No. 19-808

IN THE

# Supreme Court of the United States

LEIBUNDGUTH STORAGE & VAN SERVICE, INC.,

*Petitioner,*

*v.*

VILLAGE OF DOWNERS GROVE,

*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

## BRIEF IN OPPOSITION

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## COUNTERSTATEMENT OF QUESTION PRESENTED

Does *Reed v. Town of Gilbert* supersede or overturn application of intermediate scrutiny to time, place, and manner sign regulations that restrict petitioner-plaintiff's purely commercial speech? Does *Reed v. Town of Gilbert* render a municipal sign ordinance that provides greater constitutional protection to non-commercial speech than commercial speech to be content-based and thus subject to strict scrutiny? Does a substitution clause in a sign ordinance establish content-neutrality of the sign regulations?

## RULE 29.6 STATEMENT

Respondent, Village of Downers Grove, is an Illinois municipal corporation. It is not publicly or privately held, it issues no stock, and it has no parent or subsidiary corporations.

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## STATEMENT OF THE CASE

In 2005, respondent-defendant Village of Downers Grove (Village) adopted an amended sign ordinance (sign ordinance). The sign ordinance's stated purpose is "to create a comprehensive but balanced system of sign regulations to promote effective communication and to prevent placement of signs that are potentially harmful to motorized and non-motorized traffic safety, property values, business opportunities and community appearance."[1] (Resp. App. 1a). Specific purposes for enacting the ordinance include: (i) to enhance the physical appearance of the Village; (ii) to enhance the Village's economy, business and industry by promoting the reasonable, orderly and effective display of signs, and encouraging better communication between an activity and the public it seeks with its message; (iii) to preserve the value of private property by assuring the compatibility of signs with surrounding land uses; and (iv) to protect motorized and non-motorized travelers by reducing distraction that may increase the number and severity of traffic accidents. (Resp. App. 1a-2a).

A nine-year amortization schedule allowed owners of then-existing non-conforming signs until 2014 to eliminate non-conformities, and to bring their signs into compliance with the sign ordinance. (Pet. App. 16a).

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1. It should be noted that petitioner attached the wrong Village sign ordinance to the petition for a writ of certiorari. The correct version of the sign ordinance including all up-to-date amendments on which the district court's judgment was rendered is attached as Resp. App. 1a-40a.

Petitioner-plaintiff Leibundguth Storage & Van Service, Inc. (Leibundguth), had multiple wall signs on both the front and back of its building located at 1301 Warren Avenue, Downers Grove, Illinois, advertising Leibundguth's business. (Pet. App. 9a-13a). Upon adoption of the 2005 sign ordinance, three specific regulations rendered Leibundguth's signs to be non-conforming. (Pet. App. 14a).

First, Leibundguth had a 400-square-foot commercial wall sign hand painted directly onto the brick exterior back of its building, facing the adjoining Burlington Northern Santa Fe (BNSF) railroad corridor. This sign accordingly violated the following three provisions: (i) the prohibition against painted wall signs (Section 9.020(P) of the sign ordinance); (ii) the commercial wall sign limit of 300-square-foot of commercial sign surface area permitted (Section 9.050(A) of the sign ordinance); and (iii) the existing (and later amended) regulation that allowed commercial wall signs only to face a roadway or drivable right-of-way (Section 9.050(C)(1) of the sign ordinance). (Resp. App. 5a, 14a, 19a).

Second, Leibundguth had two additional commercial wall signs located on the front of its building which violated the prohibition of more than one wall sign facing a public roadway or drivable right-of-way (Section 9.050(C)(1)). One was also in violation for again being painted directly onto the brick of the building (Section 9.020(P)). When adding the two wall signs on the front of the building to the 400-square-foot wall sign facing the BNSF railroad corridor, the square footage of the gross signage collectively exceeded the maximum 300-square-foot commercial sign surface area permitted, still violating the sign ordinance (Section 9.050(A)). (Resp. App. 19a, 5a, 14a).

From 2005-2014, Leibundguth did nothing to alter any of the non-conforming wall signs. The Village voluntarily withheld any enforcement proceedings during the nine-year amortization period. (Pet. App. 16a-17a). In 2014, when the amortization period expired, Leibundguth's wall signs became illegal non-conforming signs. By October 2014, over 95-percent of the properties with signs within the Village had come into compliance with the sign ordinance. As of February 2015, compliance increased to 97-percent.

On December 8, 2014, Leibundguth filed its complaint, subsequently amended on January 30, 2015. Count I of the amended complaint asserted a facial challenge to the sign ordinance as being content-based. Count II specifically challenged the painted wall sign prohibition in Section 9.020(P). Count III challenged the pre-amended Section 9.050(C), that a commercial wall sign face either a roadway or public right-of-way (not the railway as one of Leibundguth's signs did). Count IV challenged the commercial wall sign size and number limitations in Sections 9.050(A) and 9.050(C). (Pet. App. 17a-18a).

### A. Uniform Ban On Painted Wall Signs In The Village.

Prior to the filing of Leibundguth's amended complaint, Section 9.020(P) of the sign ordinance prohibited any sign painted directly on a wall, roof or fence, except in three limited downtown business districts. After the filing of the amended complaint, the Village Council on July 21, 2015 adopted Ordinance No. 5472 which amended Section 9.020(P) to uniformly ban painted signs throughout the entire Village, without any exception for the downtown business districts. (Resp. App. 41a-46a).

### B. Wall Signs Allowed Along The BNSF Railroad Right-Of-Way.

Prior to the case being filed, Section 9.050(C) of the sign ordinance prohibited Leibundguth from displaying a commercial wall sign on the rear building wall facing the BNSF railroad right-of-way. After the case filing, and also within Ordinance No. 5472, the Village undertook a second amendment that added an entirely new provision (Section 9.050(C)(5)), so that Leibundguth and all other owners with lots in the Village with frontage along the BNSF railroad right-of-way could display an additional "bonus" commercial wall sign on the building wall facing the railroad right-of-way, provided the sign not exceed 1.5-square-feet per lineal foot of tenant frontage along the right-of-way, while the total 300-square-feet surface area limitation remained in place. (Resp. App. 41a-46a).

### C. Substitution Clause Added To The Sign Ordinance.

Leibundguth filed its case roughly six months prior to the decision in *Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218 (2015). Prior to *Reed*, the Village had what court decisions came to refer to as a purposive sign ordinance, embraced by the Seventh Circuit to define sign ordinance content-neutrality in *Norton v. City of Springfield, Ill.*, 768 F.3d 713 (7th Cir. 2014) and *Lavey v. City of Two Rivers*, 171 F.3d 1110 (7th Cir. 1999). Under the purposive legal concept, the operative test to assess content-neutrality was as follows:

> …a regulation is not a content-based regulation of speech if (1) the regulation "is not a 'regulation of speech,'" but rather a "regulation of the

> places where some speech may occur;" (2) the regulation 'was not adopted 'because of disagreement with the message [the speech] conveys;'" or (3) the government's interests in the regulation "are unrelated to the content of the [affected] speech."

*Covenant Media of SC, LLC v. City of N. Charleston*, 493 F.3d 421, 432 (4th Cir. 2007), citing *Hill v. Colorado*, 120 S.Ct. 2480, 2491 (2000).

Like the Town of Gilbert in *Reed*, the Village's sign ordinance segregated purely commercial sign regulations from non-commercial sign regulations, including political signs, event signs, holiday decorations and other non-commercial signs. Purely commercial signs (like Leibundguth's wall signs) were subject to specific commercial regulations limiting the location where they could be displayed, the quantity of square footage, the total number of signs and how they could be affixed or mounted on the property. Non-commercial sign regulations were in a separate section of the sign ordinance and were subjected to different time, place, and manner regulations driven by the purpose of the sign. (Resp. App. 6a-11a).

Then, with this case pending, came the June, 2015 decision in *Reed*. Despite the fractured opinion in *Reed*, it was clear that a sign ordinance like the Village's which regulated non-commercial signs through a series of different time, place, and manner restrictions based upon the purpose of the non-commercial sign may not comply with First Amendment protections. Accordingly, the Village again amended its sign regulations. On September 8, 2015, less than three months after *Reed* was decided, the

Village adopted Ordinance No. 5478 to add what is known as a substitution clause. (Resp. App. 47a-51a).

The legislative purpose for the Village's substitution clause was set forth in Ordinance No. 5478:

> WHEREAS, the substitution clause adopted by this Ordinance under Section 9.010.E is expressly intended to allow the existing categories of non-commercial sign regulations to be maintained because they have been historically legislated with an intention of allowing the purpose and function of the non-commercial sign to impact the regulations. In light of the *Reed* decision, however, the substitution clause will also now permit the owner of a lawful sign to substitute non-commercial sign copy in lieu of any other commercial or non-commercial sign copy, because the federal courts have broadly and consistently held that such substitution clauses render municipal sign regulations to be content-neutral… (Resp. App. 49a).

The Village's substitution clause adopted shortly after *Reed* states:

> Sec. 9.010.E No Discrimination Against Non-Commercial Signs or Speech.
>
> The owner of any sign which is otherwise allowed under this Article 9 may substitute non-commercial copy in lieu of any other commercial or non-commercial copy. This

> substitution of copy may be made without any additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial message over any other non-commercial message. This provision prevails over any more specific provision to the contrary. This provision does not create a right to increase the total amount of signage on a parcel or allow the substitution of an off-site commercial message in place of an on-site commercial message. (Resp. App. 3a).

**D. District Court Proceedings.**

After the case was filed, the Village agreed to waive the up to $750 daily fine for non-conforming signs that could have been assessed against Leibundguth during the course of the district court proceedings. After discovery closed, the parties filed cross motions for summary judgment. (Pet. App. 58a).

On December 14, 2015, the district court granted summary judgment in favor of the Village on all counts in Leibundguth's amended complaint. (Pet. App. 52a). Leibundguth filed a motion to alter or amend the judgment, which the court denied on June 29, 2016. (Pet. App. 83a). The district court held the sign ordinance's universal ban on painted signs found in Section 9.020(P) content-neutral, and constituted a valid time, place, and manner restriction subject to intermediate scrutiny under *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288 (1984). (Pet. App. 20a, 52a, 72a-80a). The district court

also held that the sign ordinance's restrictions on the size and number of wall signs within Sections 9.050(A) and 9.050(C) applied only to commercial signs, and were subject to intermediate scrutiny under *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980). (Pet. App. 35a-36a, 52a, 83a).

In its memorandum opinion and order, the district court specifically discussed the *Reed* decision. (Pet. App. 38-39a). While noting that its reach was not yet clear due to the recency of the decision and the various concurring opinions within it, the district court reiterated that the restrictions in *Reed* applied only to non-commercial speech. The district court therefore concluded that absent an express overruling of *Central Hudson*, it must consider *Central Hudson* and its progeny directly applicable and binding on the commercial speech regulations challenged by Leibundguth. (Pet. App. 39a).

Finally, the district court addressed Leibundguth's facial challenge to the size and number restrictions within Sections 9.050(A) and 9.050(C)(1). Relying on the overbreadth doctrine to satisfy standing, Leibundguth had asserted that even if the specific sign restrictions at issue could be constitutionally applied to it, the restrictions could conceivably be applied unconstitutionally to others and thus had to be found invalid in all applications. The district court rejected Leibundguth's overbreadth attack, holding based upon clear precedent that because the size and number restrictions in Sections 9.050(A) and 9.050(C) applied only to commercial speech, a non-commercial litigant could never be subject to the restrictions. (Pet. App. 49a-51a).

**E. The Seventh Circuit Decision.**

The Seventh Circuit affirmed the district court, albeit not under the precise same reasoning. (Pet. App. 1a-7a). The Seventh Circuit did not apply intermediate scrutiny under *Central Hudson*. Instead, the Seventh Circuit held that the challenged sign restrictions were all standard time, place, and manner regulations subject to intermediate scrutiny under *Clark*, 468 U.S. at 298. (Pet. App. 5a). The Seventh Circuit further acknowledged the existence of differences between the commercial and non-commercial regulations in the Village sign ordinance. Consistent with the district court, the Seventh Circuit concluded that none of Leibundguth's problems arose from any content distinctions; rather, they were simply the result of size and surface limitations. Thus, regardless of any content discrimination, the Seventh Circuit also found that Leibundguth lacked the ability to challenge the constitutionality of sign regulations that did not apply to its own signs.

The Village strongly contests Leibundguth's assertion that the Seventh Circuit rejected the district court's finding that Section 9.050 of the sign ordinance applied only to commercial speech. (Pet. 8-9) No such language is found anywhere in the Seventh Circuit's opinion. In fact, Leibundguth itself argued and agreed that Section 9.050 applied only to commercial speech, which the district court discussed at length in its memorandum opinion and order entered on Leibundguth's motion to alter or amend the judgment. (Pet. App. 63a-68a).

Because the challenged regulations survived intermediate scrutiny under *Clark* and/or *Central*

*Hudson*, neither the district court nor Seventh Circuit commented on the existence or impact of the substitution clause in the Village's sign ordinance.

## ARGUMENT

### I. Leibundguth's perception of lower court confusion over the level of scrutiny to be applied to commercial speech is not supported.

As the fundamental basis of its petition, Leibundguth categorically asserts that regulations that restrict commercial speech, while permitting non-commercial speech, are now content-based under *Reed*'s framework. The Village is not aware of any decision that even questions whether *Reed* somehow converts a municipal sign ordinance into a content-based ordinance requiring strict scrutiny simply because the non-commercial sign regulations are different than more restrictive commercial regulations. Leibundguth has not cited such a case, and the Village respectfully submits that both Leibundguth and the Seventh Circuit in its opinion herein mistakenly read *Thomas v. Bright*, 937 F.3d 721 (6th Cir. 2019) as holding that *Reed* supersedes or overturns *Central Hudson*. *Thomas* does no such thing, and in fact, does not even reference *Central Hudson*.

*Thomas* involved a First Amendment challenge to a Tennessee on-premise exception to a sign regulation that prohibited copy on billboards unless the message posted related to the use or purpose of the property on which the sign was located. Because the plaintiff in *Thomas* posted a sign on vacant property with a non-commercial message that said "Go USA!" on a large American flag in support

of the USA Olympic Team in the 2012 Summer Games, the State of Tennessee said the sign was not permitted under the regulation. Thomas sued and the trial court held the regulation to be a content-based restriction on non-commercial speech, subject to strict scrutiny. In affirming the district court's finding of a violation of Thomas' First Amendment rights, the court expressly limited its holding to non-commercial speech, stating:

> When a case implicates a core constitutional right, such as a First Amendment right, we must determine the level of scrutiny to apply based on whether the restriction is content-based or content-neutral. *Reed*, 135 S.Ct. at 2226-27. Because Thomas's challenge to the Act concerned only non-commercial speech ("Go USA!") and this appeal stems from the district court's as-applied holding, we necessarily confine the analysis here to non-commercial speech and need not consider the commercial speech doctrine.

*Thomas*, 937 F.3d at 729.

*Thomas* does not create any confusion or break any new ground. Thirty years prior to *Reed*, the same type of on-premise billboard regulation was declared to be a content-based non-commercial speech regulation in the case of *Nat'l Adver. Co. v. City of Orange*, 861 F.2d 246, 248-249 (9th Cir. 1988). *Thomas* is simply another case where the court declared a regulation unconstitutional because it prohibited non-commercial speech on a billboard while allowing less protected commercial speech exclusively on the basis of message content.

## II. Commercial and non-commercial speech have historically been treated differently.

The constitutional protections of the First Amendment have customarily been interpreted by this Court as restricting the authority of municipal sign regulation based on the content of the speech as being either commercial or non-commercial. Indeed, in confronting a suggestion like Leibundguth's that a sign ordinance was content-based because it had differing commercial and non-commercial regulations, the Fourth Circuit recognized:

> That some differential treatment is permitted on the basis of speech's commercial or non-commercial character would seem to be a necessary implication of the Supreme Court's use of different constitutional tests for regulations of commercial versus non-commercial speech.

*Am. Legion Post 7 of Durham, N.C. v. City of Durham*, 239 F.3d 601, 608 (4th Cir. 2001).

This different treatment between commercial and non-commercial signs and speech, and the fact that non-commercial speech is afforded greater protection than commercial speech, is predicated upon a long line of this Court's decisions finding this practice to be constitutionally sound. *Expressions Hair Design v. Schneiderman*, 137 S.Ct. 1144, 1151 (2017); *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 506 (1981); *Central Hudson*, 447 U.S. at 562-563; *Friedman v. Rogers*, 440 U.S. 1, 8-10 (1979); *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 455-56 (1978); *Linmark Ass'n, Inc. v. Willingboro Tp.*, 431 U.S.

85, 91-92, 97 (1977); *Young v. Am. Mini Theatres, Inc.*, 427 U.S. 50, 68-69 n.32 (1976);

Leibundguth's position turns this Court's longstanding and unwavering precedent upside down. Leibundguth's contorted view of *Reed* effectively overturns *Metromedia* and its progeny by imposing strict scrutiny on a municipal sign ordinance like the Village's that does exactly what it is supposed to do -- favor non-commercial speech by imposing restrictions on commercial speech that do not apply to non-commercial speech. In simplest terms, Leibundguth argues that any distinction between commercial speech regulation and non-commercial speech regulation renders the entire sign ordinance facially content-based, even if the distinction affords greater protection to non-commercial speech. This position should be rejected as having no basis in law.

## III. *Reed* itself belies Leibundguth's effort to obtain strict scrutiny.

Ironically, Leibundguth advocates the exact absolutist position the Town of Gilbert feared and foresaw, which the majority in *Reed* made an express and clear effort to refute and reject:

> Our decision today will not prevent governments from enacting effective sign laws. The Town asserts that an "absolutist" content-neutrality rule would render "virtually all distinctions in sign laws…subject to strict scrutiny." Brief for Respondents 34-35, but that is not the case. Not "all distinctions" are subject to strict scrutiny, only *content-based* ones are. Laws that are

> *content-neutral* are instead subject to lesser scrutiny. *See, Clark*, 468 U.S. at 295, 104 S.Ct. 3065.

*Reed*, 135 S.Ct. at 2232.

The concurring opinions in *Reed* also go to great length to guard against the position Leibundguth takes here by both warning against an automatic trigger of strict scrutiny regardless of the subcategories and exceptions to the strict scrutiny rule, including the commercial speech doctrine, and acknowledging the continued ability of municipalities to impose time, place, and manner restrictions such as those at issue in this case. *Reed*, at 135 S.Ct. at 2233-2236. (Justices Alito and Breyer, concurring in the judgment). Notably, the continued ability to do so in the face of *Reed* was expressly acknowledged in *Thomas*, 937 F.3d at 737-738.

In sum, Leibundguth's interpretation of *Reed* imposes a definition of content-neutrality that prevents a municipality from regulating commercial and non-commercial speech differently, creating a conundrum worthy of C.S. Lewis. Should Leibundguth's version of the *Reed* framework be adopted, the First Amendment would obligate the Village to adopt sign regulations that afford greater protection to non-commercial speech over commercial speech. But in writing those differing regulations for commercial and non-commercial signs, the same First Amendment would render the sign ordinance *per se* content-based and presumptively invalid. This Catch-22 is untenable and cannot be the embraced outgrowth of *Reed*.

## IV. The Village promptly responded to *Reed*'s non-commercial speech holding and adopted a substitution clause.

In response to *Reed*, within three months the Village adopted an amendment adding a substitution clause to its sign ordinance. (Resp. App. 3a). Purely commercial signs continued to be subject to the same time, place, and manner restrictions that previously limited the size, number and location of commercial signs, including Leibundguth's signs. But in order to ensure content-neutrality for non-commercial speech, the substitution clause permitted the owner of any sign allowed under the sign ordinance to substitute any non-commercial message for any other message of either permitted non-commercial or commercial copy. The introduction of this substitution clause was not a novel innovation of the Village, as substitution clauses had a lengthy record of judicial acceptance.

The adoption of substitution clauses dates back to the 1980s and typically provided that, notwithstanding any other provision in an ordinance to the contrary, non-commercial copy could appear in lieu of commercial copy on a sign so as to ensure that commercial advertising copy was not preferred over non-commercial copy. This was a key flaw that had been identified by the plurality opinion in *Metromedia*, 453 U.S. at 512-517.

The earliest decisions addressing the substitution clause emanated from the Fourth Circuit. *See, Major Media of the Se., Inc. v. City of Raleigh*, 792 F.2d 1269, 1272 (4th Cir. 1986); *Ga. Outdoor Adver., Inc. v. City of Waynesville*, 833 F.2d 43, 45-46 (4th Cir. 1987); *Naegele*

*Outdoor Adver., Inc. v. City of Durham*, 844 F.2d 172, 173 (4th Cir. 1988).

Other courts followed and adhered to the Fourth Circuit's decisions. *See, Nat'l Adver. Co. v. City of Orange*, 861 F.2d at 247-248; *Nat'l Adver. Co. v. Town of Babylon*, 900 F.2d 551, 556 (2d Cir. 1990); *Nat'l Adver. Co. v. City and County of Denver*, 912 F.2d 405, 410 (10th Cir. 1990); *Outdoor Sys., Inc. v. City of Mesa*, 997 F.2d 604, 610-612 (9th Cir. 1993); *Southlake Prop. Assoc., Ltd. v. City of Morrow, Ga.*, 112 F.3d 1114, 1117-1118 (11th Cir. 1997); *Valley Outdoor, Inc. v. Cnty. of Riverside*, 337 F.3d 1111, 1112 (9th Cir. 2003); *Nat'l Adver. Co. v. City of Miami*, 402 F.3d 1329, 1334-1335 (11th Cir. 2005); *Outdoor Media Group, Inc. v. City of Beaumont*, 506 F.3d 895, 902 (9th Cir. 2007).

In *Vono v. Lewis*, 594 F.Supp.2d 189, 204-205 (D.R.I. 2009), the federal district court criticized the state for not adopting a substitution clause, noting that during the course of the litigation the state had the opportunity, but declined to do so. In stark contrast, the Village here took that opportunity and promptly added a substitution clause as a direct consequence of the *Reed* decision. Given the existence of the substitution clause, any suggestion by Leibundguth that the Village's sign ordinance is content-based and subject to strict scrutiny has no merit.

## CONCLUSION

Nothing in *Reed* nor any other decision supports Leibundguth's petition. No case even suggests that because the Village sign ordinance contains a set of sign regulations for commercial speech which differ and are

more restrictive than those applicable to non-commercial speech, the sign ordinance is *per se* content-based and subject to strict scrutiny. Intermediate scrutiny was properly applied to the challenged time, place, and manner sign regulations restricting Leibundguth's purely commercial speech. As correctly recognized and rejected by the district court and the Seventh Circuit, Leibundguth cannot challenge sign regulations that do not apply to its purely commercial speech in an effort to bootstrap strict scrutiny review. In any event, adoption of the substitution clause rendered the Village's sign ordinance to be content-neutral.

Leibundguth has not established any compelling reason for this Court to grant its petition for a writ of certiorari. Therefore, the Village respectfully requests the petition be denied.

Respectfully submitted,

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# APPENDIX

# APPENDIX A — ARTICLE 9, VILLAGE OF DOWNERS GROVE SIGN ORDINANCE

## ARTICLE 9 | SIGNS

[TABLES INTENTIONALLY OMITTED]

### Sec. 9.010 General

#### A. Purpose

The sign regulations of this article are established to create a comprehensive but balanced system of sign regulations to promote effective communication and to prevent placement of signs that are potentially harmful to motorized and non-motorized traffic safety, property values, business opportunities and community appearance. This article is adopted for the following specific purposes:

1. to preserve, protect and promote public health, safety and welfare;

2. to preserve the value of private property by assuring the compatibility of signs with surrounding land uses;

3. to enhance the physical appearance of the village;

4. to enhance the village's economy, business and industry by promoting the reasonable, orderly and effective display of signs, and encouraging better communication between an activity and the public it seeks with its message;

5. to protect the general public from damage and injury, that may be caused by the faulty and uncontrolled construction and use of signs within the village;

6. to protect motorized and non-motorized travelers by reducing distraction that may increase the number and severity of traffic accidents; and

7. to encourage sound practices and lessen the objectionable effects of competition with respect to size and placement of street signs.

**B. Applicability**

The regulations of this article apply to all signs in the village, unless otherwise expressly stated.

**C. Public Health and Safety**

No sign may be designed, constructed or maintained in a manner that presents a danger to the public health, safety or welfare, as determined by the village.

**D. Content and Location**

Except as otherwise expressly provided in this article, the following regulations apply to all signs:

1. The content of signs is limited to the business, service, and activity available or conducted on the subject lot.

2. Unless otherwise specified in the Article, signs are subject to setback regulations of the subject zoning district.

3. When a business or service does not have direct access to a public street, signs directing traffic to the subject business or service may be located off premises at the nearest point of access. Such signs are counted as part of the total allowable sign area.

**E. No Discrimination Against Non-Commercial Signs Or Speech**

The owner of any sign which is otherwise allowed under this Article 9 may substitute non-commercial copy in lieu of any other commercial or non-commercial copy. This substitution of copy may be made without any additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial message over any other non-commercial message. This provision prevails over any more specific provision to the contrary. This provision does not create a right to increase the total amount of signage on a parcel or allow the substitution of an off-site commercial message in place of an on-site commercial message.

*Appendix A*

**Sec. 9.020 Prohibited Signs and Sign Characteristics**

The following are expressly prohibited under this ordinance:

A. any sign or structure that constitutes a hazard to public health or safety;

B. any signs attached to utility, traffic signal poles, light poles, or standards except for governmental signs;

C. signs, that by their color, location, or design resemble or conflict with traffic control signs or signals;

D. except for governmental signs erected by, or on behalf of, the unit of government having jurisdiction, no sign may be located on the public right-of-way, or affixed to or upon public property. This prohibition includes any sidewalk, parkway, crosswalk, curb, curbstone, street lamppost, hydrant, tree, shrub, tree stake or guard, electric light or power, CATV, telephone or telegraph system, fire alarm, lighting system, public bridge, drinking fountain, trash receptacle, street sign or traffic sign;

E. portable signs, except for sandwich board signs that are allowed in the DB, DT and Fairview concentrated business districts;

F. vehicle signs when the vehicle is not licensed, insured or operational;

G. advertising off-premise signs;

H. moving signs;

I. LED and flashing signs;

J. signs with bare bulb illumination, except for marquees located in the DB, DT or Fairview concentrated business districts;

K. attention-getting devices;

L. signs containing exposed gas tubing, exterior to the building, including argon and neon;

M. roof signs;

N. box-type signs in the DB, DT or Fairview concentrated business districts;

O. any sign that advertises, identifies, or pertains to a business no longer conducted, or a product no longer sold, on the premises where such sign is located, within the previous 30 days;

P. any sign painted directly on a wall, roof, or fence;

Q. any sign placed or attached to a telecommunications tower, pole or antenna;

R. signs containing manual changeable copy consisting of more than 2 lines, except that fueling stations, governmental agencies, schools and religious assembly uses have up 4 lines of manual changeable copy. The changeable copy surface area is included in the total surface area allowed;

S. signs containing electronic changeable copy/ message board;

T. single pole signs with a base of less than 2 feet in width; and

U. any other sign not expressly permitted in this article.

**Sec. 9.030 Signs Allowed without a Sign Permit**

The following signs do not require a sign permit and are subject to the following regulations:

A. Governmental signs, public signs and other signs incidental to those signs for identification, information or directional purposes erected or required by governmental bodies, or authorized for a public purpose by any law, statute or ordinance.

B. Railroad crossing and signs of public utility companies indicating danger or that serve as an aid to public safety or that show the location of underground facilities.

C. Street address signs up to 4 square feet in area.

D. Decorations temporarily displayed in connection with a village-sponsored or approved event or a generally recognized or national holiday.

E. Temporary signs at a residence commemorating a personal event, such as a birth, birthday, anniversary or graduation.

F. "No trespassing" or similar signs regulating the use of property, provided such signs are no more than 2 square feet in area.

G. Noncommercial flags of any country, state or unit of local government.

H. Real estate signs, provided that in residential zoning districts, real estate signs may not exceed 5.5 square feet in area, including all attached tags. In nonresidential zoning districts, real estate signs may not exceed 36 square feet in area. Real estate signs may be used solely for advertising the sale, rental or lease of the property where such sign is located. Real estate signs may not exceed 10 feet in height. No more than one real estate sign is allowed per lot where such lot contains a single use, except on a corner lot one real estate sign is allowed per street frontage. When a lot contains multiple uses one real estate sign is allowed per use. Real estate signs may not be placed in the public right-of-way,

except that "open house" signs may be placed in the public right-of-way on Friday, Saturday and Sunday of the weekend that the open house will take place. Such open house signs may be posted only between the hours of 5:00 a.m. Friday to 10:00 p.m. on Sunday, provided that:

1. the open house sign may not exceed 4 square feet in area;

2. the open house sign must be freestanding, not attached to any utility pole, traffic control sign or other similar structured and must be placed at least 3 feet from the curb or edge of the pavement;

3. only one open house sign is permitted within 1.50 feet of another sign that relates to the same address. There may be only one open house sign relating to the same address placed in on a single lot;

4. no attention-getting or attracting devices may be attached to any open house sign;

5. each open house sign must have attached to it an adhesive label or other means to identify the name, address and telephone number of the person responsible for placement and removal of the sign; and

6. a minimum fine of $75.00, per Section 1.16(f) of the municipal code, will be levied on the person whose name is on the sign if the sign does not comply with the preceding regulations. If no names are found on the sign the fine will be levied on the owner of the property identified on the sign.

I. Political signs and noncommercial signs, provided that total area of all such signs together may not exceed a maximum area of 12 square feet per lot. Political and noncommercial signs may not be placed in the public right-of-way.

J. Garage sale, rummage sale, yard sale and estate sale signs, provided that such signs may be placed in the public right-of-way only on Friday, Saturday, Sunday and federal holidays that are observed on Mondays of the weekend that the sale will take place. Such sale signs may be posted only between the hours of 5:00 a.m. Friday to 10:00 p.m. on Sunday, provided that:

1. the sign may not exceed 4 square feet in area;

2. the sign must be freestanding, not attached to any utility pole, traffic control sign or other similar structured and must be placed at least 3 feet from the curb or edge of the pavement;

3. only one sale sign is permitted within 150 feet of another sign that relates to the same address. There may be only one sale sign relating to the same address placed in on a single lot;

4. no attention-getting or attracting devices may be attached to any sale sign;

5. each sale sign must have attached to it an adhesive label or other means to identify the name, address and telephone number of the person responsible for placement and removal of the sign; and

6. a minimum fine of $75.00, per Section 1.16 of the municipal code, will be levied on the person whose name is on the sig if the sign does not comply with the preceding regulations. If no names are found on the sign the fine will be levied on the owner of the property identified on the sign.

K. Memorial signs and tablets, names of buildings and date of erection when cut into masonry surface or inlaid so as to be part of the building or when constructed of bronze or other noncombustible material.

L. "Help wanted" signs up to 2 square feet in area. The "help wanted" sign text must be the predominant text on the sign. Help wanted signs may only be located on a window or door.

M. Public notice signs are permitted on property that is the subject of a public meeting or hearing. Such signs may not exceed 9 square feet in area or 6 feet in height.

N. Vehicle signs are allowed when the vehicle to which the sign is attached is licensed, insured, and operational. The vehicle must be used for the operation of the business and may not remain stationary for an extended period of time for the purpose of attracting attention to a business.

O. Up to one contractor sign is allowed per lot. Such sign may not exceed 6 square feet in area and must be removed upon completion of related work.

**Sec. 9.040 Temporary Signs**

Temporary signs as identified in this article may be permitted for promoting special community activities, special events, grand openings for businesses, or the activities of nonprofit organizations, subject to the issuance of a sign permit and compliance with the following regulations.

A. No more than 8 permits for temporary signs may be issued in any calendar year for a single lot. Permits may be valid for a maximum period of 7 days. Applications for temporary sign permits must be approved by the village and must contain at minimum a general description of the sign, including size and lighting.

B. All temporary signs must be properly maintained while displayed and be able to withstand all weather elements.

C. Temporary signs may not contain changeable copy.

D. Temporary signs may not exceed 32 square feet in area.

E. A maximum of one temporary sign may be permitted for each street frontage on a lot.

F. All temporary signs must be removed by the person or organization that erected or caused the erection of the sign within 3 days of the end of the event to which they relate, or at the end of the maximum period for which the sign is allowed, whichever date comes first.

G. Temporary window signs are exempt from sign permit requirements. However, unless they are promoting an upcoming event of a nonprofit agency, such temporary window signs are subject to the restrictions regarding allowable area for window signs.

H. Temporary signs may not be located above the first floor in the DB, DT and Fairview Avenue Concentrated Business Districts.

*Appendix A*

I. The following additional regulations apply to all (temporary) development signs.

1. A sign permit must be obtained before the erection of any development sign. A sign permit may be issued in connection with the following types of developments after the village has issued a final approval for the development.

   a. Residential developments of 3 or more dwelling units.

   b. Commercial, industrial or institutional developments consisting of at least 20,000 square feet of land area.

2. Only one development sign per street frontage is permitted.

3. Development signs may not exceed 36 square feet in area.

4. Development signs must be removed at such time a final certificate of occupancy is issued. If more than one final certificate of occupancy will be issued for the development, the development signs must be removed when at least 75% of the final certificates of occupancy have been issued.

5. Development signs may display only information pertinent to the entity or entities participating in the development project.

## Sec. 9.050 Sign Regulations Generally

The regulations of this section (Sec. 9.050) apply to signs in all areas of the village except the DB and DT zoning districts and the Fairview concentrated business district.

### A. Maximum Total Sign Area

The maximum allowable sign area may not exceed 1.5 square feet per linear foot of tenant frontage, plus any signs expressly excluded from maximum sign area calculations. Buildings set back more than 300 feet from the abutting street right-of-way are allowed a maximum allowable sign area of 2 square feet per linear foot of tenant frontage, plus any allowed excluding menu boards, window and temporary signs. In no case, may a single tenant exceed 300 square feet in total sign surface area.

### B. Monument Signs and Shingle Signs

Unless otherwise expressly stated, each lot is allowed either one monument sign or one shingle sign.

#### 1. Monument Signs

*Appendix A*

a. Monument signs are limited to a maximum of 2 sign faces and are subject to the height and area limitations of Table 9-1.

*Table* 9-1: *Monument Sign Height and Area Regulations*

| | **Lot Size** | | |
|---|---|---|---|
| **Monument Sign Regulations** | **Less than 100 ft. Lot Width** | **100-259 ft. Lot Width** | **260 ft. or Greater Lot Width and at Least 2.5 Acres in Area** (B-3 District Only) |
| Maximum Height (feet) | 8 | 10 | 15 |
| Maximum Area (sq. ft.) | 24 | 36 | 60 |

b. Monument signs must be set back at least 10 feet from all street rights-of-way and at least 25 feet from all other lot lines. Monument signs that are greater than 10 feet in height and 36 square feet in size must be set back at least 100 feet from interior (non-street) lot lines.

c. Monument signs are subject to the intersection visibility regulations of Sec. 10.020.

d. Monument signs must display the address number of the subject property with numbers or characters between 8 and 10 inches in height. Address numbers are excluded when calculating the area of the monument sign.

e. Lots with more than one street frontage are allowed 2 monument signs, provided the signs are located on different street frontages and separated by a minimum distance of 100 feet.

f. The base of all monument signs must be landscaped. Every permit application for a monument sign must be accompanied by a landscape plan demonstrating compliance with the following standards:

(1) Signs must be surrounded by a landscaped area of at least 3 feet in width, measured outward from the face of the sign.

(2) Landscaping within the required landscape area must consist of shrubs, evergreens, perennial or annual flowers, ornamental grasses, vegetative ground cover or some combination of such live plants. Sodded, seeded, mulched or rocked areas may not be counted as meeting

these monument sign landscaping requirements.

(3) Monument sign landscaping is subject to the landscape maintenance provisions of Sec. 8.0601.

**2. Multi-tenant Shopping Centers**

a. Multi-tenant shopping centers located on lots with more than 500 feet of street frontage are allowed 2 monument signs, provided the signs are separated by a minimum distance of 200 feet. Such signs may not exceed 15 feet in height or 60 square feet in area and must contain the names of more than one tenant. A shopping center tenant's panel sign is not counted toward allowable sign surface area.

b. Multi-tenant shopping centers located on lots with 100 to 500 feet of street frontage are allowed a maximum of one monument sign. The sign may not exceed 10 feet in height or 36 square feet in area and must contain the names of more than one tenant. A shopping center tenant's panel sign is not counted toward allowable sign surface area.

c. Multi-tenant shopping centers located on lots with less than 100 feet of street frontage age are allowed a maximum of one monument sign. The sign may not exceed 8 feet in height or 24 square feet in area and must contain the names of more than one tenant. A shopping center tenant's panel sign is not counted toward allowable sign surface area.

**3. Tollway Corridor**

Signs on lots abutting the right-of-way of I-88 or I-355 are subject to all regulations of this article, with the following exceptions:

a. In addition to the monument sign otherwise allowed by Sec. 9.050B one additional monument sign is allowed for lots with a minimum frontage of 100 feet along the tollway or on IDOT frontage along the tollway.

b. The additional monument sign must be placed adjacent to the tollway and may not exceed 225 square feet in area or 20 feet in height. The additional monument sign will not be counted in calculating the lots total sign area.

c. Monument signs must be separated by a minimum distance of 30 feet from any existing tollway signs.

**4. Shingle Signs**

The maximum allowed sign area of a shingle sign is 10 square feet per side. The maximum allowed height is 7 feet. Shingle signs must be set back at least 8 feet from interior lot lines. No street setback applies.

**C. Wall Signs**

1. Each business or property owner is allowed to display one wall sign per tenant frontage along a public roadway or drivable right-of-way.

2. If the structural support of a wall sign is visible it must be the same color as the exterior building to which it is attached.

3. Wall signs may not cover (wholly or partially) any wall opening, and may not extend beyond the perimeter of the wall to which it is attached or extend more than 12 inches from the vertical plane of the wall to which it is attached.

4. Buildings with a height of 4 stories or more are allowed one wall sign on up to 3 sides of the building, with a maximum area of 100 square feet per sign. Such wall signs are not counted in calculating maximum allowable sign area.

In addition to all other signs allowed by Section 9.050, lots with frontage along the BNSF railroad right-of-way are allowed one additional wall sign to be displayed on the wall facing the BNSF railroad right-of-way. Such sign shall not exceed 1.5 square feet per lineal foot of tenant frontage along the BNSF railroad right-of-way. The maximum allowable sign area including all permitted signs pursuant to Section 9.050 may not exceed 300 square feet excluding any signs expressly excluded from the maximum sign area calculations.

**D. Menu Boards**

Menu boards for restaurants are allowed on the exterior wall of the business. Such signs may not exceed 4 square feet in area. The menu board area is not counted in calculating maximum allowable sign area. The menu board sign may include menus or notice of special events including community events. All menu board signs must be enclosed in a tempered glass or Plexiglas frame.

**E. Projecting Signs**

**1. First Floor**

Each first floor establishment is allowed one projecting sign. Such signs may not extend more than 36 inches from the vertical plane

of the façade to which it is attached and may not exceed 6 square feet in area. First floor projecting signs must be placed to allow at least 8 feet of vertical clearance above the ground directly beneath the sign. Projecting signs may not be internally illuminated.

**2. Second Floor**

The second floor of any building is allowed only one projecting sign, which must be located immediately over or within 2 feet of the first floor pedestrian access to the building. Such signs may not extend more than 36 inches from the vertical plane of the façade to which it is attached and may not exceed 6 square feet in area. The projecting signs must be placed to allow at least 8 feet of vertical clearance above the ground directly beneath the sign. Projecting signs may not be internally illuminated.

**F. Awning Signs**

Awning or canopy signs are allowed, subject to the following requirements:

1. Awnings and canopies may not extend above the first floor of the building to which it is attached and must be constructed and erected so that the lowest portion of the awning or canopy is at least 8 feet above the ground directly beneath it.

2. Awning or canopy signs may include only the name, address, and logo of the business conducted within the building. No advertising may be placed on any awning or canopy sign. Lettering must be painted or otherwise permanently affixed to the awning or canopy.

**G. Under-Canopy Signs**

Under-canopy signs must be attached to the underside of the soffit or ceiling of a canopy. The face of any such sign may not exceed 12 inches in height or 4 feet in length. Such signs must be placed to allow at least 8 feet of vertical clearance above the ground directly beneath the sign.

**H. Window Signs**

1. First floor businesses are allowed permanent and temporary window signs covering a maximum of 25% of each window. The window sign area is in addition to the total maximum allowable sign area.

2. Businesses located above the first floor are allowed permanent window signs of individual letters or etching, covering up to 25% of one window per floor per tenant.

*Appendix A*

## Sec. 9.060 Sign Regulations for Downtown and the Fairview Concentrated Business District

The regulations of this section (Sec. 9.060) apply in the DB and DT zoning districts and the Fairview concentrated business district.

### A. Maximum Total Sign Area

The maximum allowable sign area may not exceed one square feet per linear foot of tenant frontage or 300 square feet, whichever is less, plus any signs expressly excluded from maximum sign area calculations.

### B. Box Signs Prohibited

Box-type signs are prohibited.

### C. Monument, Shingle and Freestanding Signs

Unless otherwise expressly stated, each lot is allowed either one monument sign, one shingle sign or one freestanding sign, subject to the following regulations.

#### 1. Monument Sign

Monument signs may not exceed 20 square feet in area per side or a height of 7 feet. Monument signs must be set back at least 8 feet from all interior lot lines. No street

setback applies. Monument signs must display the address number of the subject property with numbers or characters between 8 and 10 inches in height. Address numbers are excluded when calculating the area of the monument sign.

**2. Shingle Sign**

Shingle signs may not exceed 10 square feet in area per side or a height of 7 feet. Shingle signs must be set back at least 8 feet from all interior lot lines. No street setback applies.

**3. Freestanding Sign**

Freestanding signs may not exceed 20 square feet in area per side or a height of 7 feet. Freestanding signs must be set back at least 8 feet from all interior lot lines. No street setback applies.

**D. Landscaping**

The base of all freestanding and monument signs must be landscaped. Every permit application for a monument sign must be accompanied by a landscape plan demonstrating compliance with the following standards:

1. Signs must be surrounded by a landscaped area of at least 3 feet in width, measured outward from the face of the sign.

2. Landscaping within the required landscape area must consist of shrubs, evergreens, perennial or annual flowers, ornamental grasses, vegetative ground cover or some combination of such live plants. Sodded, seeded, mulched or rocked areas may not be counted as meeting these landscaping requirements.

3. Freestanding and monument sign landscaping is subject to the landscape maintenance provisions of Sec. 8.0601.

**E. Wall Signs**

1. Each business or property owner is allowed to display one wall sign per tenant frontage along a public roadway or drivable right-of-way.

2. If the structural support of a wall sign is visible it must be the same color as the exterior building to which it is attached.

3. Wall signs may not cover (wholly or partially) any wall opening, and may not extend beyond the perimeter of the wall to which it is attached or extend more than 12 inches from the vertical plane of the wall to which it is attached.

4. In addition to all other signs allowed by Section 9.060, lots with frontage along the BNSF railroad right-of-way are allowed one additional wall sign to be displayed on the wall facing the BNSF railroad right-of-way. Such sign shall not exceed 1.0 square foot per lineal foot of tenant frontage along the BNSF railroad right-of-way. The maximum allowable sign area including all permitted signs pursuant to Section 9.060 may not exceed 300 square feet excluding any signs expressly excluded from the maximum sign area calculations.

## F. Menu Boards

Menu boards for restaurants are allowed on the exterior wall of the business. Such signs may not exceed 4 square feet in area. The menu board area is not counted in calculating maximum allowable sign area. The menu board sign may include menus or notice of special events including community events. All menu board signs must be enclosed in a tempered glass or Plexiglas frame.

## G. Projecting Signs

### 1. First Floor

Each first floor establishment is allowed one projecting sign. Such signs may not extend more than 36 inches from the vertical plane

of the façade to which it is attached and may not exceed 6 square feet in area. First floor projecting signs must be placed to allow at least 8 feet of vertical clearance above the ground directly beneath the sign. Projecting signs may not be internally illuminated.

**2. Second Floor**

The second floor of any building is allowed only one projecting sign, which must be located immediately over or within 2 feet of the first floor pedestrian access to the building. Such signs may not extend more than 36 inches from the vertical plane of the façade to which it is attached and may not exceed 6 square feet in area. First floor projecting signs must be placed to allow at least 8 feet of vertical clearance above the ground directly beneath the sign. Projecting signs may not be internally illuminated.

**H. Awning Signs**

Awning or canopy signs are allowed, subject to the following requirements:

1. Awnings and canopies may not extend above the first floor of the building to which it is attached and must be constructed and erected so that the lowest portion of the awning or canopy is at least 8 feet above the ground directly beneath it.

2. Awning or canopy signs may include only the name, address, and logo of the business conducted within the building. No advertising may be placed on any awning or canopy sign. Lettering must be painted or otherwise permanently affixed to the awning or canopy.

**I. Under-Canopy Signs**

Under-canopy signs must be attached to the underside of the soffit or ceiling of a canopy. The face of any such sign may not exceed 12 inches in height or 4 feet in length. Such signs must be placed to allow at least 8 feet of vertical clearance above the ground directly beneath the sign.

**J. Window Signs**

1. First floor businesses are allowed permanent and temporary window signs covering a maximum of 25% of each window. The window sign area is in addition to the total maximum allowable sign area.

2. Businesses located above the first floor are allowed permanent window signs of individual letters or etching, covering up to 25% of one window per floor per tenant. Window signs above the first floor may not be illuminated by means of exposed gas tubing including, but not limited to, argon, neon or neon-like substances.

**K. Heritage Signs**

Signs in place in the DB or DT zoning districts or Fairview concentrated business district before January 1, 1965 are hereby deemed to be "heritage signs" and are allowed to remain in place and be maintained in any manner to allow for continued use. In order to be deemed a "heritage sign," the owner of the sign must provide conclusive evidence to the community development director that the sign was in place before January 1, 1965.

**L. Sandwich Board Signs**

First floor businesses are allowed up to one sandwich board sign, not to exceed 6 square feet in area. They are not counted in calculating the maximum sign area allowed on a lot. Sandwich board signs are allowed within the public right-of-way, provided the following requirements are met:

1. A license agreement must entered into in a form and amount approved by the village indemnifying and holding the village harmless from liability and naming the village, its officers and employees as an additional insured on a general liability insurance policy. Such license agreements require the approval and signature of the village manager.

2. Sandwich board signs may be displayed only during business hours and must be removed each day at the end of business.

3. Sandwich board signs may not be placed in any location where the paved area for passage is reduced to less than 6 feet or within 15 feet of any intersection, driveway or crosswalk.

4. Sandwich board signs must be constructed of wood, metal or durable plastic.

5. The minimum fine for a violation of these sandwich board sign regulations is $750. Each day that such violation continues constitutes a separate fineable offense.

**Sec. 9.070 Special Sign Types**

**A. Ornamental Entry Gate Signs**

Ornamental entry gate signs are allowed at the entry to a development along an arterial or collector street, subject to the following regulations:

1. The maximum area of any ornamental entry gate sign in a residential zoning district is 25 square feet, and the maximum height is 8 feet.

2. The maximum area of any ornamental entry gate sign in a manufacturing zoning district is so square feet, and the maximum height is 10 feet.

3. In residential zoning districts, the sign may display only the name of the subdivision or development.

4. In manufacturing zoning districts, the sign may display only a directory for an industrial subdivision or an industrial park.

5. One ornamental entry gate sign may be located on each side of the point of ingress to the development, but not in the public right-of-way or otherwise upon public property. Any ornamental entry gate sign on public property before August 1, :2006 may remain in place, subject to approval of a fully executed license agreement with the village.

**B. Home Occupation Signs**

Permitted home occupations are allowed one sign per lot, subject the following regulations.

1. The sign must be flat-mounted against the principal building.

2. The sign may not exceed 2 square feet in area.

3. The sign may display only the name, address, phone number and occupation.

4. The sign may not be directly or indirectly illuminated, other than by those lights incidental to the residential use of the premises.

**C. Signs Accessory to Parking Areas**

Signs directing and guiding vehicular ingress and egress to public or private off-street parking areas may not exceed 2 square feet in sign area. No more than 2 such signs are allowed at each point of ingress/egress from the parking area. One sign with a maximum sign area of 4 square feet may be maintained on each street side of a parking area for the purpose of designating the conditions of use or identity of the parking area. Signs accessory to parking areas are not included in calculating the total sign area on a lot. Signs accessory to parking areas must be set back at least 3 feet from the public right-of-way.

**D. Institutional Signs**

Exterior identification signs up to 20 square feet in area and a maximum height of 6 feet are allowed on the site of a public, charitable

or religious assembly use. No more than one such sign is allowed per lot. Changeable copy consisting of a maximum of 4 lines is allowed. The changeable copy area is included in calculating the total sign area on a lot.

**E. College and University Signage**

Any educational campus with an area of 40 acres or more is subject to the regulations of this section. Entry monument signs are allowed at the perimeter of the campus on private property. The monument sign may not exceed 6 feet in height or so square feet in area, including ornamentation. Entry monument signs must be set back at least 40 feet from all curb lines. Exterior building identification may consist of no more than one monument sign on each side of the primary building entrance.

**Sec. 9.080 Administration and Permits**

Except as otherwise expressly stated, all signs require a permit.

**A. Application**

Any person or activity proposing to erect or display a sign must file an application on a form provided by the village, which must include a plat of survey.

**B. Fees**

All applicable permit fees as established in the User-Fee, License & Fine Schedule must be paid in full.

**C. Conformance with the National Electrical Code**

All signs in which electrical wiring and connections are required for direct or indirect illumination must comply with all applicable provisions of the National Electrical Code.

**D. Wind Pressure and Dead Load Requirements**

Signs must be designed and constructed to withstand a wind pressure of at least 40 pounds per square foot of net surface area and to receive dead loads as required in the building code.

**E. Insurance and Bond Requirements**

Every applicant for a sign that will extend over a public right-of-way or that is so located that it may fall upon the public right-of-way, must file with the community development director an encroachment license agreement indemnifying the village and holding the village harmless from any liability. The applicant must also provide a liability insurance policy covering all damage or injury that might be caused by such signs, or certificate of insurance therefore, issued by an

insurance company authorized to do business in the state of Illinois and satisfactory to the community development director, with limits of liability of not less than $1,000,000 for property damage and $1,000,000 for personal injuries. The village, its officers, agents and employees must be named as additional insured. Such liability insurance policy must be maintained in force throughout the life of the permit, and if at any time it is not in full force, the permit must be revoked.

**F. Completion of Authorized Work**

If the work authorized under a sign permit has not been completed within 6 months of the date of issuance, the permit becomes null and void.

**Sec. 9.090 Nonconforming Signs**

Any sign that existed lawfully on the effective date of the sign regulations of this article that remains or becomes nonconforming by reason of adoption of these sign regulations or because of subsequent amendments to these sign regulations, or that become nonconforming by reason of annexation to the village of the lot on which the sign is located, are considered nonconforming signs and their continuance is allowed in accordance with the following regulations:

A. Ordinary repairs and maintenance, including the removing and replacing of the outer panels is

permitted, provided that the panels are replaced with identical panels and that no structural alterations or other work that extends the normal life of the nonconforming sign is permitted.

B. Single panels on multi-panel monument signs for multi-tenant shopping centers may be changed to reflect tenant changes.

C. No repair or alteration that increases the size of the nonconforming sign is permitted.

D. No nonconforming sign may be moved in whole or in part to any other location on the same or any other premises unless every portion of such sign is made to conform to all of the regulations of these sign regulations.

E. If a nonconforming sign is located on property that is sold, with the full ownership of the property being transferred, the nonconforming sign must be brought into conformance with the sign regulations of this article at the time of the transfer unless the business will continue to operate under the same name.

F. If a nonconforming sign is abandoned or the described business discontinued for a continuous period of 30 days or more, it must be discontinued and any subsequent sign must conform to all of the sign regulations of this article.

G. On or prior to May 5, 2014 all nonconforming signs must be brought into conformance with the sign regulations of this article. This period is for all purposes deemed an appropriate amortization period for each and every nonconforming sign presently located within the corporate limits of the village or hereinafter located within the village by reason of annexation into the village of the lot or parcel on which the sign is located. Such amortization period shall be non-compensated.

H. Paragraph G does not apply to signs previously granted variances by the zoning board of appeals. Such signs are deemed nonconforming signs to which all other provisions of this section apply.

**Sec. 9.100 Illumination**

Except as otherwise expressly stated, internally or externally illuminated signs are allowed, provided they comply with the following requirements:

A. Signs may be illuminated only by steady, stationary light sources directed solely at the sign or internal to it so that the light intensity or brightness does not create a nuisance to adjacent property or a traffic hazard.

B. Individual letters or logos may be internally illuminated. All other portions of the sign must be opaque.

C. Signs may not be illuminated by exposed reflective type bulbs, exterior exposed neon, fluorescent, incandescent or strobe lights.

**Sec. 9.110 Maintenance**

All signs must be properly maintained, which includes repair or replacement of all broken or missing parts, elimination of rust or oxidation, elimination of faded or chipped paint, and correcting all similar conditions of disrepair. If a sign is illuminated, the source of such illumination must be kept in a state of safe working order at all times. Failure to properly maintain any sign constitutes a violation of this zoning ordinance.

**Sec. 9.120 Enforcement**

The community development director is hereby authorized and directed to enforce all of the provisions of this article. Upon presentation of proper credentials, village personnel may enter, at reasonable times, any building, structure or premises to perform any duty imposed under this article.

**A. Notice of Violation**

Unless otherwise provided in this article, if the community development director finds that any sign has been erected in violation of the provisions of this article, or is unsafe or insecure, the community development director may issue a citation and/or cause the sign to be removed by the village upon 10 days written notice. However,

the community development director may cause any sign that poses an immediate threat of harm to persons or property to be removed summarily and without notice. The cost of such removal will be collected from the owner and/or occupant of the property by an action at law or assessed as a lien against the subject property after notice to the property owner.

**B. Signs Allowed without a Sign Permit and Temporary Signs**

If the community development director finds that any sign or signs pursuant to Sections 9.030 and 9.040 have been erected in violation of the provisions of this article, or is unsafe or insecure, written notice must be provided to the owner and/or occupant of the property on which the sign is located or to the person or organization whose message is on the sign. If the sign is not removed or altered to comply with the provisions of this article within 24 hours of such notice, the community development director may issue a citation and/or cause such sign to be removed by the village without further notice. The owner and occupant of the property are jointly responsible for the cost of such removal, which may be recovered by the village in an action at law or by filing a lien against the property after notice to the property owner.

**C. Sec. 9.130 Severability**

If any portion of this Article 9 or any regulation contained herein is held to be invalid or unconstitutional by a court of competent jurisdiction, it is the Village's specific legislative intent that said portion or regulation is to be deemed severed from this Article 9 and should in no way affect or diminish the validity of the remainder of Article 9 or any other sign regulation set forth herein.

## APPENDIX B — ORDINANCE NO. 5472, AN ORDINANCE AMENDING CERTAIN PROVISIONS OF THE DOWNERS GROVE ZONING ORDINANCE REGARDING SIGNS

### ORDINANCE NO. 5472

### AN ORDINANCE AMENDING CERTAIN PROVISIONS OF THE DOWNERS GROVE ZONING ORDINANCE REGARDING SIGNS

WHEREAS, the Village Council finds:

1) Signs painted directly onto a wall, fence, or roof create a greater upkeep and maintenance problem than signs separately manufactured and hung or affixed to a wall, fence or roof, and such signs face increased fading, chipping, deterioration, loss of visibility, brick fracture, and other visual deterioration.

2) Signs painted directly onto a wall, fence, or roof present far more demanding and difficult methodology for removal than signs separately hung or affixed to a wall, fence, or roof, and whether by sand blasting, chemical removal, paint over or other method of obliteration, the after effects of removal of such signs painted directly onto a wall, fence, or roof often leave residual ghost signs, discolored building surfaces or other undesirable visual blight detrimental to the appearance of the Village.

3) Permitting signs painted directly onto a wall, fence, or roof would allow hand painted spray paint messages to lawfully exist on walls, fences, and roofs, which

would cripple the enforcement ability of the Village to eradicate graffiti, and would legalize the very visual blight that the Village has been fighting for the past decade to eradicate.

4) Through enforcement efforts and the imposition of a decade long amortization schedule, nearly 100% of signs painted directly onto a wall, fence, or roof have been eradicated, and broadening the prohibition of signs painted directly onto a wall, fence, or roof to include the DB, DT, and Fairview business district will create a uniform rule to protect against the visual detriments of such signs, while leaving ample opportunities to post a multitude of code compliant signs throughout the Village.

WHEREAS, the Village Council further finds:

1) The Village sign regulations currently permit multiple signs facing the BNSF rail corridor, but wall signs are required to be posted so as to face a driveable right of way or public roadway so as to assure that the wayfinding safety function of wall signs can be fulfilled by making such signs visible to motorists attempting to locate their destination.

2) While monument signs, projection signs, window signs, and other signs are currently permitted facing the BNSF rail corridor, wall signs are not permitted by the current sign regulations.

3) Many properties along the BNSF corridor have structures which were built at a time when rear yard set back requirements of the Village Code permitted the structures to be at or near the BNSF property line, thus leaving inadequate rear yard for posting signs which are compliant with the current code provisions.

4) By permitting wall signs which face the BNSF, the Village will be providing broader opportunities for signage to those properties with frontage on the rail corridor, while maintaining consistency with the established policy of the Village to permit a broad variety of signage along the rail corridor.

5) By recognizing the additional frontage of the BNSF for purposes of allowing additional wall signs, the amendment will nevertheless maintain the driveable right of way and public road frontage as permitting wall signs facing such frontages and thus the amendment will not detract from the regulations which encourage the traffic safety function of wayfinding signs visible to drivers along those roadways.

6) By maintaining the gross signage limit of 300 SF per property as well as the limit on the number of signs per tenant frontage, the amendment will still prohibit the unconstrained proliferation of signage and the accompanying visual blight, and the amendment will still require competitive balance by prohibiting one property owner from over signing their property to the detriment of neighboring property values or neighboring business interests.

*Appendix B*

NOW, THEREFORE, BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by redline/underline; deletions by ~~strikeout~~):

**Section 1. That Section 28.9.020 is hereby amended as follows:**

9.020 Prohibited Signs and Sign Characteristics

* * *

P. any sign painted directly on a wall, roof, or fence, ~~except in the DB, DT or Fairview Concentrated Business District~~;

**Section 2. That Section 28.9.050.C is hereby amended as follows:**

9.050.C. Sign Regulations Generally – Wall Signs

* * *

5. In addition to all other signs allowed by Section 9.050, lots with frontage along the BNSF railroad right-of-way are allowed one additional wall sign to be displayed on the wall facing the BNSF railroad right-of-way. Such sign shall not exceed 1.5 square feet per lineal foot of tenant frontage along the BNSF railroad right-of-way. The maximum allowable sign area including all permitted signs pursuant to Section 9.050 may

not exceed 300 square feet excluding any signs expressly excluded from the maximum sign area calculations.

**Section 3. That Section 28.9.060.E is hereby amended as follows:**

9.060.E. Sign Regulations for Downtown and the Fairview Concentrated Business District – Wall Signs

* * *

4. In addition to all other signs allowed by Section 9.060, lots with frontage along the BNSF railroad right-of-way are allowed one additional wall sign to be displayed on the wall facing the BNSF railroad right-of-way. Such sign shall not exceed 1.0 square foot per lineal foot of tenant frontage along the BNSF railroad right-of-way. The maximum allowable sign area including all permitted signs pursuant to Section 9.060 may not exceed 300 square feet excluding any signs expressly excluded from the maximum sign area calculations.

**Section 4. That Section 28.15.230. is hereby amended as follows:**

15.230 Definitions – Words and Terms Beginning with "T"

* * *

*Appendix B*

Tenant Frontage

The width of a tenant space measured from one side wall to the other along the front exterior wall or other drivable accessible routes or the BNSF railroad right-of-way for purposes of Sections 9.050.C.5 or 9.060.E.4.

**Section 5.** That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**Section 6.** That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

/s/_____
Mayor

Passed: July 21, 2015
Published: July 22, 2015
Attest: /s/_____
Village Clerk

## APPENDIX C — ORDINANCE NO. 5478, AN ORDINANCE AMENDING ADOPTING A TEXT AMENDMENT TO ARTICLE 9 OF DOWNERS GROVE ZONING ORDINANCE

## ORDINANCE NO. 5478

## AN ORDINANCE AMENDING ADOPTING A TEXT AMENDMENT TO ARTICLE 9 OF DOWNERS GROVE ZONING ORDINANCE

WHEREAS, the Village sign ordinance separates commercial sign regulations from non-commercial sign regulations because based upon U.S. Supreme Court precedent, non-commercial speech, including non-commercial signage, is afforded greater constitutional protection than commercial speech under the First Amendment to the U.S. Constitution; and

WHEREAS, while commercial signs are relatively uniform in purpose and function, non-commercial signs are fundamentally non-uniform and serve an almost unlimited variety of purposes and functions; and

WHEREAS, the Village sign ordinance was adopted to fulfill expressly stated goals, which include, but are not limited to, traffic safety, aesthetics, preservation of property values and maintenance of competitive balance between property owners and businesses within the Village; and

WHEREAS, all regulations within the sign ordinance are subject to judicial review for compliance with the First Amendment, and the Village accepts its obligation

to create narrowly tailored regulations, and accepts that the Village must be prepared to prove that each sign regulation it adopts successfully serves one or more of the stated purposes for which the Village has elected to regulate signs; and

WHEREAS, because non-commercial signs are so diverse and serve such a broad variety of purposes and functions, the Village's non-commercial sign regulations limit the size, number, location and physical aspects of non-commercial signs based upon the purpose of the category of non-commercial sign and/or the function of the non-commercial sign being regulated. In this way, the size, number, location and other physical aspects of the non-commercial signs can be narrowly tailored to serve one or more of the Village's stated purposes, predicated upon the function or purpose of the non-commercial sign; and

WHEREAS, based upon the prior precedential decisions of the Seventh Circuit Court of Appeals which has jurisdiction over the Village, the non-commercial sign regulations, as currently adopted and in effect, met the content neutrality definition under the First Amendment; and

WHEREAS, on June 18, 2015 the U.S. Supreme Court issued a fractured decision in the case of *Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218 (2015), which addressed the constitutionality of a municipal sign ordinance which regulated non-commercial signs based upon the different function or purpose of the non-commercial signs, and found that those non-commercial sign regulations were content-based and violated the First Amendment; and

*Appendix C*

WHEREAS, the *Reed* decision recently caused the Seventh Circuit Court of Appeals to reverse its interpretation of content neutrality for purposes of regulating non-commercial signs; and

WHEREAS, as a result, the Village now confronts a legislative dilemma. If the Village must be prepared to prove that its non-commercial sign regulations are narrowly tailored and actually serve one of the stated Village purposes justifying the regulation of non-commercial signs, then the function and purpose of the category of non-commercial sign being regulated must be taken into consideration. If, however, the non-commercial regulations are legislatively established based upon the function and the purpose of the various categories of non-commercial signs, after the *Reed* decision, the non-commercial regulations now run the risk of being declared to be content-based and unconstitutional; and

WHEREAS, the substitution clause adopted by this Ordinance under Section 9.010.E is expressly intended to allow the existing categories of non-commercial sign regulations to be maintained because they have been historically legislated with an intention of allowing the purpose and function of the non-commercial sign to impact the regulations. In light of the *Reed* decision, however, the substitution clause will also now permit the owner of a lawful sign to substitute non-commercial sign copy in lieu of any other commercial or non-commercial sign copy, because the federal courts have broadly and consistently held that such substitution clauses render municipal sign regulations to be content-neutral; and

*Appendix C*

WHEREAS, the severance clause adopted by this Ordinance under Section 9.130 is expressly intended to articulate the Village Council's specific legislative determination and intent that individual regulation within the sign ordinance stand separate and distinct from one another, such that should one portion or regulation within the sign ordinance be declared to violate the U.S. Constitution, the remainder of the sign ordinance and regulations should be severed and remain valid and in full force and effect.

NOW, THERFORE, BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by redline/underline; deletions by ~~strikeout~~):

**Section l. That Section 28.9.010E is hereby added as follows:**

**Sec. 9.010.E No Discrimination Against Non-Commercial Signs Or Speech.**

The owner of any sign which is otherwise allowed under this Article 9 may substitute non-commercial copy in lieu of any other commercial or non-commercial copy. This substitution of copy may be made without any additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial message over any other non-commercial message. This provision prevails over any more specific provision to the contrary. This provision does not create

a right to increase the total amount of signage on a parcel or allow the substitution of an off-site commercial message in place of an on-site commercial message.

**Section 2. That Section 28.9.130 is hereby added as follows:**

**Sec. 9.130 Severability.**

If any portion of this Article 9 or any regulation contained herein is held to be invalid or unconstitutional by a court of competent jurisdiction, it is the Village's specific legislative intent that said portion or regulation is to be deemed severed from this Article 9 and should in no way affect or diminish the validity of the remainder of Article 9 or any other sign regulation set forth herein.

**Section 3.** That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**Section 4.** That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

/s/_____
Mayor

Passed: September 8, 2015
Published: September 9, 2015
Attest: /s/_____
Village Clerk