

# Sign Ordinance Revisions

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## Planning & Zoning Committee Presentation

What we call the “Sign Ordinance” is actually the portion of the Arlington County Zoning Ordinance entitled SECTION 34.

NAMEPLATES, SIGNS, AND OTHER DISPLAYS OR DEVICES TO DIRECT, IDENTIFY, AND INFORM.

### 1. Legal Basis for Signage Rights and Limitations

The “Editors Note” at the beginning of Section 34 describes the rationale for why Arlington controls signs, which focuses on how signs can inform the public but also can be a nuisance. This rationale lacks two key points that would help users understand the legal basis for the signage rights and limitations provided in the ordinance:

- That courts have ruled that commercial signs are a type of commercial speech — and commercial speech may be more regulated by the government than other types of speech; and
  - That courts also have ruled that, under the free-speech provisions of the US Constitution, people generally have a greater right to erect non-commercial signs on their private property than they have to erect commercial signs on private property, or any signs on public property.
- We believe the “Editors Note” should be expanded to allude to the rationale behind the difference in treatment between commercial and non-commercial signs.

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### 2. Provide a List of Legally-Placed Commercial and Non-Commercial Signs on Private Property and Public Property

The Editors Note at the beginning of Section 34 includes this statement:

Signs shall be permitted only on private property and not on public property or public easement area, unless specifically provided for by this section.

- We believe that Section 34 should provide tables listing types of commercial and non-commercial signs allowed on private property and on public property. For example:

Location	Legally-Placed Signs
On Arlington Public Property/Right-of-Way	Specific types of signs listed in the sign ordinance, including: <ul style="list-style-type: none"> <li>• Official notices posted by Arlington authorities</li> <li>• Real Estate directional signs at intersections on weekends</li> <li>• Political signs (as defined in the ordinance) beginning 31 days prior to an election held at an official polling place</li> <li>• Special event signs approved by the County Board</li> </ul>
On State of Virginia Public Property/Right-of-Way	Only official signs posted by State authorities
On Private Property	A limited set of commercial signs described in the sign ordinance Political signs and other non-commercial signs that do not exceed the total sign area allowed for commercial signs

### 3. Provide Definitions

The terms **public land**, **public lands**, and **public property** are used in Section 34. However these terms are not defined in the Zoning Ordinance. It is unclear whether these terms refer only to land or also to publicly-owned buildings and County-leased space in privately owned buildings.

The terms **public-right-of-way** and **public easement area** also are used in Section 34 but are not defined in the Zoning Ordinance. Similar terms regarding **private property** are [defined? Undefined?] and in any event may be ambiguous such as, for example, when a private utility pole is placed in the public right-of-way.

Also, because a substantial amount of land in Arlington is controlled by the State and Federal government, the ordinance should make clear about its applicability, if at all, to such property.

- We believe that the above terms should be defined in Zoning Ordinance, and clarity given to the treatment of government property that is not County property.
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#### **4. Public Easement Areas**

Public easements are made for a variety of purposes, such as building public sidewalks across private property. In discussions with staff, we have learned that, for the purposes of sign placement, homeowners who grant a sidewalk easement may not include the planting area between the sidewalk and curb in their private property whether or not it is included in the easement.

We acknowledge that most people assume that the planting strip between the sidewalk and curb is public property — and it would be difficult and time-consuming to determine where that is not the case. However, if the above prohibition were widely known, it could be a disincentive to agreeing to a sidewalk easement. Since it is County policy to encourage sidewalks, the sign ordinance revision should strive to limit the new burdens and limitations on property owners who grant a sidewalk easement.

Also, to ease compliance and enforcement, rather than create rules for planting strips that depend on the underlying ownership rights, it would be preferable to write rules that relate to the likelihood that a sign will affect public welfare, based on the physical conditions (e.g. width of the strip, volume of parking on the adjacent street, volume of sidewalk traffic).

- The revision should seek to reduce restrictions on reasonable signage in the utility strip in between the sidewalk and curb in low-density (especially residential) areas. Rules for the placement of signs in the area should be drawn, to the extent feasible, with respect to the physical conditions rather than harder-to-discern underlying property rights.
- However the substantive issue is resolved, we believe that Section 34 needs to provide additional information about how easements affect the property owner's right to display both commercial and non-commercial signs.

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## **5. Expand Exceptions for Signs on Public Property and in the Public Right-of-Way**

Arlington, like many other jurisdictions, allows certain types of commercial signs to be placed on public property and in the public right-of-way:

Unlighted directional real estate "for rent" or "sale" signs, not exceeding one and one-half (1 1/2) square feet in area, are permitted on public property, as follows, provided that such real estate directional signs are displayed only from sundown on Friday to sundown on Sundays and on legal holidays. Not more than one (1) sign for each real estate agency shall be displayed in any one (1) street intersection on that portion of the public right-of-way adjacent to a street, road, highway or sidewalk but not on utility poles or trees, landscaped beautification area, traffic circle, control device, sign, or any paved portion of a pedestrian refuge area, nor on or adjacent to any other public lands such as school sites, recreation fields, parks, and parkways. Each such directional "for rent" or "sale" sign posted on public right-of-way shall contain the name of the real estate company or agency which caused the sign to be posted. Such signs shall not be placed in such a fashion as to constitute a "vision obstruction" at street intersections as specified in Section 32 of this ordinance.

While the exception is characterized as a directional sign, the above wording does not allow for the inclusion of directional signs to other types of sales, such as yard sales, estate sales, and community- or non-profit group fundraisers. Thus, we see allowing Real Estate signs on public property as an exception for one type of commercial sign.

- An important consideration, which staff has indicated, is that where/when commercial signs are allowed on public property, so too are non-commercial (free speech) signs.

Nowhere in Section 34 do we find an exception for signs on public property that announce or provide directions for community events — some of which might be considered commercial events — such as civic association meetings, holiday parades, lost pets, or blood drives.

- However, signs announcing such events on public school property are allowed by interpretation that they are “erected at the direction of a public authority, or by an official of the State or County pursuant to statute or ordinance.” If this is a legitimate practice, then it should be allowable for another public official with authority over parks and streets to approve community signs.
- We believe the exception should be expanded to include temporary signs for the above-mentioned types of events during a reasonable period prior to and during the event.

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## **6. Improve the Definition of Political Signs**

Arlington has a separate category of non-commercial signs called the Political Sign, which is defined in Section 34 as follows:

*Political sign.* A temporary sign relating to the election of one or more persons to public office, or a political party, or a matter to be voted upon at an election called by a duly constituted public body, or an issue of public interest. (7-9-05)

This definition has caused confusion about whether caucuses not held at a polling place, or political parties endorsing rather than nominating a candidate qualify for the exclusion that enables political signs to be placed in the public right-of-way and on public property during election periods.

There has also been confusion about whether an issue of public interest must be one that is related to an item being voted on, and it is unclear whether that was the intent when the wording was formulated. For example, if the rationale for the current law is to limit the use of public land for private expression related

only to a taxpayer-funded election, this rationale (or whatever the rationale is) should be more clearly explained.

In addition, the statement below implies that political signs are not allowed on all types of private property (residential and commercial), which would appear to be excessively restrictive of free political speech.

Unlighted temporary political signs are permitted on private property in residential zoning districts. Unlighted temporary political signs may be placed in a window. In multiple-family buildings, unlighted temporary political signs may be placed in windows.

- We believe that if the political sign category is to be kept that the above issues need to be clarified either within Section 34 or by a Zoning Administrator Determination. We believe that there should be fewer restrictions on signs on public or private property related to a political event occurring at that property.
- We believe the sign ordinance review should include a study of how issue-oriented signs not pertaining to a taxpayer-funded election can be permitted on public and private property in a fair and reasonable manner.

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## **7. Lighted Signs**

Lighted signs may be a visual disturbance to those who live nearby.

- We suggest that provisions be added to prevent this type of problem.
- We further suggest that the Sign Ordinance include luminescence standards for lighted signs.

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## **8. Site Plan Exceptions**

Section 34 specifically prohibits certain types of signs, for example:

The following types of signs are prohibited and shall not be permitted by variance:

1. Any moving sign or device to attract attention, whether or not any such device has written message content, of which all or any part moves by any means, including fluttering, rotating or otherwise moving devices, or set in motion by movement of the atmosphere including, but not limited to, pennants, propellers, discs, banners, balloons, etc.
2. Any flashing sign or device displaying flashing or intermittent lights or lights of changing degrees of intensity, including electronic message signs, except a sign indicating time and/or temperature.
3. Any lighted tubing or strings of lights outlining property lines or open sales areas, doors, windows, or wall edges of any building, provided that perimeter shielded down lighting may be used to light open sales areas. This does not preclude the use of neon tubing as a part of the area allowed for signs under this Zoning Ordinance.

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Looking around Arlington, we see many examples of signs that violate the above prohibitions, which we were informed have been done through the Site Plan process, which may or may not have given adequate public notice that the exception is being considered.

- We recommend that Section 34 state that any such exceptions allowed through Site Plan should have public notice of the exception to a prohibition (and not buried in the details of the Site Plan).

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## **9. Allow Sandwich Board Signs**

Restaurants and other retailers use sandwich board signs to entice potential customers and guide patrons to their facilities. Sandwich board signs are not allowed in Arlington at this time.

However, sidewalks in some commercial neighborhoods are already suffering from encroachments from numerous obstacles such as utility poles, street furniture, transit and bicycle facilities, and cafe seating. In many locations this results in pedestrians

being diverted into planting strips, shy zones, or even into the street. Therefore, sandwich board signs should be allowed only when there is ample sidewalk clearwidth, and the location of such signs should be limited to places already unavailable for pedestrian travel, such as within a cafe enclosure, within a tree pit, or within the two-foot "shy zone" adjacent to a building.

- We recommend allowing retail and restaurant establishments to use one sandwich board sign, which would not be part of their total signage calculation, provided that the sign (1) is no larger than [six square feet]; (2) is located on a frontage that has adequate sidewalk clear-width, and (3) is placed so that it does not diminish or encroach into the pedestrian clear zone.

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## **10. ~~Sign Removal~~**

~~Section 34 is silent about who can remove illegally placed signs. In addition, Section 34 has many ambiguities about what are legally and illegally placed signs. The silence, combined with the ambiguities, enabled possible criminal prosecution for people who remove any signs on public property or in the public right of way. (Individuals are not allowed to remove illegally placed signs on private property, except with the permission of the property owner.)~~

~~A few months ago the Civic Federation considered a resolution offered by a member delegate that asked that Section 34 be revised to allow anyone to remove an illegally placed sign from public property or in the public right of way. The idea was not supported at that time. Rather, the Federation took a position in favor of asking the County to clarify ambiguities in Section 34 and to provide educational materials. The planned revision of Section 34 appeared to be an important factor for the delegates voting on the resolution.~~

~~Thus the question of who should be allowed to remove illegally placed signs has not yet been decided by the Civic Federation. Arguments can be made either way:~~



In Favor of Allowing

~~Some commercial signs are obvious violations. Some signs are out of date. It is common practice in our community and elsewhere to formally enlist the help of citizens to remove litter from public rights of way.~~

Against Allowing

~~It's very complicated. It can be dangerous.~~

- ~~■ We recommend allowing persons who have obtained sufficient of knowledge about the relevant portions of Section 34 (for example, by attending County run training) to remove illegally placed signs from public property or the public right of way.~~

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## 11. Organization

Users consulting the sign ordinance would benefit from a new organization that separates regulations for commercial signs from non-commercial signs — and within each, provides rules about placement and removal on/from public and private property.

- We suggest that, once changes are made, that Section 34 be reorganized to make it easier for different kinds of users to access the information they need.
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