CITY OF MANISTEE PLANNING COMMISSION WORKSESSION

NOTES OF MAY 26, 2005

The City of Manistee Planning Commission met in a worksession on Thursday, May 26, 2005 at 7:00 p.m. in the Middle School Library, 550 Maple Street, Manistee, Michigan.

Members Present: Maureen Barry, Sara Bizon, Greg Ferguson, Ray Fortier, Christa Johnson-Ross, Tony Slawinski, and Roger Yoder

Members Absent: Tamara Buswinka and Mark Wittlief

Others Present: Tom Amor Jr. And Tom Amor Sr. (Amor Sign Studios), Maria Flynn (Northern Spirits), Lee Trucks (DDA), Alan Marshall (City Council), Kendra Thompson (Kendra Thompson Architects), Jeff Skinner and Kieu Ngo (57 Greenbush St), Melissa Rennie (Manistee News Advocate), Jon Rose (Community Development Director) and Denise Blakeslee (Administrative Assistant)

Worksession began at 6:00 pm.

ZONING ORDINANCE RE-WRITE

Jay Kilpatrick, Williams and Works and the members of the Planning Commission continued work on the Zoning Ordinance Re-Write. Mr. Kilpatrick said that hopes are to hold a Public Meeting in July for input on the Ordinance, then a Public Hearing would be scheduled and then the Ordinance would go to City Council.

ARTICLE 21 SIGNS:

Amor Sign Studios:

Read correspondence from Legal Resource Group LLC (attached)

Other items of concern included:

- Lighting for Signs in the Historic District
- Height and Setbacks for signs in the Commercial District
- Multiple Signage in the Commercial District
- Electronic Message Board
- Did not like the new tables - preferred the tables in the current ordinance

Signs in the Historic District:

Maria Flynn, Northern Spirt spoke as a business owner in the Downtown Commercial District. She spoke of the amount of stores that are now using Neon Signs. She spoke with Dave Carlson who said that there were 19 signs in the Historic District at this time. Ms. Flynn said that neon is not historic and has no business in the Historic District - they do not go together. Mr. Rose spoke of how we currently do not regulate signage that is not adhered to the window.

Members had received a copy of a Memo from Steve Harold regarding Signage in the Downtown Historic District. Mr. Rose read the memo (attached).

Discussion included:

- If the DDA can give us any assistance with signage in the Downtown/Historic District?
- Should there be architectural standards for signage in the Downtown/Historic District?
- Should a standard be established for neon?

Billboards:

Mr. Kilpatrick spoke of the Cap and Replace Ordinance that is used for Billboards in Garfield Township (Attached). Consensus was the Planning Commission would like to see Billboards limited to the Poster Board size billboards and use a Cap and Replace standard in the Ordinance.

Proposed Tables for Signage in the Ordinance:

Members were asked if they liked the format of the new tables in the ordinance -vs- the tables in the existing ordinance. Consensus was that the new tables were fine. Members also thought the reduction in allowed signage was appropriate.

Misc.

Amor Sign Studio requested a meeting with Mr. Kilpatrick prior to the Open House and the presentation of a draft to the community.

DIMENSIONAL STANDARDS

Kendra Thompson, Thompson Architects spoke to the Commissioners about dimension requirements for a project in the C-4 Zoning District. This project contains residential on the street level portion of the building.

Discussion on Dimensional Standards included:

- If residential is allowed on the street level of the Central Business District, establish a minimum amount of commercial space that must be maintained on the street level.

- Change the R-2 Minimum Lot Dimension standards to the same as the R-3 Minimum Lot Dimension standards but leave the Maximum Lot Coverage % the same. This would eliminate creating as many non-conformities in the R-2 District.

- Discussed removing Building Area Standard which encourages ranch houses and provide a minimum living area standard which would allow more two story homes to be constructed (960 sq. ft.).

- Allowing a set-back encroachment to extend without requiring a variance if it does not increase the degree of encroachment.

ARTICLE 12 - WATERFRONT DISTRICT

Last sentence in Section 1200 Purpose and Intent should read:

> *"The W-F District is intended to host a variety of land uses including, but not limited to, residential, commercial, entertainment and recreational service and industrial uses."*

Other discussion included:

- Remove Waterfront Overlay District from list on page 7-1
- Add Shipping Facilities as a Special Use

ARTICLE 16 - LIGHT INDUSTRIAL

Discussion about past Council Policy and cost of Lots.

Add the following as Special Uses in the Light Industrial District:

- Convenience Store, w/o fuel pumps
- Day Care, Commercial
- Dwelling - Multiple unit
- Eating and Drinking Establishment
- Home Based Business
- Home Occupation, Major
- Hotels and Motels
- Mixed-Use Development
- Places of Public Assembly, Large

ARTICLE 17 - GENERAL INDUSTRIAL

Alan Marshall wanted to make sure that the Ordinance provided for a Power Plant. Mr. Kilpatrick was directed to Prepare Special Use Standards and Requirements for a Power Plant and add as a Special Use to the General Industrial District.

MISC:

Noise Decibel:

Maureen Barry brought a Noise Decibel meter to the meeting. Members were shown what different levels of conversation were in decibels. This resulted in the Planning Commission changing the Noise Decibel standards in the proposed ordinance from 40 to 60.

Open House:

A meeting will be scheduled for July for the Public to get the first look at the Draft Ordinance. The date for this Open House for the Public will be scheduled at the June Planning Commission Meeting. Mr. Kilpatrick is available either on July 21st or July 28th.

ADJOURN

The Worksession adjourned at approximately 9:15 p.m.

Respectfully Submitted

Denise J. Blakeslee

Denise J. Blakeslee, Recording Secretary

Legal Resource Group LLC

May 5, 2005

VIA FACSIMILE

Tom Amor (JR)
Amor Sign Studios, Inc.
443 Water Street
Manistee, MI 49660

Re: **Review of City of Manistee, Michigan's April 13, 2005 Proposed Draft of Sign Ordinances**

Dear Mr. Amor:

Per your request, we have reviewed the Draft Sign Code dated 4/13/05, as it applies to on-premise signs, for the City of Manistee, Michigan. Our review is limited to the Draft Sign Code's compliance with general Federal First Amendment principles. There may be state constitutional issues present as well, and you should consult a local Michigan attorney for that analysis.

Whenever a governmental entity, be it a city, state or the Federal Government, regulates speech, those regulations must comply with the First Amendment. *See*, *Gitlow v. People of New York*, 268 U.S. 652 (1923); *United States v. O'Brien*, 391 U.S. 367 (1968). Regulations of on-premise signs are regulations of speech. *See, City of Ladue v. Gilleo*, 512 U.S. 43 (1994); *City of Painesville Building Dept. v. Dworkin & Bernstein Co.*, 733 N.E.2d 1152 (Ohio, 2000); *Arlington County Republican Comm. v. Arlington County*, 983 F.2d 587, 593 (4th Cir 1993) (stating "Communication by signs and posters is virtually pure speech."). The Draft Sign Code proposes to regulate on-premise signs, and therefor needs to be carefully drafted so as to avoid unnecessarily infringing upon speech.

I. Content and Viewpoint Based Regulations

For regulations of speech, the first inquiry is whether the regulations are content or viewpoint based. *City of Ladue v. Gilleo*, 512 U.S. 43, 59 (1994) (O'Connor, J., concurring). A regulation is viewpoint based if it treats speech differently depending upon the identity of the speaker, or the position the speaker takes in a discussion. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 391 (1992). "As a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content-based." *Turner Broadcasting v. Federal Communications Comm.*, 512 U.S. 622, 643 (1994). In *Deida*, the following example was given. "a general ban on speech in the vicinity of a school is content-neutral... whereas an analogous ban on speech containing an exemption for speech relating to labor disputes is content-based. The former regulation requires no consideration of content before applying the ban ..." *Deida v. City of Milwaukee*, 2001 U.S. Dist. LEXIS 21958.

*14 (ED Wisc. 2001) (citing *Schultz v. City of Cumberland*, 228 F.3d 831, 840-41 (7th Cir. 2000); *Grayned v. City of Rockford*, 408 U.S. 104, 119-20 (1972)) (emphasis in original). The 9th Circuit explained this rule very similarly by saying regulations of "signs are content-based [if] a law enforcement officer must read a sign's message to determine if the sign is [regulated]." *Foti v. City of Menlo Park*, 146 F.3d 629, 636 (9th Cir. 1998).

The Draft Sign Code contains numerous provisions which are content or viewpoint based. Including:

- § 2101 (A)(7) (providing exceptions to the sign code for "historically significant signage or community events")
- § 2102 (E)(3) (allowing non-conforming signs to continue, but not if the message is "changed or altered")
- §§ 2103 (C)-(E) (exempting signs from regulation that do not contain commercial messages)[1]
- §2103 (I) (exempting signs with messages such as "No Trespassing" or "Beware of Dog")
- §2103 (J) (exempting political election signs, but placing time limits on how long those signs may be kept up)[2]
- Table 2100-1 "Use Types and Sign Standards" (dictates number of signs allowed, and maximum sign size based upon the identity of the speaker)
- Sign Definitions § (E) "Flag" (defining "Flag" as "fabric… contain[ing] distinctive colors, patterns, or symbols representing a unit of government… or non-profit organization.")
- Sign Definitions §§ (H) "Sign, Identification" & (I) "Sign, Incidental" (defined as not containing a commercial message);[3]
- Sign Definitions § (N) "Sign, Political" (defined as temporary signs "… in connection with any national, state, or local election.")
- Sign Definitions § (R) "Sign, Temporary" (defined as being "… for one (1) specific event, such as a yard sale.")

The above identified provisions all require a public official to read the content of the sign or determine the identity of the speaker, before determining what regulations of speech apply. For instance, the definition of "Political Signs" does not include signs relating to issues of public concern not on a ballot (such as the type of sign at issue in *City of Ladue v. Gilleo*). Where the

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1 Content-Based regulations of Commercial speech have had little success in the courts. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001).

2 Time limits on temporary political signs are content-based regulations and have been consistently held to violate the First Amendment to the United States Constitution. *City of Painesville Building Dept. v. Dworkin & Bernstein Co.*, 733 N.E.2d 1152 (Ohio. 2000).

3 *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 598 (2001).

government regulates based upon content, the regulations must survive strict scrutiny. *Boos v. Barry*

The table setting out the size, number and type of sign based upon "use" and zoning is particularly troubling. Using the proposed table, a Cemetery in an R-3 zone is allowed a wall, window, ground, or marquee sign with a maximum of 32 square feet. A Research Laboratory in the same R-3 zone is limited to a wall, ground or window sign only, and a maximum of 16 square feet. This different treatment appears to be based not upon the specific conditions of an R-3 zone relating to visibility, traffic safety and other substantial concerns, but rather on the City's opinion as to how much speech particular speakers need. The City would be giving preferential treatment to some speakers over others based solely upon their identity. Such a restriction is viewpoint based, and must survive strict scrutiny. *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).

Under strict scrutiny, the City has the burden of production and persuasion to show

Sable Communs. of California v. F.C.C.

Where regulations of speech are not based upon the content of the speech, the viewpoint of the speaker, and are not solely applicable to commercial speech or other categories of lesser-protected speech, the time, place and manner test applies. In *Turner*, the Court explained: a content-neutral regulation will be sustained if it: 1) furthers an important or substantial governmental interest; 2) if the governmental interest is unrelated to the suppression of free expression; and 3) if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. *Turner*, 512 U.S. at 662.

In order to regulate speech, even in a content-neutral manner, the government must first identify real harms that the government has a substantial interest in curing. *Turner*, 512 U.S. at 664. The Draft Sign Code does not refer to any findings that signs are currently causing problems in the City of Manistee. Section 2100 does state several purposes for the Draft Sign Code. The purpose section begins with the purpose of "Encourage and protect the public health, safety, welfare and convenience." §2100 (A). Broad statements of purpose such as that are not specific enough to allow a court to determine the validity of a regulation of speech under the First Amendment. *Dills v. City of Marietta*, 674 F.2d 1377, 1381 (11th Cir 1982), *cert denied*, 461 U.S. 905 (1983).

The purpose identified in §2100 (B), to enhance the economy... by promoting the reasonable orderly, and effective display of signs..." may very well be substantial. However, the

provisions of this ordinance are very restrictive, in particular of commercial signs, as noted above. There is a substantial amount of research available on the importance of a visible on-premise sign to the economic success of businesses. *See*, THE SIGNAGE SOURCEBOOK, p. 229-335 (discussing the "Market Comparison Approach and Income Approach" to the appraisal of the value of on-premise signs) *See also*, the Small Business Administration's website, <http://www.sba.gov/starting/signage/why.htm> (visited May 5, 2005). The provisions of this Draft Sign Code may be so restrictive as to fail to directly or materially further this stated purpose, as required by the First Amendment. Worse, the provisions may actually undermine this stated purpose.

Section 2100 (C) identifies two purposes, traffic safety and aesthetics. There are numerous traffic studies available discussing size, height and setback requirements for on-premise signs based upon road conditions available for the City of Manistee to review. This research is available in THE SIGNAGE SOURCEBOOK as well as in the most recent version of the American Planning Association's STREET GRAPHICS AND THE LAW. We recommend that the City of Manistee compare its size limitations with the traffic safety research to ensure that the restrictions enacted do not worsen traffic safety in the City of Manistee.

The second purpose in §2100 (C) is aesthetics. For most types of speech, aesthetics is not an appropriate purpose to justify a restriction of speech. See *Schneider v. State*, 308 U.S. 147, 163 (1939) (stating, "...the public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution."); *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 791 (1988) (stating, "To this end, the government, even with the purest of motives, may not substitute its judgment as to how best to speak for that of speakers and listeners; free and robust debate cannot thrive if directed by the government."); *Cohen v. California*, 403 U.S. at 25 (1971) (stating, "...it is nevertheless often true that one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual."). The only exception to this area that we are aware of is with billboards. *Metromedia v. City of San Diego*, 453 U.S. 490, 501, 507-508 (1981). The Draft Sign Code as a regulation of on-premise signs must further substantial governmental interest.

The final purpose stated is to reduce the "conflict between signs and their illumination and public and private land uses." We are not aware of caselaw supporting this as a substantial purpose in regulating speech. A city looking to restrict speech for such a purpose should make factual determinations that sign illumination is causing real harms in the community that the city has a substantial interest in curing.

The next aspect of the Time, Place, and Manner test is that the regulations must directly and materially further the *substantial* purposes that justified the enactment of the sign regulations. If challenged, the City would bear the burden of proving that every restriction of speech, from size limitations to time limitations furthers a stated substantial governmental interest. *Turner Broadcasting v. Federal Communications Comm.*, 512 US at 664; *Dills*, 674

F.2d at 1382. In our review of the Draft Sign Code, there were several provisions which could prove particularly difficult for the City to justify, however there may be facts supporting these provisions which we are unaware of.

Some of those provisions are:

- § 2103 (K) "Temporary signs advertising yard sales... not to exceed eight (8) square feet and are removed within seven (7) days of installation." – What purpose is furthered by a seven day limitation? Why only eight square feet?
- § 2104 (F) (4) "Prohibited Signs" projecting signs outside of C-2 and C-3 zones - Exemptions undercut the sufficiency of the purpose for enacting the regulations. Why is this restriction necessary outside of C-2 and C-3 zones?[4]
- § 2104 (I) "Signs that include flashing or moving lights or parts and animated signs located such that they may distract drivers." – Does this prohibit *all* Electronic Message Centers? Even though the Federal Highway Department uses them on Freeways? This could be overly restrictive of speech.
- Table 2100, sets out number of signs, size area and lighting restrictions. What research was conducted to determine that these limitations were necessary to further specific purposes? What traffic safety data was consulted?
- § 2113 (B) Temporary Portable Signs that are internally lit "shall be turned off after 9:00 pm." – What facts support the necessity to turn these signs off at 9:00 pm?
- §2113 (D) Temporary Portable Signs limited to 42 days per year per parcel of land – Why so restrictive? What facts and research show that this directly and materially furthers a specific purpose? Is this the least restrictive means available to achieve that purpose?

III. Commercial Speech Regulations

Commercial speech is defined as speech, which solely proposes a commercial transaction. *Central Hudson Gas & Electric Corp v. Public Service Comm. of N.Y.*, 447 U.S. 557, 562 (1980). The definition contained in Draft Sign Definitions, § (D) is differently worded, but appears to get at the same idea. To reduce confusion, the City should consider adopting the accepted definition from the U.S. Supreme Court. Under *Central Hudson*, the test for regulating commercial speech is: 1) to be protected, the speech must concern a lawful activity and not be

4 "Exemptions from an otherwise legitimate regulation of a medium of speech may be noteworthy.... They diminish the credibility of the governments' rationale for restricting speech in the first place." *City of Ladue*, 512 U.S. at 52.

misleading; 2) the asserted governmental interest must be substantial; 3) the regulation must directly advance the asserted governmental interest; 4) and the regulation cannot be more extensive than necessary to serve that interest. *Central Hudson*, 447 U.S. at 566. "[T]he party seeking to uphold a restriction on commercial speech carries the burden of justifying it. This burden is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Edenfield v. Fane*, 507 U.S. 761, 770 (1993) (internal citations omitted). This is very similar to the Time, Place, and Manner test discussed above. Those provisions which specifically refer to regulating "commercial messages" must comply with this test.

IV. Prior Restraint

A system of prior restraints exists where the speaker must get the government's permission prior to speaking. *Southeastern Promotions Ltd. v. Conrad*, 420 U.S. 546, 553-58 (1975). The Draft Sign Code §2101 implements a prior restraint on speech, as it appears to require permits for signs.[5] There are two aspects to prior restraint protections under the First Amendment. The first is a protection from unbridled discretion of public officials. *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969); *See, Cafe Erotica of Florida, Inc. v. St. Johns County*, 360 F.3d 1274; 1284-85, 1292 (11th Cir 2004) (holding a sign code en toto unconstitutional due to unbridled discretion in the permitting process).

Unbridled discretion exists where a public official has no objective guidelines to control the application of a restriction on speech. In such cases, the public official can substitute their personal tastes and preferences over those of the public or even restrict based upon content or viewpoint of the message. Section 2101 (A)(6) allows the Administrator to turn over a sign permit application to the City Council for review and approval. There are no time limits on the City Council contained in the Draft Ordinances, thereby potentially allowing the City Council to never grant or deny an application for a sign permit. This creates an unbridled discretion problem. *Cafe Erotica*, 360 F.3d 1284-85.

The second is that procedural safeguards are in place. *Freedman v. Maryland*, 380 U.S. 51 (1965). The City must: 1) bear the burden of taking the denial to a judicial proceeding; 2) bear the burden of persuasion at the judicial proceeding; 3) limit any restraint prior to the judicial determination to a specified brief period of time; and 4) guarantee a prompt judicial determination. *Freedman*, 380 U.S. 51, 62 (1965). The plurality in *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 228 (1990) explained that, "Where the licensor has unlimited time within which to issue a license, the risk of arbitrary suppression is as great as the provision of unbridled discretion. A scheme that fails to set reasonable time limits on the decision maker creates the

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5 §2101 does not specifically state that permits are required, but the apparent intent of the procedures for obtaining a permit is that they are required for signs that are not otherwise exempt, which includes "Any sign wholly located within a building and not visible from outside the building." §2103 (B).

risk of indefinitely suppressing permissible speech." This problem is created by §§ 2101 (A)(6) and 2113 (F).

V. Vagueness

A regulation can be struck down for vagueness for one of two reasons: 1) failure to ensure fair notice to citizens; 2) failure to provide standards for law enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *United States v. Hausmann*, 345 F.3d 952, 958 (7th Cir 2003). In order to ensure fair notice, the regulation cannot allow the "enforcement of a law that contains 'terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application.'" *Gresham v. Peterson*, 225 F.3d 899, 907 (7th Cir 2000) (quoting Roberts v. United States Jaycees, 468 U.S. 609, 629 (1984)). The second goal requires that a law not "impermissibly [delegate] basic policy matters to policemen, judge, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972). In cases where the regulations impact protected speech, even greater precision is required. *Haynes v. Mayor of Oradell*, 425 U.S. 610, 620 (1976); *Village of Hoffman Estates*, 455 U.S. 489, 499 (1982) (explaining that, if an ordinance "interferes with the right of free speech..., a more stringent vagueness test should apply.").

This does not require absolute precision. As explained in *Grayned*, "Condemned to the use of words, we can never expect mathematical certainty from our language." *Grayned*, 408 U.S. at 110. The provisions of a sign ordinance can be attacked should they not contain the specifics required. The Draft Sign Code contains several provisions which may be too vague to give sufficient guidance to public officials or citizens. For instance, §2101(A)(7) allows for an exemption for "historically significant signage or community events", without defining what constitutes historically significant signage, or a "community event" – is it a publicly sponsored event or a privately sponsored, either, both? A similar problem exists in § 2113 (A) which states that the Zoning Administrator may, with regard to temporary portable signs, "require a greater distances ... to assure compatibility with the surround land uses." There is no specificity as to what is or is not compatible with the surround land uses, leaving it up to the Zoning Administrator and citizens to guess.

VI. Conclusion

The Draft Sign Code proposed for the City of Manistee, Michigan, contains numerous provisions which appear to either violate clearly established law in the area of the Federal First Amendment, or which toe the line, depending upon what research and evidence the City has to support the Draft Sign Code. This is not intended as a comprehensive analysis of the Draft Sign Code, but rather a discussion of some of the questions raised by the provisions. There may be additional violations of the First Amendment not discussed in this letter, as well as potential problems with state statutes and constitutional law.

From purely the perspective of compliance with the First Amendment, and to ensure that the Sign Code is not overly restrictive of the speech rights of businesses and citizens of

Manistee, we recommend that the Draft Sign Code be reviewed carefully for compliance with the tests discussed above. Should a sign code ultimately be adopted that does not comply with the First Amendment, citizens can bring a lawsuit under 42 USC § 1983 and § 1988 for declaratory judgment and, if successful, recover their attorney fees and costs.

If we can be of further assistance, please let us know.

Very truly yours,

Douglas M. Bragg

government regulates based upon content, the regulations must survive strict scrutiny. *Boos v. Barry*, 485 U.S. 312, 321-22 (1988).

The table setting out the size, number and type of sign based upon "use" and zoning is particularly troubling. Using the proposed table, a Cemetery in an R-3 zone is allowed a wall, window, ground, or marquee sign with a maximum of 32 square feet. A Research Laboratory in the same R-3 zone is limited to a wall, ground or window sign only, and a maximum of 16 square feet. This different treatment appears to be based not upon the specific conditions of an R-3 zone relating to visibility, traffic safety and other substantial concerns, but rather on the City's opinion as to how much speech particular speakers need. The City would be giving preferential treatment to some speakers over others based solely upon their identity. Such a restriction is viewpoint based, and must survive strict scrutiny. *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).

Under strict scrutiny, the City has the burden of production and persuasion to show that "the regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." Id. (internal quotations omitted). In addition, the regulation must use the least restrictive means to further the articulated compelling interest. *Sable Communs. of California v. F.C.C.*, 492 U.S. 115, 126 (1989).

II. Content-Neutral Regulations — Time, Place, and Manner Test

Where regulations of speech are not based upon the content of the speech, the viewpoint of the speaker, and are not solely applicable to commercial speech or other categories of lesser-protected speech, the time, place and manner test applies. In *Turner*, the Court explained: a content-neutral regulation will be sustained if it: 1) furthers an important or substantial governmental interest; 2) if the governmental interest is unrelated to the suppression of free expression; and 3) if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. *Turner*, 512 U.S. at 662.

In order to regulate speech, even in a content-neutral manner, the government must first identify real harms that the government has a substantial interest in curing. *Turner*, 512 U.S. at 664. The Draft Sign Code does not refer to any findings that signs are currently causing problems in the City of Manistee. Section 2100 does state several purposes for the Draft Sign Code. The purpose section begins with the purpose of "Encourage and protect the public health, safety, welfare and convenience." §2100 (A). Broad statements of purpose such as that are not specific enough to allow a court to determine the validity of a regulation of speech under the First Amendment. *Dills v. City of Marietta*, 674 F.2d 1377, 1381 (11th Cir 1982), *cert denied*, 461 U.S. 905 (1983).

The purpose identified in §2100 (B), to enhance the economy... by promoting the reasonable orderly, and effective display of signs..." may very well be substantial. However, the provisions of this ordinance are very restrictive, in particular of commercial signs, as noted above. There is a substantial amount of research available on the importance of a visible

25 May 2005

To: Sign Ordinance Committee
City of Manistee

After reviewing many of the signs in Historic Overlay District I would like to suggest the following items for your consideration:

1. To double the sign permit fees for all permits applied for after the fact.

2. It has been policy to allow company/corporate logos on signs. Perhaps we might limit (as a percentage) the area a logo would cover or consider some other mthod of reducing the impact of non historic logos.

3. Explore the possibility of limiting neon signs in Victorian commercial windows - perhaps a distance back from the main facade glass.

4. Take a further look at sandwich boards.

5. In thinking about the standard Victorian sign cornice located over the primary entrance to a commercial business - this could be limited as a percentage of the total facade or it might be limited based on the width of the store front.

6. At present there are no requirements or guidelines requiring professionally designed signs - we have had cases where signs have been created by business owners using off the shelf materials from hardware stores resulting in poorly designed and unsightly signs.

7. There are no limitations regarding color co-ordination other than the colors be a traditonal hue. This is a difficult area to regulate but it is also an area that receives the most critism.

Thank you for youyr consideration of these corcerns.

Steve Harold
Design Review Committee
Museum Director

GARFIELD TOWNSHIP
GD. TRAVERSE CO.

its proprietors.

(6) M-1, Industrial Districts: In the M-1 District (other than along or adjacent to Birmley, Hammond and Hartman Roads as provided elsewhere herein), the following signs shall be permitted:

(a) All signs permitted in the R-1A, R-1B, R-1C, and C-1 through C-4, and A-1 Districts and subject to the same limitations required for those Districts.

(b) Outdoor Advertising Signs (Billboards)

Purposes: The purposes of this Section are:

1. Protect the Township's distinctive community character and natural landscape;

2. Protect the Township's scenic resources, scenic roadsides, and view sheds;

3. Enhance the economic base associated with tourism and the community's overall economic well-being by protecting the natural, scenic beauty of the Township;

4. To foster and enhance the Township's dark sky policy; and

5. To satisfy the public need for commercial information disseminated by billboards.

(c) In light of the findings made by the Township (in connection with the 2002 amendment to these regulations) with respect to the extent and sufficiency in number of billboards and outdoor advertising signs within the Township, and notwithstanding anything contained in this Section to the contrary, no permit shall be issued for a billboard or outdoor advertising sign if construction of the billboard or outdoor advertising sign will result in there being more than 20 billboard or outdoor advertising sign structures or 40 billboard or outdoor advertising sign faces in the Township. Lawfully constructed nonconforming billboards or outdoor advertising signs shall be counted for purposes of this Section.

(d) Notwithstanding the provisions of this Section 6 above, no

billboards or outdoor advertising signs shall be permitted in the M-1 District on any property abutting or within two thousand six hundred forty (2,640) feet of Birmley, Hammond and Hartman Roads.

Dimensional Requirements, spacing and lighting: No billboard, advertising signboards, or advertising structures shall be more than two hundred thirty (230) square feet in area or more than thirty (30) feet in height; and PROVIDED FURTHER that distance between such billboards or signs shall not be less than one thousand four hundred (1,400) feet. Billboard lighting shall meet the requirements of Section 7.12.2(3).

Nonconforming Billboards:

Nonconforming billboard situations shall be considered in accord with Section 7.7.7 Removal of Nonconforming Billboards.

(Amend. 233A - Section 7.2.4(6) - Eff. 6-21-02)

(7) Deleted. Eff. 5/9/98