

**ORDINANCE NO. 441**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF HAVERHILL, FLORIDA, AMENDING CHAPTER 46, SIGNS, OF THE TOWN'S CODE OF ORDINANCES, BY AMENDING ARTICLE I, IN GENERAL, SECTION 46-2, DEFINITIONS, TO REVISE THE DEFINITION OF SIGNS AND ADD A NEW DEFINITION FOR TEMPORARY SIGNS, AND BY AMENDING DIVISION 1, GENERALLY, OF ARTICLE III, STANDARDS AND REGULATIONS, BY DELETING SECTION 46-52, TEMPORARY SIGNS, AND ADOPTING IN ITS PLACE AND STEAD NEW PROVISIONS DEFINING THE SCOPE OF THE SECTION, AND SETTING FORTH FINDINGS OF FACT AND PURPOSE AND INTENT PROVISIONS, SETTING FORTH CRITERIA FOR TEMPORARY SIGNS AS WELL AS PROHIBITION AND OTHER REGULATIONS RELATING TO TEMPORARY SIGNS, AND ADDING A NEW SECTION 46-59 TO CLARIFY THAT ANY SIGN AUTHORIZED BY THE TOWN SIGN CODE IS ALLOWED TO CONTAIN NON-COMMERCIAL COPY IN LIEU OF ANY OTHER COPY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AUTHORITY TO CODIFY; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

WHEREAS, the Town Council of the Town of Haverhill ("Town") finds and determines that it is appropriate to ensure that its Sign Code is in compliance with all constitutional and other legal requirements; and

WHEREAS, the Town's planning staff have reviewed the proposed changes for consistency with the Town's Comprehensive Plan and Zoning and Sign Code, and finds that the proposed changes are consistent with the foregoing Code; and

WHEREAS, the Town has endeavored to adopt regulations governing signage that will comply with the First Amendment of the U.S. Constitution as interpreted by the U.S. Supreme Court; and

WHEREAS, the Town finds and determines that it is appropriate to update and revise its Sign Code relative to temporary signs; and

WHEREAS, the Town recognizes that there have been decisions delivered by the U.S. Supreme Court over the past forty years that provide guidance to local governments in their regulation of signage, including *Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85 (1977); *Metromedia, Inc. v. San Diego*, 453 U.S. 490 (1981); *Town Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984); *Town of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993), and, *Town of Ladue v. Gilleo*, 512 U.S. 43 (1994); and

WHEREAS, the Town wishes to preserve the aesthetic beauty of the Town of Haverhill, Florida; and

WHEREAS, the Town finds and determines that Article II, Section 7, of the Florida Constitution, as adopted in 1968, provides that it shall be the policy of the state to conserve and protect its scenic beauty; and

WHEREAS, the Town finds and determines that the regulation of temporary signage for purposes of aesthetics directly serves the policy articulated in Article II, Section 7, of the Florida Constitution, by conserving and protecting its scenic beauty; and

**WHEREAS**, under established Supreme Court precedent, a law that is content-based is subject to strict scrutiny under the First Amendment of the U.S. Constitution, and such law must therefore satisfy a compelling governmental interest; and

**WHEREAS**, under established Supreme Court precedent, a compelling government interest is a higher burden than a substantial or significant governmental interest; and

**WHEREAS**, under established Supreme Court precedent, aesthetics is not a compelling governmental interest; and

**WHEREAS**, until a recent Supreme Court decision released in June 2015, there had not been clarity as to what constitutes a content-based law as distinguished from a content-neutral law; and

**WHEREAS**, in *Reed v. Town of Gilbert*, 575 U.S. TBD (2015), the United States Supreme Court, in an opinion authored by Justice Thomas, and joined in by Chief Justices Roberts, Scalia, Alito, Kennedy and Sotomayer, addressed the constitutionality of a local sign ordinance that had different criteria for different types of temporary noncommercial signs; and

**WHEREAS**, in *Reed*, the Supreme Court held that content-based regulation is presumptively unconstitutional and requires a compelling governmental interest; and

**WHEREAS**, in *Reed*, the Supreme Court held that government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed; and

**WHEREAS**, in *Reed*, the Supreme Court held that even a purely directional message, which merely gives the time and location of a specific event, is one that conveys an idea about a specific event, so that a category for directional signs is therefore content-based, and event-based regulations are not content neutral; and

**WHEREAS**, in *Reed*, the Supreme Court held that if a sign regulation on its face is content based, neither its purpose, nor function, nor justification matter, and the sign regulation is therefore subject to strict scrutiny and must serve a compelling governmental interest; and

**WHEREAS**, in *Reed*, Justice Alito in a concurring opinion joined in by Justices Kennedy and Sotomayer pointed out that municipalities still have the power to enact and enforce reasonable sign regulations; and

**WHEREAS**, Justice Alito in the concurring opinion joined in by Justices Kennedy and Sotomayer provided a list of rules that would not be content-based; and

**WHEREAS**, Justice Alito noted that these rules, listed below, were not intended to be a comprehensive list of such rules; and

**WHEREAS**, Justice Alito included the following rules among those that would not be content-based (1) rules regulating the size of signs, which rules may distinguish among signs based upon any content-neutral criteria such as those listed below; (2) rules regulating the locations in which signs may be placed, which rules may distinguish between freestanding signs and those attached to buildings; (3) rules distinguishing between lighted and unlighted signs; (4) rules distinguishing between signs with fixed messages and electronic signs with messages that change; (5) rules that distinguish between the placement of signs on private and public property; (6) rules distinguishing between the placement of signs on commercial and residential property; (7) rules distinguishing between on-premises and off-premises signs; (8) rules restricting the total number of signs allowed per mile of roadway; and (9) rules imposing time restrictions on signs advertising a one-time event, where rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed; and

**WHEREAS**, Justice Alito further noted that in addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech [see *Pleasant Grove Town v. Summum*, 555 U.S. 460, 467-469 (2009)], and that government entities may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots; and

**WHEREAS**, Justice Alito noted that the *Reed* decision, properly understood, will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate esthetic objectives, including rules that distinguish between on-premises and off-premises signs; and

**WHEREAS**, as a result of the *Reed* decision, it is appropriate and necessary for local governments to review and analyze their sign regulations, beginning with their temporary sign regulations, so as to make the necessary changes to conform with the holding in *Reed*; and

**WHEREAS**, under established Supreme Court precedent, commercial speech may be subject to greater restrictions than noncommercial speech and that doctrine is true for both temporary signs as well as for permanent signs; and

**WHEREAS**, the Town finds and determines that under Florida law, whenever a portion of a statute or ordinance is declared unconstitutional, the remainder of the act will be permitted to stand provided (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the legislative body would have passed the one without the other, and (4) an act complete in itself remains after the valid provisions are stricken [see, e.g., *Waldrup v. Dugger*, 562 So. 2d 687 (Fla. 1990)]; and

**WHEREAS**, the Town finds and determines that there have been several judicial decisions where courts have not given full effect to severability clauses that applied to sign regulations and where the courts have expressed uncertainty over whether the legislative body intended that severability would apply to certain factual situations despite the presumption that would ordinarily flow from the presence of a severability clause; and

**WHEREAS**, the Town finds and determines that the Town has consistently adopted and enacted severability provisions in connection with its ordinance code provisions, and that the Town wishes to ensure that severability provisions apply to its land development regulations, including its sign regulations; and

**WHEREAS**, the Town finds and determines that there be an ample record of its intention that the presence of a severability clause in connection with the Town's sign regulations be applied to the maximum extent possible, even if less speech would result from a determination that any provision is invalid or unconstitutional for any reason whatsoever; and

**WHEREAS**, the Town finds and determines that the amendments to its Sign Code, as set forth herein, are consistent with all applicable policies of the Town's adopted Comprehensive Plan; and

**WHEREAS**, the Town finds and determines that these amendments are not in conflict with the public interest; and

**WHEREAS**, the Town finds and determines that these amendments will not result in incompatible land uses; and

**WHEREAS**, the notice and hearing requirements of the Code and Florida law have been met for adoption of this Ordinance; and

**WHEREAS**, the Town Council has determined that the adoption of these regulations would further the public's health, safety and general welfare.

**Section 1.** The "WHEREAS" clauses are incorporated herein as true and correct and as the legislative findings of the Town Council.

**Section 2. Code Amendments.** Chapter 46, Signs, is hereby amended as follows:

**See Exhibit "A" attached hereto and made a part hereof.**

**Section 3. Codification.** The Mayor and Town Administrator are hereby authorized and directed to do all things necessary to effectuate this amendment; and authority is hereby granted to codify and incorporate this ordinance into the existing Code of Ordinances of the Town of Haverhill. The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances of the Town of Haverhill, Florida* and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections 3, 4, 5 and 6 of this Ordinance shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

**Section 4. Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**Section 5. Repeal of laws in conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 6. Modification.** Sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "Ordinance" may be changed to "Section", "Article", or any other appropriate word.

**Section 7. Effective Date.** This Ordinance shall take effect immediately upon adoption.

PASSED AND APPROVED ON FIRST READING this 17<sup>th</sup> day of November, 2016.

THE SECOND AND FINAL READING was held this 15th day of December, 2016. Council member PLYLER offered the foregoing Ordinance, and moved its adoption. The Motion was seconded by Council member UPTEGRAPH, and upon being put to a vote, the vote was as follows:


**JAY G. FOY, Mayor**  
**LAWRENCE GORDON, Vice Mayor**  
**MARK C. UPTEGRAPH, Council Member**  
**JO H. PLYLER, Council Member**  
**REMAR HARVIN, Council Member**

Aye  
Aye  
Aye  
Aye  
Aye

The Mayor thereupon declared this Ordinance approved and duly adopted by the Town Council of the Town of Haverhill, Florida.

**Attest:**

**TOWN OF HAVERHILL, FLORIDA**

  
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**Janice C. Rutan, Town Admin.**

  
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**Jay G. Foy, Mayor**



## EXHIBIT A - ORDINANCE NO. 441

The definition of Sign in Section 46-2, Definitions, is modified as follows:

*Sign* means any display of banners and flags, characters, letters, illustrations or any ornamentations, or the complete structure on which any such characters, letters, illustration or ornamentations are stated or applied (except buildings to which the same may be attached): used for identification, directional purposes, advertising or promotional purposes; provided, however, that the word "sign" shall not be construed so as to include self-contained fixtures approved by the National Board of Fire Underwriters for nonelectrical display, wholly contained within a building and not visible from any public right-of-way. any surface, fabric, device or display which bears lettered, pictorial or sculptured matter, including forms shaped to resemble any human, animal or product designed to convey information to the public and is visible from an abutting property, from a public street, sidewalk or right-of-way, or from a body of water. The term "sign" shall include all structural members. A sign shall be construed to form a single unit. In cases where matter is displayed in a random or unconnected manner without organized relationship of the components, each such component shall be considered a single sign. The term "sign" shall not include: artwork, holiday or seasonal decorations, cemetery markers, or machinery or equipment signs.

A new definition of temporary sign is added to the Section 46-2, Definitions:

Temporary sign means any sign that is not a permanent sign, and shall include a sign formerly or commonly known as a temporary election sign, a temporary political sign, a temporary free expression sign, a temporary real estate sign, a temporary directional sign, a temporary construction sign, a temporary grand opening sign, or any other temporary sign unless otherwise provided herein. The term "temporary sign" shall not include any substitution of message on an existing lawful sign or sign structure.

**Section 46-52, Temporary Signs is deleted in its entirety and replaced with the following:**

**(a) Scope**

Notwithstanding anything to the contrary in the Town's Zoning Code, or in any other ordinance or code provision of the Town, the provisions of this subchapter 46-52 shall govern the regulation of temporary signs, and take precedence over any other provisions that pertain to temporary signs unless specifically exempted or excepted herein.

**(b) Findings of Fact**

The Town Council finds that the location and maintenance of temporary signs affects the public health, safety, and general welfare of the people of this community, and that in order to preserve and enhance the Town as a desirable community in which to live and do business, a pleasing, visually attractive environment is of foremost importance. The Town Council further finds that the regulation of temporary signs within the Town is a highly contributive means by which to achieve

~~this desired end, and that uncontrolled and unlimited temporary signs would degrade the aesthetic attractiveness of the natural and manmade attributes of the community and thereby undermine the economic value of tourism, visitation and permanent economic growth.~~

**(c) Purpose and Intent**

It is the purpose of this section to promote the public health, safety and general welfare through reasonable, consistent and non-discriminatory standards for temporary signs. The temporary sign regulations in this subchapter are not intended to censor speech or to regulate viewpoints, but instead are intended to regulate the secondary effects of speech, and especially insofar as those secondary effects may adversely affect aesthetics and traffic and pedestrian safety. It is the intent of the Town Council that the temporary sign regulations shall provide uniform sign criteria which regulate the size, height, number and placement of signs in a manner that is compatible to the residential, coastal and historic scale and character of the Town, and which place the fewest possible restrictions on personal liberties, property rights, commerce, and the free exercise of Constitutional rights while achieving the Town's goal of creating a healthy, safe and attractive environment that does not contain excessive clutter and visual distraction in rights-of-way and adjacent properties, the surrounding natural coastal environment, historic district and residential neighborhoods. These sign regulations have been prepared with the intent of enhancing the visual environment of the Town and promoting its continued well-being, consistent with the most recent pronouncements by the United States Supreme Court regarding the regulation of temporary signage, and are further intended to:

- 1) Encourage the effective use of signs as a means of communication in the Town;
- 2) Maintain and enhance the aesthetic environment and the Town's ability to attract sources of economic development and growth;
- 3) Improve pedestrian and traffic safety;
- 4) Minimize the possible adverse impact of temporary signs on nearby public and private property;
- 5) Lessen the visual clutter that may otherwise be caused by the proliferation, improper placement, illumination, animation, excessive height, and excessive size (area) of temporary signs which compete for the attention of pedestrian and vehicular traffic;
- 6) Allow temporary signs that are compatible with their surroundings, while precluding the placement of temporary signs that contribute to sign clutter or that conceal or obstruct adjacent land uses or signs;
- 7) Encourage and allow temporary signs that are appropriate to the zoning district in which they are located;
- 8) Regulate temporary signs in a manner so as to not interfere with, obstruct the vision of or distract motorists, bicyclists or pedestrians;
- 9) Preserve, conserve, protect, and enhance the aesthetic quality and scenic beauty of all zoning districts of the Town;
- 10) Protect property values by precluding to the maximum extent possible temporary signs that create a nuisance to the occupancy or use of other properties as a result of their size, height, illumination, brightness, or movement; and
- 11) Enable the fair and consistent enforcement of these temporary sign regulations.

**(d) Criteria Required for Temporary Signs**

The criteria for temporary signs are set forth in Table 46-52(d) below. A temporary sign is unlawful if it does not meet the criteria established for the zoning district in which the sign is located.

**Table 46-52(d) Temporary Signs Design Standards and Limitations**

<b>ZONING DISTRICTS</b>	<b>R-1, R-2, R-3,</b>	<b>C-1</b>	<b>PBCD</b>
Maximum Number of Signs Per Parcel <sup>1</sup>	8	4	4
Maximum Sign Area <sup>2</sup>	6 sf.	32 sf.	16 sf.
Sign Height Maximum for a Freestanding Sign <sup>3</sup>	5 ft.	5 ft.	5 ft.
Sign Height Maximum for a Wall Sign (inclusive of a Window Sign)	15 ft.	15 ft.	15 ft.
Minimum Sign Setback for Ground Signs <sup>4</sup>	3 ft.	3 ft.	3 ft.
Minimum Spacing from any Other Sign (Temporary Sign or a Permanent Sign <sup>5</sup> )	15 ft.	15 ft.	15 ft.
Aggregate Maximum of Surface Area Allocated for All Sign Messages <sup>6</sup>	96 sf.	256 sf.	128 sf.

<sup>1</sup> The number of temporary commercial signs per parcel shall be no more than two.

<sup>2</sup> The square footage limitation is per side for a back-to-back sign.

<sup>3</sup> Not applicable to signs displayed on flagpoles.

<sup>4</sup> Minimum sign setbacks are measured from the edge of the property line. Setbacks do not apply to wall signs.

<sup>5</sup> Not applicable to signs displayed on flagpoles.

<sup>6</sup> There is no limit to the number of separate messages that may appear on the allowable surface(s) of any temporary sign. The aggregate maximum of surface area allowed is subject to the other limitations or circumstances that may reduce the aggregate maximum of surface area that can be allocated.



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**(e) Prohibition of Temporary Signs on Public Property**

Other than government signs displaying government speech, temporary signs on public property are prohibited unless otherwise allowed within the Code of Ordinances.

**(f) Duration for Display of Temporary Sign**

If a temporary sign pertains to an event, the temporary sign shall be removed within and by no later than three (3) days after the event is concluded. If a temporary sign does not pertain to an event, the temporary sign shall be removed within and by no later than thirty (30) days after being erected.

**(g) Display of Temporary Sign Requires Permission of Real Property Owner**

A temporary sign on any parcel shall not be maintained if the placement of the same does not have the permission of all of the owners of the real property.

**(h) A Temporary Sign May Not Display Any Lighting and Must Remain Static**

A temporary sign may not display any lighting or illuminations that flash, move, rotate, scintillate, blink, flicker, or vary in intensity or color.

**(i) A Temporary Sign May Not Incorporate Fluorescent Color or Exhibit Fluorescence**

A temporary sign may not incorporate fluorescent color or exhibit fluorescence.

**(j) A Temporary Sign May Not Obstruct A Permanent Sign or The Vision Between Pedestrians and Vehicles**

A temporary sign may not obstruct the view of a permanent sign as viewed from any public road, street or highway or any public sidewalk, and may not obstruct the vision between pedestrians and vehicles using the public right-of-way, including but not restricted to, those meeting intersection visibility requirements set forth in the Code of Ordinances, or otherwise required by law.

**(k) A Temporary Sign May Display Multiple Messages**

A temporary sign may display multiple independent messages on any portion of the sign surface of a temporary sign.

**(l) A Temporary Sign is not Subject to Permitting**

A temporary sign does not require a permit from the Town.

**(m) Section 46-52 Not Intended to Regulate Interior Facing Signage**

The Town does not intend that Section 46-52 regulate or be applicable to signage located in the interior of school yards, ball/play fields or similar uses where such signage is designed to face the interior of such location and is not designed to be viewed or seen from adjacent roadways.

**A new Section 46-59 is added to the Sign Code, which shall read as follows:**

**Sec. 46-59. – Non-Commercial Copy.**

Any sign authorized by Chapter 46 is permitted to contain non-commercial copy in lieu of any other copy.