlanta, Georgia 30334, email: Jordan.hoffman@dot.state.ga.us phone: 404-651-7603

## Disclaimer of Legal Advice

While this document is intended to assist jurisdictions in controlling billboards along rural corridors, it not intended to provide a complete discussion of all aspects of billboard regulation. The law changes rapidly, and timely legal advice is essential in drafting ordinances. This publication is provided for general information only and is not a substitute for legal advice. Consult with an attorney familiar with this area of law before taking action based on any information in this document.

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## Appendix

**Summary of the Outdoor Advertising Control Act, O.C.G.A. § 32-6-70, *et. seq.***

Restrictions on Signs

The Outdoor Advertising Control Act regulates signs both within and beyond 660 feet of the nearest edge of the highway. Signs within 660 feet are only allowed for providing directional and official information, advertising sale of property on which the sign sits, signs about an activity within 100 feet of the activity, signs in commercially and industrially zoned areas with information in the specific interest of the traveling public, or signs providing directional information about goods and services in the specific interest of the traveling public. O.C.G.A. § 32-6-72. Signs beyond 660 feet of the right of way that are outside of an urban area and visible to travelers are allowed if the sign is directional or official, advertises the property on which it sits, advertises an activity within 100 feet, or is a directional sign about goods and services in the specific interest of the traveling public. § 32-6-73. The "specific interest of the traveling public" is defined in O.C.G.A. § 32-6-71(23) as "information regarding places offering lodging, food, motor vehicle fuels and lubricants, motor vehicle service and repair facilities, or any other service or product available to the general public, including, but not limited to, publicly or privately owned natural phenomena; historic, cultural, scientific, educational, or religious sites; and areas of natural scenic beauty or areas naturally suited for outdoor recreation." These guidelines provide some direction as to what types of signs are allowed on interstates however, even with the provided definitions, the requirements are somewhat vague.

Within the above listed limits, there are other restrictions on the size, shape, and design of signs. O.C.G.A. § 32-6-75 requires that signs be structurally safe, permanently attached to the ground, contain nothing obscene,[10] contain no movement or flashing lights, and if illuminated, lit so as not to impair travelers. O.C.G.A. § 32-6-75(a)(1)-(10), (21). The sign area may be no larger than 1,200 square feet or more than 30 feet high or 60 feet long, except in areas with a population greater than 500,000, in which case the sign may not exceed 3,000 square feet. O.C.G.A. § 32-6-75(a)(11). Only two faces on a sign can be visible from one direction. O.C.G.A. § 32-6-75(a)(12). In an area not zoned commercial or industrial, a sign cannot be within 300 feet of a residence without consent of the owner. O.C.G.A. § 32-6-75(a)(13). A sign cannot be seen from within 500 feet of a public park, forest, scenic area or cemetery. O.C.G.A. § 32-6-75(a)(14). A sign may not obscure traffic, traffic signs, or an intersection and may not be within 500 feet of an interchange or another sign. O.C.G.A. § 32-6-75 (a)(15)-(18). Signs may be closer together within

[10] Obscene is defined in O.C.G.A. § 16-12-80(b): Material is obscene if: (1) To the average person, applying contemporary community standards, taken as a whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex, or excretion; (2) The material taken as a whole lacks serious literary, artistic, political, or scientific value; and (3) The material depicts or describes, in a patently offensive way, sexual conduct specifically defined in subparagraphs (A) through (E) of this paragraph: (A) Acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated; (B) Acts of masturbation; (C) Acts involving excretory functions or lewd exhibition of the genitals; (D) Acts of bestiality or the fondling of sex organs of animals; or (D) Sexual acts of flagellation, torture, or other violence indicating a sadomasochistic sexual relationship.

a municipality. O.C.G.A. § 32-6-75(a)(19)-(20). There are also restrictions for multiple message signs. A multiple message sign is a sign, display, or device that changes the message or copy on the sign electronically by movement or rotation of panels or slats. O.C.G.A. § 32-6-71(11.1). Such restrictions on these signs include requirements that the sign must stay fixed for at least ten seconds on a side, a message must make a change in three seconds or less, and all multiple message signs must have a default design that will freeze if a malfunction occurs. O.C.G.A. § 32-6-75(c).

In addition to the O.C.G.A. § 32-6-75 restrictions, "directional and other official signs and notices" are further restricted. These signs include "official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs." O.C.G.A. § 32-6-7(2). These signs may not be located in a rest area, parkland, or scenic area, nor may their dimensions be more than 150 square feet or 20 feet on a side. O.C.G.A. § 32-6-76(1)-(2). They cannot be within 2,000 feet of an interchange or within one mile of another directional sign. O.C.G.A. § 32-6-76(5)-(6). In addition, they may not be more than 75 air miles of an activity if on an interstate, or 50 miles of an advertised activity if on the primary system. O.C.G.A. § 32-6-76(8)-(9). These signs may only state information on how to find the activity, and may be erected only for activities or attractions that involve natural phenomena, scenic attractions, historic, educational, cultural, scientific, and religious sites that are nationally or regionally known. O.C.G.A. § 32-6-76(11).

Permits

The Act also provides for obtaining permits and renewals, how to deal with nonconforming signs, and revocation of permits. Applications for permits are made to the Department of Transportation of the State of Georgia (hereinafter "department") and permits are issued if the sign is erected and maintained in accordance with the statute for the following 12-month period. O.C.G.A. § 32-6-74(a). The fee for initial issuance of a permit is $50 and a renewal is $25. Id. These fees go toward defraying the expense of administering outdoor signs. The permit is issued within 30 days of application unless the sign is illegal. Id. A renewal permit has to be applied for between 90 and 60 days before the permit expires. Id. 30 days after the expiration date, the department must send notice thereof to the applicant's last known address and if the renewal application is not received within 30 days, the sign becomes an illegal sign. Id. Permits are transferable and an application must be made for transfer within 30 days of the change in ownership. O.C.G.A. § 32-6-74(b). The statute provides for compensation of interests and losses if a sign or real property is taken, or a lessee or lessor suffers actual financial losses. O.C.G.A. § 32-6-84.

To provide for non-conforming signs, the Act contains a provision prohibiting the erection of non-conforming signs after July 1, 1977. O.C.G.A. § 32-6-79(d). After March 24, 1980, all persons with non-conforming signs have one year to file an application for non-conforming sign permits with a $50 application fee. O.C.G.A. § 32-6-79(e)(2). The department has a period of two years to process the applications and issue permits. Id. If denied a permit, an applicant may seek relief in accordance with O.C.G.A. § 50-13-13 through 50-13-18. Id. If an applicant fails to apply for a non-conforming sign permit, the sign is presumed abandoned, becomes an illegal sign, and is subject to removal. O.C.G.A. § 32-6-79(e)(3). If a person has an illegal sign, the department may refuse the issuance of additional permits to that person. O.C.G.A. § 32-6-79(f). A permit for a nonconforming sign, once issued, may be renewed in the same procedure as a permit for a conforming sign. O.C.G.A. § 32-6-80(a). Nonconforming sign permits are also transferable in the same manner as permits for conforming signs. O.C.G.A. § 32-6-80(b).

A municipality or person may request the board to designate a specific area as a defined area[11], if that person shows the area contains directional signs, displays, or devices that were lawfully erected but are now non-conforming. O.C.G.A. § 32-6-88. The signs must provide directional information about goods and services in the specific interest of the traveling public and the request must show that removal of the signs would work a substantial economic hardship in the defined area. Id. The Georgia Department of Transportation is then authorized to request the approval of the United States Secretary of Transportation for creating the defined area and retaining the signs. O.C.G.A. § 32-6-89.

Compensation and Acquisition

The department or a municipal corporation or county is authorized to acquire by purchase, gift, or condemnation with just compensation for any property rights in outdoor advertising signs, displays, and devices which were lawfully erected in compliance with the applicable law in effect at the time of erection, but which no longer conform to the statute or no longer conform due to changed conditions beyond the control of the sign owner. O.C.G.A. § 32-6-82 – 83. The department is limited to $5 million for the state's portion of just compensation and the department may only pay up to 25 percent of any just compensation award. Id. In either case, compensation is to be paid only for: the taking from the owner of all right, title, leasehold, and interest in a sign; the taking from the owner of the real property on which the sign is located of the right to erect and maintain the sign; or the actual financial loss suffered by the lessee or lessor under a written lease for the erection and maintenance of a sign because of refusal by the department to issue a permit for the sign. O.C.G.A. § 32-6-84(1) – (4). As to compensation of a lessee or a lessor, the amount of compensation may not exceed the pro rata part of the entire rental paid and to be paid under the lease for the unlapsed portion remaining on July 1, 1973. Id. To obtain any of these rights, the commissioner may exercise the power of eminent domain for the acquisition of real property needed for the construction of highways. O.C.G.A. § 32-6-85. However, no sign may be acquired by condemnation or purchase until the state has the portion of the federal matching funds apportioned to that acquisition, and no sign may be acquired by condemnation except after three months' written notice has been given to the owner of the sign stating the intention to acquire the sign. O.C.G.A. § 32-6-86.

Roadside Enhancement and Beautification Council

O.C.G.A. § 32-6-75.1 creates a Roadside Enhancement and Beautification Council that regulates tree trimming and removal for the viewing of outdoor signs. The statute states the positions throughout the state whose occupants are to be members of the Council. O.C.G.A. § 32-6-75.1(a)(1). It also details the responsibilities of the Council, including making recommendations on policies for trimming and removing vegetation on state rights of way in front of outdoor signs, encouraging the contribution of funds to support the roadside enhancement and beautification, and submitting reports to the deputy commissioner of the Georgia Department of

[11] A "defined area" is any area or areas within the state defined by the board, upon request made by the State Department of Transportation and approved by the United States Secretary of Transportation, to be an area where the removal of directional signs, displays, the devises which were lawfully erected under state law in force at the time of their erection, which were in existence on May 5, 1976, and which do not conform to the requirements of O.C.G.A. § 32-6-72(1) – (5) and O.C.G.A. § 32-6-73(1) – (3) would deprive the traveling public of directional information about good and services in the specific interest of the traveling public and would work a substantial economic hardship in the area. O.C.G.A. § 32-6-71(1).

Transportation[12] based on their findings. O.C.G.A. § 32-6-75.1(b). Section 32-6-75.2 creates a Roadside Enhancement and Beautification Fund, some of which is appropriated from the sale of wildflower vehicle license plates, to support the Council. The Act states that the "General Assembly finds and declares that outdoor advertising provides a substantial service and benefit to Georgia" and the traveling public. O.C.G.A. § 32-6-75.3(a)(2). It also declares that it is important to be able to see the signs, but the beauty of the state and health of the environment are also important. The Assembly created a permitting system and fee for the removal of vegetation and denotes which trees may be removed and the area that may be trimmed to promote those purposes. To discourage vegetation permits for creating new signs, no owner of a new sign may apply for a vegetation permit for five years after the sign is erected. O.C.G.A. § 32-4-75.3(b)(2).

Penalties

If the erection of a sign causes damage to any of the department's property on the rights of way, including trees, vegetation, or fences, the department may revoke that persons sign permit or refuse to issue a permit for that site for five years. O.C.G.A. § 32-6-81. Any person who erects or maintains a sign without a permit is guilty of a misdemeanor. O.C.G.A. § 32-6-91. Any person who maintains an illegal sign is guilty of a misdemeanor. O.C.G.A. § 32-6-92. A sign erected or maintained without a valid permit or one that is illegal is declared to be a public nuisance and the department may bring an equitable proceeding to enjoin a person from maintaining it. O.C.G.A. § 32-6-93 – 32-6-94. The Act also provides the procedure by which illegal signs are to be removed, after notifying the landowner and a final decision in cases where an administrative order was issued. O.C.G.A. § 32-6-96. The department disassembles and removes the sign, sending a statement of expenses incurred to the party against whom the order requiring the removal is directed. O.C.G.A. § 32-6-96(c). If the expenses are not paid within 30 days, the department may institute a civil action for recovery, use other collection procedures, or refuse to issue a permit to that party for any signs. Id.

[12] The deputy commissioner of the Georgia Department of Transportation is also a member of the Roadside Enhancement and Beautification Council.