

**Sign Bylaws Review and Analysis
Table of Contents**

Section	Page
<i>Project Purpose and Scope</i>	1
<i>Study Process</i>	1
○ Review and analysis of South Hadley Zoning Bylaw	1
○ Review and analysis of General Bylaw with sign provisions	5
○ Review of and analysis of relevant Municipal Law Decisions issued by the Massachusetts Office of Attorney General	6
○ Review and Analysis of sign regulations from other communities	7
○ Discussion with Municipal staff from select other Massachusetts communities	8
 <i>Summary of Sign Issues</i>	 8
 <i>Analysis of Sign Issues</i>	 9
1. Sign Illumination Approval Process	9
2. Sign Illumination Standards	11
3. Uses exempt under Chapter 40A, Section 3	13
4. Temporary signs – regulation of content	13
5. Banner signs are prohibited	15
6. Signs in rights of ways for both State-owned roads and roads owned by the Town of South Hadley	15
7. Regulation of sign content in conflict with Reed vs Town of Gilbert	16
8. Treatment of Nonconforming signs	17
9. Signs for businesses in residential districts	18
 <i>Summary of Findings</i>	 20
 <i>Recommendations</i>	 21
 Appendices	
○ Draft Amendments to § 255-10 “Terms Defined”	
○ Draft Amendments to § 255-22 “Home occupations”	
○ Draft Amendments to § 255-34 “Professional business uses”	
○ Draft Amendments to §255-39 “Bed-and-breakfast facilities”	
○ Draft Rewrite of § 255-85 “Signs”	
○ Draft Amendment to General Bylaws	

Sign Bylaws Review and Analysis Report

Study Purpose and Scope

To provide the Town of South Hadley with a new Sign Bylaw provision in the Zoning Bylaw which addresses the content neutrally of signs under the Reed vs Town of Gilbert case and other local issues.

The focus of this project is the sign provisions in the Zoning Bylaw. Principally, the focus is on revisions to § 255-85. However, other Zoning Bylaw and General Bylaw provisions are also examined as they relate to signs.

Study Process

The assessment phase of this project entailed the following tasks:

- Review and analysis of South Hadley's Zoning Bylaw
- Review and analysis of other pertinent South Hadley Bylaws
- Review of and analysis of relevant Municipal Law Decisions issued by the Massachusetts Office of Attorney General
- Review and Analysis of sign regulations from nine other Massachusetts communities
- Discussion with Municipal staff from the other Massachusetts communities

Review and analysis of South Hadley's Zoning Bylaws. In reviewing the South Hadley Zoning Bylaw in its entirety, § 255-85 is the primary focus but there are other portions of Article 7 & 8 which are relevant.

- § 255-85 Signs
§ 255-85 of the South Hadley Zoning Bylaw is the core of the regulation of signs. This section of the Zoning Bylaw provides regulations for signs on parcels of land. As such, it does not regulate signs within the public rights of ways of roadways. The provisions of § 255-85 largely differentiate signs between the types of zoning districts in which the signs are located:

§ 255-85A - Signs in Business and Industrial Districts

§ 255-85B - Signs in Residence and Agricultural Districts

But it also provides regulations for specific types of signs – which can often reflect on the content of the signs:

§ 255-85C - Political signs

§ 255-85D - Traffic control.

§ 255-85E - Directional signs.

§ 255-85F - Temporary signs.

§ 255-85G - Illumination of signs.

Sign Bylaws Review and Analysis Report

- Other Sign Provisions in the Zoning Bylaw

While the focus of the project is § 255-85, South Hadley's Zoning Bylaw has other sign provisions which address specific uses:

§ 255-22 Home occupations. Home Occupations are differentiated between Home Occupation I and Home Occupation II. The applicable sign regulations are similarly differentiated:

- Home Occupation I uses are prohibited from having any signs which denote the "conduct of the home occupation business" . . . "displayed on the property". §255-22D(6)
- Home Occupation II uses are allowed to have some signage under §255-22E(4):

Signs used in conjunction with a home occupation shall not be animated or illuminated and shall not exceed one square foot and must be affixed to the residence and not be freestanding. The Planning Board may approve a small (up to 0.25 square foot) nameplate to be affixed to a freestanding mailbox structure as a condition of the site plan review.

§ 255-34 Professional business uses. Professional businesses approved by a Special Permit pursuant to § 255-34 are in residential zoning districts. This section allows signage to be approved which is different than the restrictions for residential zoning districts laid out in § 255-85B. Under § 255-34F(1), such professional businesses are allowed signage as follows:

A single sign may be permitted on each parcel. The sign may be approved for placement either flat on the building in which the professional business is located or freestanding on the parcel. Sign illumination by means of continuous indirect lighting may be permitted. The cumulative size of the sign structure permitted shall be within the discretion of the SPGA but in no case shall it exceed 16 square feet; provided, however, the SPGA may permit the area of the sign to be calculated by the area within the border of the sign and not as provided in the definition of "mobile home" in § 255-10 of the Zoning Bylaw. The Planning Board may also permit one additional sign per business (not to exceed one square foot in area) to be located on the exterior of the building.

§ 255-39 Bed-and-breakfast facilities. Bed and Breakfast facilities are differentiated between Bed-and-Breakfast Homes and Bed-and-Breakfast Inns.

Sign Bylaws Review and Analysis Report

Signs for Bed-and-Breakfast Homes and Bed-and-Breakfast Inns are to be regulated by § 255-39A(2)(e) and § 255-39B(2). These sections collectively provide that signage for Bed-and-Breakfast Homes and Bed-and-Breakfast Inns

“ . . . shall be limited to an announcement sign as permitted under this § 255-39.”

However, nowhere in § 255-39 is an “announcement sign” described or explained as to what that would entail. Neither is it defined under § 255-10 Terms Defined.

§ 255-40 Wireless communications regulations. Other than the size of the signage, the Zoning Bylaw in § 255-40F(5) limits the signage to what is essentially required by Federal and State licensing authorities:

“(5) Signage.

(a) The only signs associated with the wireless communications facility which may be permitted are the following:

[1] Identification sign: one identification sign identifying the wireless communications facility and detailing the owner, operator, and an emergency telephone number where the owner or its emergency representative can be reached on a twenty-four-hour basis.

[2] "No trespassing" signs. Such signs are required.

[3] FCC registration: a sign displaying the FCC registration number.

[4] Warning sign. Signs are required to warn of danger.

(b) No sign should be larger than four square feet in area unless state or federal regulations require larger signs.”

§ 255-42 Adult entertainment uses. This section provides that signs for “adult entertainment” are regulated with content as a principal consideration.

§ 255-42I(6) Signs. All signs shall comply with the provisions of § 255-85 of the Zoning Bylaw. No sign that falls within the definition of an adult entertainment use shall be displayed in the windows of, or on the building of, any adult entertainment use, or be visible to the public from the pedestrian sidewalks or walkways or from other areas, public or semipublic, outside such establishments.

Sign Bylaws Review and Analysis Report

§ 255-46 Medical marijuana facilities and operations. This section provides focused regulation similar to the approach for “adult entertainment”

§ 255-46E(6). Signage shall conform to § 255-85 of the South Hadley Zoning Bylaw and requirements of state laws and regulations governing such facilities. However, the signage and other marketing on the exterior of the building or in any other manner visible from a public way or adjoining property shall not promote or encourage: a) the use or abuse of marijuana or other drugs for nonmedical purposes; or b) the use or abuse of marijuana or other drugs by minors; or c) the active marketing of marijuana or other drugs for medicinal purposes; provided, however, that these restrictions shall not preclude any signage required by the Massachusetts Department of Public Health.

§ 255-48 Solar photovoltaic installations. This section regulates the signage with significant limitation as to its content.

§ 255-48E(5)(c) Signage. No signage on solar photovoltaic installations is permitted other than those required to identify voltage and electrocution hazards as well as the owner, and provide a twenty-four-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

§ 255-49 Recreational marijuana. This section is a “moot” point at this time as South Hadley adopted a prohibition on recreational marijuana. However, the section defaults to the general sign regulations and state laws and regulations.

§ 255-49F(3)(c) Signage shall conform to § 255-85 of the South Hadley Zoning Bylaw and requirements of state laws and regulations governing such facilities.

- Business Uses without Sign Regulations/Provisions

There are several “business” uses or uses which could function as businesses that are allowed in Agricultural and/or Residential zoning districts for which there are not specific sign provisions. These uses are found in the following sections of the Zoning Bylaw:

§ 255-25 Agricultural, horticultural and floricultural uses.

§ 255-26 Stables and riding academies.

§ 255-38 Public-private recreation.

§ 255-41 Outdoor recreation facilities.

§ 255-43 Commercial kennels.

§ 255-44 Gas-to-energy facilities.

Sign Bylaws Review and Analysis Report

§ 255-84 Earth removal, extraction, and fill regulations.

- Special Business Development Districts

Two nonresidential zoning districts have special planning and development requirements:

§ 255-29 Industrial Garden Districts.

§ 255-37 Business C District development methods.

While the provisions require landscaping and other special elements, the provisions do not address sign requirements. Thus, while the developments have special parking, landscaping, and other requirements; regulations of signs default to § 255-85.

An interesting point in this regard is how “residential development” signs are addressed in the § 255-85B(5)(i):

“The sign must be incorporated into and be an integral part of the landscaping for the development.”

Review of General Bylaws with Sign provisions. The General Bylaws have three sections which relate to or have sign regulations which may be relevant. These sections relate to building address numbers, tag sales, and traffic control. However, § 230-10G is potentially relevant in how it addresses removal of signs.

- Chapter 123 - BUILDINGS, NUMBERING OF

Two subsections of this chapter regulate the placement of building address numbers.

Typically, the Zoning Bylaw makes address numbers an exception to the sign provisions.

§ 123-2. Affixing of numbers required.

No owner of any building set forth in § 123-1 shall neglect or refuse to affix to such building any street number designated by the Inspector of Buildings.

§ 123-3. Visibility of numbers from street.

In cases where a building set forth in § 123-1 is not clearly visible from the street, the Inspector of Buildings shall require that said numbers be placed such that they are clearly visible from the street at the point of entry to the property.

- Chapter 207 - TAG SALES

This chapter provides limited regulation of tag sale signs which are “temporary signs”.

§ 207-4. Signs posted on utility poles prohibited.

Sign Bylaws Review and Analysis Report

No notices, advertising signs or directional signs are to be attached to utility poles.

- Chapter 230 - VEHICLES

This chapter provides limited regulation of signs which are within a street or in view of a street.

§ 230-10. Traffic signs, signals, marking and zones.

G. Display of unauthorized signs, signals and markings prohibited; removal. It shall be unlawful for any person to place or maintain or to display upon or in view of any street any unofficial sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic sign, signal, marking or device or which attempts to direct the movement of traffic or which hides from view any official sign or signal. The Chief of Police is hereby empowered to remove every such prohibited sign, signal, marking or device or cause it to be removed, without notice.

Review of and analysis of relevant Municipal Law Decisions issued by the Massachusetts Office of Attorney General. All towns in Massachusetts must submit bylaw changes to the Attorney General's Office for review and approval. Following review of the bylaw changes, the Municipal Law Unit issues "Decision Letters". A search of the database was made to identify Decision Letters related to signs. The results were analyzed to assess the relevance of the bylaw changes to the purpose of this study and to select community sign bylaw provisions for review. Only sign revisions adopted after the Reed decision was issued in 2015 were considered.

After the Reed decision was issued, the "Decision Letters" began referencing the Court's decision including providing some of the case background and the guidance provided by the members of the U.S. Supreme Court:

"In holding that the Town's sign ordinance was unconstitutional, the Court offered guidance on the types of sign regulations that may be adopted consistent with the First Amendment. The Court noted that the Town had ample content-neutral options to regulate signs. In a concurring opinion, Justice Alito offered specific examples of sign regulations that could be imposed so long as they are not content-based:

- Rules regulating size;
- Rules regulating location;
- Rules distinguishing between lighted and unlighted signs;

Sign Bylaws Review and Analysis Report

- Rules distinguishing between signs with fixed messages and electronic signs with messages that change;
- Rules that distinguish between the placement of signs on commercial and residential property;
- Rules distinguishing between on premises and off-premises signs;
- Rules restricting the total number of signs allowed per mile of roadway; and
- Rules imposing time restrictions on signs advertising a time event.”

Reed, 135 S.Ct. at 2233.

The following excerpt from a 2020 Decision Letter regarding a Norwell Zoning Bylaw amendment appears typical in its concluding reference to “Reed”:

“If a sign by-law is challenged in court, it is the municipality’s burden to demonstrate that the sign by-law is narrowly tailored to achieve a compelling government interest. Reed, 135 S.Ct. at 2231. A municipality usually attempts to meet that burden by citing to a statement of purpose or findings in the by-law itself. See, e.g., Commonwealth v. Weston W., 455 Mass. 24, 27-28, 36 (2009) (ordinance included a series of findings made by the council followed by a statement of purpose, supporting the trial court judge’s finding that the council adopted the ordinance only ‘after months of planning, debating, and researching models from other cities’). Only after the community demonstrates the legitimate goals of the by-law can the court determine whether the by-law is narrowly tailored to achieve those goals.”

Review and Analysis of sign regulations from nine other Massachusetts communities. Based on input from the Town’s Planning Director and the review of the relevant Municipal Law Decisions issue by the Massachusetts Office of Attorney General, bylaws from the following communities were identified for review and analysis:

- Andover*
- Arlington
- Dennis
- Attleboro
- Essex
- Ipswich
- Shutesbury
- Stoughton
- Wareham

*Andover was added midway through the process based on information that the Attorney General Office had approved the recodification of the Zoning Bylaw without any

Sign Bylaws Review and Analysis Report

comments. Based on reviews of the Decision Letters pertaining to other communities' bylaw amendments and my own experience, this appeared to be exceptional.

The Zoning Bylaw sign provisions for each of these nine communities were analyzed relative to the issues identified with the South Hadley sign provisions – principally § 255-85.

In addition to a thorough analysis of the Zoning Bylaws of the above listed communities, a cursory review was conducted of 10 communities in the “South Hadley neighborhood”. This review was undertaken to make a general assessment of how the South Hadley sign provisions compare to those of its “neighbors”.

Discussion with Municipal staff from the other Massachusetts communities. Recognizing that a sign bylaw (or any bylaw) may look great on paper but the real application of the bylaw may be a different story, efforts were undertaken to have discussions with the Planning Director/Town Planner or other municipal official in eight of the communities (since Andover's sign bylaw changes are very new, it was not seen as beneficial to discuss their experience). Several communities did not respond to emails and phone calls, but discussions were held with the Planning Director/Town Planner from the following communities: Arlington, Attleboro, Stoughton, and Wareham.

The focus of the discussions were the following questions:

- When were the sign regulations last revised?
- How well do they accomplish their purpose?
- How easy are they to administer?
- Are there aspects that you and the community would want to change?
- How do you handle signs illegally installed in the right of way?
- Are you looking to revise the sign regulations?

The communities are generally satisfied with their sign regulations. One planner stated they would like to allow neon signs which are prohibited. Several mentioned that they have a lack of enforcement capacity. Enforcement is handled by the Building Commissioner. One community stated that removal of illegal signs is handled by giving a ticket to the owner and then having the DPW remove the sign. Another stated that signs illegally installed within the right-of-way are handled by the Police Department and DPW.

Summary of Sign Issues

Through discussion with South Hadley Planning Director Anne Capra and Building Commissioner Damien Cote as well as a subsequent review of the South Hadley sign regulations as codified in § 255-85, the following issues were identified as being the focus of the study:

1. Sign Illumination approval process

Sign Bylaws Review and Analysis Report

2. Sign Illumination standards
3. Uses exempt under MGL Chapter 40A, Section 3
4. Temporary signs –regulation of content
5. Banner signs are prohibited
6. Signs in rights of ways for both State-owned roads and roads owned by the Town of South Hadley
7. Regulation of sign content in conflict with Reed vs Town of Gilbert
8. Treatment of nonconforming signs
9. Signs for businesses in residential districts

Analysis of Sign Issues

1. *Sign Illumination Approval Process*

§ 255-85G governs the Illumination signs including the approval process and standards. The process as set forth in § 255-85G requires approval of illuminated signs by the Planning Board in a meeting which requires notification of abutters. Thus, the process is not “Administrative”, that is by Town staff. Unfortunately, the Bylaw does not specify:

- Whether the approval requires a simple majority or super majority for approval.
- A time period for the Board to make a decision.
- Whether the Board may impose condition when approving an illuminated sign.
- The scope of any conditions the Board may impose in making a decision.
- The purpose of notification of the abutters given that the sign illumination is not subject to a public hearing under § 255-85G

Quantum of Vote. The practice of the Board, which seems reasonable, has been that approval of an illuminated sign only requires a simple majority. However, this raises another question:

- Is a simple majority required for illumination of a sign when approval of a sign might require a Special Permit (such as a sign which is integral to a use requiring a Special Permit or alteration of a nonconforming sign)?

Time Frame for Decision. The Board has a practice of acting on Sign Illumination applications generally within 30 days of the submission, but that is not always the case. Other applications (ANR Plans, Definitive and Preliminary Subdivision Plans, Form H Plans, Special Permits, and Site Plans) have some time frame specified by which the Board must act.

Conditional Approval. Imposing conditions on sign illumination applications has been an issue of discussion in the past. The practice has been that the Board could impose

Sign Bylaws Review and Analysis Report

conditions if the conditions are necessary to support the Board making the essential determination required under § 255-85G:

“ . . . that the sign will not be adverse to the character of the surrounding neighborhood or the community.”

However, there is not an explicit authorization for imposing conditions and no expression of the scope which such conditions may encompass. As such, there also lacks any clear explanation as to the effect of the conditions and legal impact of violating those conditions. That is not the case with Special Permits (§ 255-130) and Site Plan Review ((§ 255-149B(3))

§ 255-130 of the Zoning Bylaw expressly allows the Board to impose conditions when approving a Special Permit. It also provides that “violation of any of these conditions or modifications shall be a violation of this bylaw”. It further provides some clarity as to the scope of potential conditions which may be imposed on Special Permits:

“Such conditions or modifications may include, but are not limited to, specifications for: type of construction, increased setbacks and yards, landscaping and screens or buffers, operational controls, sureties, deed restrictions, restrictive covenants, locations of parking and signs; or any other conditions necessary to fulfill the purposes of this bylaw.”

§ 255-149 governs Site Plan Review. The decisions by the Board are governed by § 255-149B with item § 255-149B(3) providing that a decision may be “[a] written approval subject to any conditions, modifications, and restrictions as the Planning Board may deem necessary to satisfy this bylaw.” The latter portion of § 255-149B(3) provides some clarity as to the “scope” of potential conditions.

As noted above, there is no clear provision for imposing conditions. Therefore, there is no clear guidance as to the scope of conditions which may be imposed. This “vague” structure has led to imposition of conditions without any clear standards to guide such conditions. Examples of such results include:

- Hours of illumination
- Review of “quality” of sign design without standards for design of signs

Notice to Abutters. Notification of abutters for other matters in the Zoning Bylaw, Stormwater Management Bylaw, and Subdivision Regulations relate to holding of public hearings. For example, Special Permits, Definitive Subdivision Plans, Site Plan Review (major), and Stormwater Management permits require public hearings that require notification of abutters. However, review of ANR Plans, Preliminary Subdivision Plans, and Form H Plans do not require public hearings and do not require notification of

Sign Bylaws Review and Analysis Report

abutters. The notification of abutters for sign illumination applications appears to lead abutters to interpret and treat the “public meeting” the same as a public hearing. And the Board generally does the same regarding providing an opportunity for public comment on the application.

A review of the Zoning Bylaws for the selected communities found the approval of illuminated signs in the “relevant communities” was largely administrative. A permit is generally required from the Building Commissioner. There are some variations from this process:

- Some communities provide that, if the sign is associated with a project requiring a Special Permit or Site Plan Review, the signs are approved as part of the Planning Board approval of the Special Permit or Site Plan. This approval would appear to include illumination of the signs.
- Half of the communities allow for deviations from the sign requirements. The means for approving such deviations varied. In some cases, this deviation may be approved only by a Special Permit.
- Several communities provide a broad approach to sign deviations which would allow an applicant to pursue a deviation from some of the illumination standards. Only one of the communities specially required a Special Permit for deviations regarding illumination of a sign.
- One community appears to require most signs (including, but not limited to, illuminated signs go through a Design Review Board before the Building Commissioner can issue a permit.

2. *Sign Illumination Standards*

A general standard for approval of illuminated signs is set out in § 255-85G(2) “Adverse to surrounding neighborhood or community” as follows:

Signs which illuminate more than what is necessary to convey the message or name being promoted or create glare which may impact motorists are generally considered to have an adverse impact on the community. Such adverse impact arises from excessive light pollution.

The Zoning Bylaw in § 255-85G(2)(a) through (e) sets forth five more “specific” standards with varying degrees of clarity:

- § 255-85G(2)(a) Consider and minimize the illumination impact of the signage illumination on the surrounding properties; and

Sign Bylaws Review and Analysis Report

- § 255-85G(2)(b) Only approve internally illuminated signs where only the lettering or logo of the enterprise or message being promoted are illuminated; and
- § 255-85G(2)(c): Ensure that the illuminated sign does not illuminate adjoining or nearby residential properties or pose a danger to motorists on adjoining or nearby roadways which might arise from glare from the illumination source; and
- § 255-85G(2)(d): Not approve exposed or illuminated neon signs; and
- § 255-85G(2)(e): Require that illumination sources do not illuminate the background or field of a sign except to the extent that the background or field (due to the shape of the sign area) is clearly a logo of the company or enterprise being advertised.

Through its decisions on sign illumination, the Board has effectively established vague and inconsistent standards for hours of illumination and quality of signs. In some approvals the Board has required sign illumination to be turned off 30 minutes after closure of the business while other approvals have had specific times for termination of the illumination. Similar businesses located along the same roadway and within several hundred yards of each other have different standards regarding the hours of illumination.

A review of the Zoning Bylaws for the selected communities found several communities which have an Administrative process for sign permits have general standards that relate to the community character.. However, most have some specific standards regarding hours of illumination and sign illumination standards. With the approval process for signs generally being by an Administrative process it would be essential that the Bylaws have clear standards for the Building Commissioner to use in approving signs including illumination of signs. Several communities allow for a Special Permit to vary the sign standards including hours of illumination or method of illumination.

Standard – Hours of Illumination

Most of the communities specified the hours during which signs may be illuminated. Reflecting the diverse community interests, the hours vary from community to community:

- A broad standard that commercial signs may only be illuminated between 7:00 am to 11:00 pm
- Signs may not be illuminated “during hours the business is not open” and not after 8:00 p.m. on a residential premise.
- Generally only allow illumination between 7:00 am to 9:00 pm but for non-residential uses, signs may be illuminating during any hours establishments are open to the public
- Signs may not be illuminated between 12:00 AM and 6:00 AM except for emergency services and on-premises signs for businesses open during that time,
- Sign illumination must be off between 11 pm and 6 am if the sign is within 100 feet of any residential property

Sign Bylaws Review and Analysis Report

Standard – Method of Illumination

Whether to allow internal illumination and how to illuminate a sign is addressed by many, but not all, of the various communities.

- Three of the communities expressly prohibit internally illuminated signs.
- Several communities provide general standards for illumination of signs but very clear standards for internally illuminated signs.
- More specific standards were applied by several communities when an illuminated sign was located in proximity to residential property (such as, within 100 feet).

3. *Uses exempt under Chapter 40A, Section 3*

Massachusetts General Laws, Chapter 40A, Section 3 provides exemptions from Zoning Bylaws for specific and varied uses. It limits municipalities to subjecting such uses to “reasonable regulation”. In regard to nonprofit educational institutions and religious institutions, MGL Chapter 40A, Section 3 limits municipalities to imposing “reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.”

Since “signs” is not identified as a topic for “reasonable regulation”, the statute raises questions as to whether signs associated with such exempt uses may be regulated by a Zoning Bylaw. South Hadley has generally taken the position that the Zoning Bylaw provisions regarding signs are not strictly applicable to such uses except regarding the height, area, and setback requirements. However, this interpretation has varied as staff have changed.

A review of the Zoning Bylaws for the selected communities found that only a few of the communities appear to expressly touch on this issue. Most of the bylaws have language indicating that they apply to all signs or require a permit for all signs not expressly exempt. Such broad language would suggest that the Bylaw applies to the uses exempt under MGL Chapter 40A, Section 3. Two of the communities specify some size restrictions for “religious” and “Agricultural” signs.

4. *Temporary signs – regulation of content*

Two sections of the Zoning Bylaw appear to specifically apply to “temporary signs” - § 255-85C - “Political signs” and § 255-85F “Temporary signs”

- § 255-85C is not specified as applying to temporary signs. But regulates “political signs” which are limited as to the time in which they may be posted; thus, they are “temporary signs”.

Sign Bylaws Review and Analysis Report

“Political signs. Political signs, including but not limited to signs advertising or promoting candidates for public office or urging positions on questions appearing on the ballot of a regular or special election, are permitted in all districts, in excess of the usual limits, for a period of 45 calendar days prior to the election and shall be removed within 10 calendar days following the election.”

- § 255-85F specifically applies to temporary signs but is limited to “real estate signs” for property listed for sale.

“Temporary signs. A temporary real estate sign, advertising the availability of the property for sale, may be erected for a period extending only until such property is sold. Such sign shall not exceed 20 square feet in area and shall be located at least 10 feet from the street line or on a building if in closer proximity to the street line.”

The current Zoning Bylaw provisions regarding temporary signs require one to read the sign to determine if they are permitted and under what conditions. Regarding “temporary” real estate signs, the Zoning Bylaw appears to have an internal conflict. § 255-85F appears to conflict with § 255-85B(3) regarding size of temporary real estate signs. Whereas § 255-85F allows such signs to have a size of 20 square feet, § 255-85B(3) limits real estate signs advertising a parcel of property for “sale, rental or lease” to 5 square feet in residential districts. It may be that § 255-85F applies to nonresidential districts, but it does not make that distinction. Additionally, § 255-85F is limited to signs advertising a parcel of property “for sale” whereas § 255-85B(3) includes parcels for rent or lease.

A review of the Zoning Bylaws for the selected communities found a wide divergence on this topic.

- Where temporary signs are expressly addressed, they are often similar to the provisions in the South Hadley Zoning Bylaw in that they require one to read the sign to determine if it qualifies as a temporary sign and what standards are applicable. These bylaws use such descriptions/categories as “construction”, “real estate for sale”, “yard sale”, etc.
- Two communities do not reference “temporary” signs. One of these communities regulates “portable or removable signs”. This approach avoids the need to review the content of the sign for compliance. Rather, one merely needs to examine how it is designed or affixed to a structure or the ground.
- Several communities which regulate temporary signs regulate them through a focus on size, number, duration, and annual frequency.
- One of the communities which does not address “temporary” signs, regulates all signs based on size, number, placement, and illumination. Thus, if the property is

Sign Bylaws Review and Analysis Report

allowed to have 2 signs of “x” size, they could be permanent or temporary – placement of a temporary sign does not increase the allowance as to the number or size of signs.

5. *Banner signs are prohibited.*

South Hadley’s Zoning Bylaw does not expressly address “banner signs”. The belief that such signs are prohibited seems to be a matter of interpretation based on the perspective that if a use is not expressly identified as permitted, then it is prohibited. That is a reasonable interpretation since the Zoning Bylaw is silent on “banner signs” but fairly detailed about permitted signs.

A review of the Zoning Bylaws for the selected communities found that most of the communities provide for installation and maintenance of “banner signs” in some manner.

- Several allow banner signs but are stricter and allow them only as temporary signs.
- One community only allows for “Banners or flags emblematic of or issued by national, state, or local governments”.
- Installation of a banner sign is generally not permitted within a public right of way although one community allows such installations as a temporary sign with special restrictions while another allows approval in two districts for “non-commercial” events.

6. *Signs in rights of ways for both State-owned roads and roads owned by the Town of South Hadley*

This issue is not addressed as the Zoning Bylaw only regulates use and development parcels and not the rights of ways. § 255-85 uses a variety of terms to describe allowable placement and they all suggest the signs cannot be placed in the right of way:

- At least 10 feet from the street line
- Located flat on a building
- Advertising the sale, rental or lease *of the premises on which* they are maintained

A review of the Zoning Bylaws for the selected communities found an array of approaches to this issue that vary from absolute prohibition to limited placement of temporary signs within the right of way:

- One community expressly states that “signs are not to be within, on, or projecting over public property or Town rights -of -way” unless specifically authorized. One such authorization provides that a permit is required for temporary A-frame and upright signs in the public right-of-way.

Sign Bylaws Review and Analysis Report

- One community requires that any sign “to be placed on the property of another, including signs on Town or State-owned property, will require the prior written approval of the property owner or the owner’s representative in control thereof.” Thus, it would appear that the Selectboard could approve a sign within a Town right of way.
- Communities which expressly allow for installation in the right of way have a variety of restrictions. One community limits signs to be no nearer than 5 feet of the “travelled lanes of a public roadway”. Another community takes a similar approach but states “no sign shall project more than five feet over any public right of way or other public property”. Another only permit “hanging” signs within the right of way with sufficient clearance and signs “belonging to or approved by a government, public agency, or railroad”.
- Several communities either expressly prohibit signs from the right of ways or specify that signs must be setback 10 to 15 feet from any street line – depending on the zoning district. These communities exempt traffic and similar public signs from the Zoning Bylaw.
- One community which allows signs to project over a public right of way provides the following provision:

“Liability. No sign shall project more than five feet over any public right-of-way or other public property. Any sign projecting over a public right-of-way shall be covered by liability insurance in the amount of \$2,000,000 as verified by a certificate of insurance filed with the Town Clerk. The Town ... shall be named as additional insured on all such certificates.”

7. *Regulation of sign content in conflict with Reed vs Town of Gilbert*

As stated previously, the Attorney General’s Office has, in its decision letters regarding Zoning Bylaw amendments stated:

“If a sign by-law is challenged in court, it is the municipality’s burden to demonstrate that the sign by-law is narrowly tailored to achieve a compelling government interest. Reed, 135 S.Ct. at 2231. A municipality usually attempts to meet that burden by citing to a statement of purpose or findings in the by-law itself. . . .”

A review of the South Hadley sign provisions finds several reasons to be concerned that the provisions would stand up to judicial scrutiny under the Reed decision:

- The only purpose statement one can rely upon is the purpose statement of the Zoning Bylaw itself in § 255-1 as opposed to a clear statement of purpose or findings for the Sign provisions.

Sign Bylaws Review and Analysis Report

- Some of the signs require one to read the content of the sign to determine whether it is permissible. It has been suggested that if one must read the sign to determine if it conforms, the regulation is not content neutral.

A review of the Zoning Bylaws for the selected communities suggests that, on the whole, they are somewhat similar regarding content neutrality to that of the South Hadley Zoning Bylaw.

- Most of the reviewed bylaws appear to have some content focused restrictions, particularly in regard to temporary signs. These communities typically refer to “construction signs”, “real estate for sale or lease signs”, etc. which would not appear to be content neutral.
- Generally, with the exception of temporary signs, the Zoning Bylaws focus on the size and placement of signs by either “use” or “zoning district”.
- Several communities steer clear of the temporary sign issues by not making any distinctions between temporary and permanent signs. These communities, while not addressing “content neutrality”, only regulate signs by number, size, illumination, and placement.
- Two communities make explicit statements regarding their intent to be content neutral.
 - *“to the extent any provision of this Section is ambiguous, the term will be interpreted as to not regulate on the basis of the content of the message”.*
 - *“The following sign bylaws are crafted to be compatible with the 2015 decision of the Supreme Court in the case of Clyde Reed v. Town of Gilbert, Arizona and are intended to avoid constitutionally suspect regulations related to time limits on legal signs on private property. The Reed decision stated that content-based sign bylaws must withstand strict scrutiny. That is, the government must have a compelling reason to regulate speech based on content.”*

8. *Treatment of Nonconforming signs*

South Hadley’s Zoning Bylaw does not expressly address nonconforming signs in § 255-85. Rather, the only provision which might apply is found in § 255-7B(1) which generally regulates “nonconforming structures or uses”:

- “B. Change, substantial extension or alterations.
(1) Preexisting nonconforming structures or uses may be changed, extended or altered only upon approval of a special permit for such purpose by the Planning Board acting as the special permit granting authority, provided that the*

Sign Bylaws Review and Analysis Report

Planning Board shall find that such change, extension or alteration will not be substantially more detrimental than the existing nonconforming use to the neighborhood in which it is located. This shall not apply to billboards, signs, and other advertising devices subject to the provisions of MGL c. 93, §§ 29 through 33, inclusive, and to MGL c. 93D.”

The provisions of MGL referenced in this subsection relate to regulation of signs by the Massachusetts outdoor advertising board. Thus, they would not appear to apply to the business signs which are generally regulated by § 255-85.

A review of the Zoning Bylaws for the selected communities found seven of the communities have explicit provisions regarding nonconforming or pre-existing signs within their sign provisions.

- All seven of these communities allow for restoration or maintenance of pre-existing signs with some variations.
 - If damaged or deteriorated to such that the cost to restore would exceed 35% of the replacement cost, it must comply with Bylaw.
 - If the sign is deteriorated to the point where restoration cost exceeds 50% of replacement, the sign may not be replaced but must be brought into conformity.
 - If the sign is deteriorated to the point where restoration cost exceeds 1/3 of replacement, the sign may not be replaced but must be brought into conformity.
- One community requires establishment of a record of the nonconforming signs. If a sign is not so inventoried, it is presumed to be illegal and not pre-existing.
- Several communities make it explicitly known that “Illegal signs are not nonconforming signs”.
- Several communities do not address “nonconforming” signs but expressly state that all signs must be maintained.
- One community allows retention and does not require any Board approval for a minor change such as changing a panel or updating a sign.

9. *Signs for businesses in residential districts*

The issue arises as to how signs for different businesses permitted in residential zoning districts are regulated. Among the specific uses to which this issue applies are:

- Home Occupations
- Professional Businesses by Special Permit
- Bed and Breakfast establishments

Sign Bylaws Review and Analysis Report

The amount of signage and its placement and how the signage is regulated varies significantly between the uses:

- Home Occupations (§ 255-22) are regulated as either Home Occupation I or Home Occupation II. The former is not permitted to have any signs while the Home Occupation II is allowed to have signage as follows:

“Signs used in conjunction with a home occupation shall not be animated or illuminated and shall not exceed one square foot and must be affixed to the residence and not be freestanding. The Planning Board may approve a small (up to 0.25 square foot) nameplate to be affixed to a freestanding mailbox structure as a condition of the site plan review.”

- Professional Businesses (§ 255-34) by Special Permit may be allowed two signs as follows:

“A single freestanding sign may be permitted on each parcel. The sign may be approved for placement either flat on the building in which the professional business is located or freestanding on the parcel. Sign illumination by means of continuous indirect lighting may be permitted. The cumulative size of the sign structure permitted shall be within the discretion of the SPGA but in no case shall it exceed 16 square feet; provided, however, the SPGA may permit the area of the sign to be calculated by the area within the border of the sign and not as provided in the definition of "mobile home" in § 255-10 of the Zoning Bylaw.”

“The Planning Board may also permit one additional sign per business (not to exceed one square foot in area) to be located on the exterior of the building.”

- Bed and Breakfast facilities (§ 255-39) are regulated in two categories as either bed-and-breakfast homes or bed-and-breakfast inns. Signage for both categories is limited to an announcement sign. However, the Zoning Bylaw does not define or describe the limits of such a sign.

There are other nonresidential uses permitted in noncommercial districts which are also allowed to have limited signage – such as wireless communications facilities. However, these provisions generally allow signage as required by State or Federal regulatory authorities.

A review of the Zoning Bylaws for the selected communities found few communities which specifically address this issue.

Sign Bylaws Review and Analysis Report

- One community expressly states that signs are only permitted for businesses in residential districts which have been authorized. Thus, businesses illegally operating in residential districts may not have signs.
- One community has specific signs for residential districts including limited signage for a medical/dental practitioner.

Summary of Findings

As suggested in the previous section, there are a number of findings relevant to the drafting of Zoning Bylaw amendments regarding signs:

- South Hadley's sign provisions are not as thorough or as complex as those of its neighbors.
- South Hadley's sign provisions lack a statement of purpose which would aid in defending them if they were subject to judicial scrutiny.
- Specific provisions for addressing nonconforming signs would benefit the Town and the owner of the sign.
- Administrative approval of signs including sign illumination appears to be the more typical approach versus having a Board approve the sign or its illumination.
- Clear standards for hours during which signs may be illuminated appear to be common although the hours vary among the communities.
- Establishing clear standards for all signs, especially addressing illumination issues, allows for administrative permitting of sign installations without public review – similar to that of constructing a house by following the building code as opposed to a vague standard.
- Provisions for a Special Permit to obtain relief from strict standards recognize that there may be specific circumstances not addressed by strict standards but places the burden on the applicant instead of the Town to justify the relief.
- Sign regulations which are limited to number, dimensions, placement, and illumination would appear to be more common and defensible.
- It would not appear to be necessary to regulate temporary signs by type but by duration in addition to the objective standards applied to other signs.
- Centralization of all sign provisions into one section of the Zoning Bylaw could better ensure consistency in standards, compliance, and enforcement.
- Sign regulation enforcement is a challenge for many communities as it requires resources to identify violating signs and to remove the signs with proper notice.
- Terms are used and/or implied in South Hadley's Zoning Bylaw but they are not always defined; thus, the Bylaw suffers, in part, from the sparsity of definitions relative to signs.
- If any nongovernmental signs are to be permitted to be placed within or over a public right of way, the provision to be able to require a liability guarantee would appear reasonable and appropriate.

Sign Bylaws Review and Analysis Report

- Graphics can often, but not always, enhance the interpretation of sign provisions; they need to be prepared carefully and prepared professionally to supplement and not replace the regulations.
- Based on the above analysis, there do not appear to be any need to revise either Attachment 1 – Use Regulations Schedule or Attachment 2 - Dimensional Regulations Schedule.

Recommendations

Based on the analysis and findings above, recommendations are made to amend the Zoning Bylaw in the following sections:

- § 255-10 “Terms Defined”
- § 255-22 Home occupations
- § 255-34 Professional business uses
- §255-39 Bed-and-breakfast facilities
- §255-85 “Signs”

Summary of recommendations – Zoning Bylaw Revisions

- Amend § 255-10 “Terms Defined” to redefine the term “sign” and to incorporate definitions for the following terms:
 - Sign, Attached
 - Sign, Awning
 - Sign, Banner
 - Sign, Commercial
 - Sign, Display area
 - Sign, Double-Sided
 - Sign, Freestanding
 - Sign, Hanging
 - Sign, Illuminated-Externally
 - Sign, Illuminated-Internally
 - Sign, Maintenance
 - Sign, Nonconforming
 - Sign, Portable
 - Sign, Projecting
 - Sign, Removable
 - Sign, Support Structure
- Amend §255 by repealing the existing provisions of §255-85 and inserting in its place, a new §255-85 to address the issues identified previously to:
 - Provide a statement of purposes

Sign Bylaws Review and Analysis Report

- Provide guidance for interpretation which makes clear that the provisions are not to be interpreted to inhibit free speech or conflict with court decisions
 - Specify when and what permits are required
 - Require maintenance of signs
 - Address nonconforming signs and signs approved to be with a public right of way
 - Make provisions for portable or removable signs
 - Remove any content-based sign references and establish clear regulations for allowing signs based on number, dimensional limits, setbacks, placement, and illumination
 - Incorporate consistent provisions for businesses allowed in residential zoning districts
 - Make clear standards for illumination of signs
 - Make all Sign Permit approvals Administrative (staff) unless applicant seeks relief, then a Special Permit from Planning Board but limit the scope of such potential relief
 - Provide design guidelines to be used when acting on a Special Permit request for relief
 - Provide that all sign permits are administratively issued including illumination of signs except when relief is sought from the standards via Special Permit
- Amend § 255-22 Home occupations to delete and replace §255-22E(4) to make all signs comply with the provisions in §255-85.
- Amend § 255-34 Professional business uses to delete and replace 255-34F(1) to make all signs comply with the provisions in §255-85.
- Amend §255-39 Bed-and-breakfast facilities to delete and replace §255-39A(2)(e) to make all signs comply with the provisions in §255-85.

Summary of recommendations – General Bylaw Revisions

- Amend the General Bylaws, if necessary

A provision is included in the proposed §255-85 to address signs within a public right of way. If the Town or Town Counsel do not feel that is an appropriate topic for the Zoning Bylaw, a recommendation is made to revise the General Bylaws (possibly § 230-10G) to insert a section regarding “Signs in public right of way”. Such an amendment should regulate such signs by:

- Requiring prior written approval of the property owner or the owner’s representative in control
- Setting out certain prohibitions and exceptions
- Requiring removal
- Making clear that illegal signs will be removed and disposed of without notice