

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 18-cv-_____

KAITLIN MOLLOY, SARAH OELKER,
ANNE THALHEIMER, DANIELLE RYAN,
GABRIEL QUAGLIA, LISA AHLSTROM, and
DALE MELCHER,

Plaintiffs,

v.

CITY OF HOLYOKE, MASSACHUSETTS;
ALEX MORSE, in his Official Capacity as Mayor
of Holyoke; and DAMIAN COTE, in his official
capacity as Holyoke Building Commissioner,

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. In violation of the First Amendment and the Massachusetts Constitution, the City of Holyoke has enacted an ordinance that, for three months out of the year, “almost completely forecloses” the public from using “a venerable means of communication that is both unique and important”—specifically, lawn signs. *City of Ladue v. Gilleo*, 512 U.S. 43, 54 (1994). The ordinance categorically prohibits residents from having so-called “temporary” signs on residential or commercial property anywhere in the city during the months of December, January and February. It then goes on to say that if a resident wishes to place any sign on her property for a period of longer than two weeks during these months, she must register the sign with the City. The ordinance exempts the display of flags and other governmental insignia, while prohibiting such signs as those supporting candidates for elective office, celebrating religious

holidays, or espousing social and political messages. The City's sign ordinance also prohibits "temporary" signs on vehicles, including (apparently) all bumper stickers, year-round.

2. Plaintiffs are Holyoke residents who wish to display so-called "temporary" signs in the yards of their homes, and/or bumper stickers on their cars, during all months of the year. Pursuant to 42 U.S.C. § 1983, they bring this action for a declaratory judgment that Holyoke's sign ordinance violates (1) the guarantees of freedom of speech and religion of the First Amendment to the U.S. Constitution; (2) their right to due process under the Fourteenth Amendment to the U.S. Constitution; (3) their right to free speech under Art. 16 of the Massachusetts Declaration of Rights, (4) and their right to freedom of religion under Art 46, Section XLVI, § 1 of the Massachusetts Constitution. Plaintiffs request preliminary and permanent injunctions against enforcement of the ordinance, and an award of their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

THE PARTIES

3. Plaintiff Kaitlin Molloy is an individual over the age of 18 who resides at 28 Lawler Street, Holyoke, Massachusetts.

4. Plaintiff Sarah Oelker is an individual over the age of 18 who resides at 75 Evergreen Drive, Holyoke, Massachusetts.

5. Plaintiff Anne Thalheimer is an individual over the age of 18 who resides at 8 Clark Street, Apartment 2, Holyoke, Massachusetts.

6. Plaintiff Danielle Ryan is an individual over the age of 18 who resides at 5 Glen Street, Holyoke, Massachusetts.

7. Plaintiff Gabriel Quaglia is an individual over the age of 18 who resides at 13 Harrison Avenue, Holyoke, Massachusetts.

8. Plaintiff Lisa Ahlstrom is an individual over the age of 18 who resides at 215 Madison Avenue West, Holyoke, Massachusetts.

9. Dale Melcher is an individual over the age of 18 who resides at 61 Lyman Rd., Northampton.

10. Defendant City of Holyoke is a political subdivision of the Commonwealth of Massachusetts.

11. Defendant Alex Morse is the Mayor of the City of Holyoke. He is sued in his official capacity.

12. Defendant Damian Cote is the Building Commissioner of the City of Holyoke. Cote is charged with enforcing the City of Holyoke Zoning Code, including its provisions concerning signs. Cote is sued in his official capacity.

JURISDICTION AND VENUE

13. This Court has jurisdiction over plaintiffs' First Amendment claims under 28 U.S.C. §§ 1331, 1343(a)(3). The Court has supplemental jurisdiction over plaintiffs' state constitutional claim under 28 U.S.C. § 1367.

14. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because the events giving rise to this action occurred within this district and the defendants reside in this district.

FACTS

15. On October 16, 2018, the Holyoke City Council, over the veto of Mayor Alex Morse, amended the City's ordinance regulating signs on residential and commercial properties. ("Sign Ordinance"). The Sign Ordinance is set forth in Section 6.4 the Holyoke Zoning Code, located at Appendix A to the Revised Code of Ordinances. (The Sign Ordinance as it existed

prior to the recent amendments is set forth in Exhibit A hereto. The 2018 amendments to Section 6.4 and a summary of the votes leading to their passage, including the override of the Mayors' veto, are contained in Exhibit B. The Mayor's Veto message is contained in Exhibit C).

16. Section 6.4.3(7), of the revised Sign Ordinance regulates so-called "Temporary Signs." It defines the term "temporary signs" as follows: "Temporary signs shall include fixed signs, portable signs, banners, inflatables, balloon signs, sandwich boards, and other similar signs." (Ex. B). The Sign Ordinance contains no further definition of "Temporary Signs," nor does it define "permanent" signs.

17. The Sign Ordinance, as revised, provides:

No temporary signs shall be allowed in any district between the dates of December 1st and March 1st of each year in any location within the City. Signs to be placed in any location between these dates, for a duration longer than two (2) weeks, shall be registered with the Building Department prior to placement. Registrants shall provide a location of placement (address), duration of placement, and the materials of which the sign is made.

18. On its face, the first sentence of this provision categorically bans the placement of "temporary signs" on residential and commercial properties in the months of December, January and February. It is unclear whether the registration language, appearing directly after the sentence imposing an absolute ban, applies to "temporary signs" or not. However, at the very least, it provides that a person who wishes to place a sign on her property for more than two weeks must first register the sign with the Building Commissioner, including informing the Building Department how long the sign will remain in place.

19. The revised Sign Ordinance exempts from the definition of a "sign," and therefore does not regulate, any "[f]lags and insignia of any government except when displayed in connection with commercial promotion." (Ex. A, Section 6.4.2).

20. The Sign Ordinance further provides that “[t]emporary signs shall not be placed on or affixed to vehicles. Permanent signs affixed to vehicles are exempt from this section.” (Ex. B, Section 6.4.3(7)(first bullet point). The Sign Ordinance does not define “temporary sign” or “permanent sign” in the context of a motor vehicle. However, the provision, on its face, prohibits persons from driving or parking cars with bumper stickers in Holyoke.

21. Although the plaintiffs interpret the Sign Ordinance as set forth above, the language of the ordinance contains significant ambiguities that both chill speech and give significant and unconstitutional discretion to the Building Commissioner in his enforcement of the Sign Ordinance.

22. For example, by failing clearly to define “temporary signs” and “permanent signs,” the Sign Ordinance provides little if any guidance as to which kinds of signs are prohibited during the months of December, January, and February, as opposed to being subject to registration. This lack of clarity gives the Building Commissioner significant discretion as to which signs, and which messages, to target for enforcement.

23. While the Sign Ordinance contains a sentence imposing an absolute ban on “temporary” signs during December, January and February, it also requires registration of “signs” that are “placed” during those months for longer than two weeks, without making clear whether “temporary signs” that are registered are exempt from the ban. It provides no option for registering a sign that will be up for less than two weeks.

24. The Sign Ordinance requires a person who registers a sign in December, January or February to inform the Building Department of the “duration” of the sign, but does not state what the consequences are if the registrant does not remove the sign by the end of the period for

which it is registered. The Sign Ordinance does not make clear whether signs “placed” before December 1 can remain if thereafter registered.

25. Regardless of how the Sign Ordinance is construed, it either entirely prohibits or substantially interferes with the right of plaintiffs and other members of the public to display lawn signs during the months of December, January and February, as well as bumper stickers all year long.

26. Persons who post or maintain signs deemed to be “temporary signs” in their yards, or who display them on their vehicles, in violation of the ordinance are subject to increasing levels of fines for each sign and each day that a sign remains in place. Pursuant to Section 6.4.10 of the Sign Ordinance, the first day of a sign violation results in a warning; the second day results in a fine of \$25 per sign and a maximum of \$100 for all signs; the third day results in a fine of \$100 per sign and a maximum of \$500 for all signs; and the fourth and each subsequent day results in a fine of \$300 per sign with no cap on the maximum penalty.

27. City Councilor David K. Bartley proposed the 2018 amendments to the Sign Ordinance, including the December-February ban on lawn signs. In introducing the amendment, Bartley stated that his “purpose” in proposing the ban on lawn signs was “to emphasize that [political] campaigns . . . are only finite by nature and any political signs should only be temporary themselves and not be permanently posted in lawns or on buildings.” (Ex. B).

28. Elections, however, can occur in Massachusetts at any time of year. For example, on January 19, 2010, the Commonwealth held a special election to fill the seat of Senator Edward M. Kennedy. Had the revised Sign Ordinance been in effect at that time, no person in Holyoke could have displayed a lawn sign supporting or opposing a candidate in that important Senate election, at least not without registering it in advance with the Building Department.

29. The City Council in Holyoke also votes on important issues all year long, as do the state legislature and Congress. Enforcement of the Sign Ordinance would therefore prohibit or highly restrict residents of Holyoke from using lawn signs to influence policy being debated and enacted by their elected representatives.

30. Important social and political issues also can arise at any time of year. For example, on December 3, 2014, a grand jury declined to indict New York City police officer Daniel Pantaleo for the choking death of Eric Garner. The following week, more than 100 people marched in downtown Holyoke to protest police killings of unarmed black men.¹ The Sign Ordinance, if it had been in place at the time, would have prohibited Holyoke residents from putting up lawn signs reading “Black Lives Matter” or “I Can’t Breathe” in solidarity with the marchers, at least not without registering their signs in advance.

31. There is also an expressive purpose in displaying lawn signs after the political campaign to which they pertain is over. Displaying such signs can express displeasure with the outcome of the election and hopes for a different outcome in the next one. And, for example, if the Sign Ordinance had been in place in January 2017, it would have restricted a supporter of the newly-elected president from displaying a “Make America Great Again” sign on and around Inauguration Day.

32. The plaintiffs either maintain or have maintained lawn signs at their residences or bumper stickers on their cars, and would be deterred and prevented from displaying such “temporary signs” in the future if the defendants were permitted to enforce the Sign Ordinance.

¹ See Michelle Williams, “Over 100 March in “Black and Brown Lives Matter” Protest in Downtown Holyoke, *masslive.com*, December 12, 2014.

33. Plaintiff Kaitlin Molloy has displayed lawn signs for political candidates in the past and wishes to do so in the future.

34. Plaintiff Sarah Oelker lives in a home overlooking Interstate 91, and her lawn can be seen from the highway. She has two lawn signs on her property. One reads: "All People Are Welcome." The second sign reads, "Black Lives Matter." Oelker wishes to continue displaying these signs during the months of December, January and February.

35. Anne Thalheimer frequently places lawn signs in her yard, and wishes to do so in the future. Thalheimer ran for Ward 3 Councilor in 2017 against Councilor Bartley and intends to run against him in 2019.

36. Danielle Ryan has signs on her lawn reading "Black Lives Matter" and another is a "You Are Welcome Here" sign. Recently, Ryan displayed signs supporting two initiatives, Questions 1 and 3, on the November 6, 2018 ballot.

37. Gabriel Quaglia has had "Black Lives Matter" and "Everyone is Welcome" signs on his lawn for the past 18 months. In addition, he has recently put up a sign reading "Anne Thalheimer for City Council" as a protest against David Bartley, the councilor who is a proponent of the ordinance at issue in this lawsuit.

39. Lisa Ahlstrom frequently puts lawn signs in her yard and wishes to place a sign in her yard in December 2018 reading "Peace on Earth," a statement she considers to constitute an exercise of her religious freedom.

40. Dale Melcher regularly drives through, and parks her car in, the City of Holyoke for shopping, dining, and entertainment purposes, including at the Holyoke Mall and Gateway City Arts. Her vehicle displays numerous bumper stickers, including stickers reading, "Bernie Sanders for President 2016," and "No On Question 2. Bad For Our Schools." Melcher does not

believe she should have to peel her bumper stickers off her car in order to be able lawfully to drive in Holyoke.

COUNT I

Declaratory and Injunctive Relief Pursuant to 42 U.S.C. § 1983 Violation of the First Amendment to the United States Constitution

41. Plaintiffs repeat and incorporate the factual allegations above as if fully set forth herein.

42. The First Amendment to the U.S. Constitution provides that “Congress shall make no law . . . prohibiting the free exercise [of religion]; or abridging the freedom of speech” U.S. Const. Amend. I. The defendants, a municipality and municipal officials sued in their official capacities, are bound by the First Amendment.

43. The Sign Ordinance violates Plaintiffs’ First Amendment rights to freedom of speech and freedom of religion because, *inter alia*,

a. it prohibits altogether certain common means of speaking—lawn signs and bumper stickers—and thereby suppresses too much speech;

b. it interferes with residents’ interest in controlling the use of their own properties;

c. it forecloses means of communication that are unique and not replicated by any alternative means of communication;

d. it is a content-based restriction on speech that is not supported by a compelling governmental interest;

e. to the extent it imposes a registration requirement, it suppresses spontaneous speech and chills expression by requiring residents to inform the government of their desire to speak in advance, or else suffer monetary penalties;

f. it imposes a prior restraint on speech, without a compelling government interest;

g. it impermissibly chills First Amendment protected expression by, among other things, imposing penalties of up to \$300 per prohibited sign per day, with no cap on the total fine;

h. to the extent the Sign Ordinance is a content-neutral time, place and manner restriction, it is not narrowly-tailored to serve a significant governmental interest, and does not leave open ample alternative channels for communication;

i. it is impermissibly vague and gives too much discretion to the Building Commissioner to determine, among other things, (i) what kinds of signs are “temporary” and which are “permanent,” (ii) whether and under what circumstances registered “temporary signs” may be allowed during the months of December, January and February, (iii) whether a “temporary sign” that is expected to be displayed for less than two weeks can even be registered; (iv) how to distinguish between a “temporary” and “permanent” sign on a vehicle, (v) whether to deem a sign to be “registered” if some information required by the ordinance is not provided, (vi) whether information in addition to that explicitly set forth in the ordinance can be required for registration; (vii) whether or not to impose sanctions on persons who keep a sign up for longer than the duration set forth in the registration document;

j. its ban on signs during December, January and February serves no significant governmental interest and, indeed, has no rational basis;

k. it imposes a substantial burden on the exercise of religion with no compelling governmental interest.

44. Plaintiffs are residents of Holyoke and/or persons who drive in Holyoke who wish to display lawn signs and/or bumper stickers, but will be prevented and/or deterred from doing so if the City is permitted to enforce the Sign Ordinance.

45. The actions of the defendants have caused and threaten to cause irreparable harm to the Plaintiffs by depriving them of their right to freedom of speech, expression, and religion.

46. Plaintiffs have no adequate remedy at law.

COUNT II

Declaratory and Injunctive Relief Pursuant to 42 U.S.C. § 1983 Violation of the Fourteenth Amendment to the United States Constitution

47. Plaintiffs repeat and incorporate the factual allegations above as if fully set forth herein.

48. The Fourteenth Amendment provides that no State may deprive persons of liberty without due process of law. The Fourteenth amendment applies to cities such as Holyoke, and to its officials.

49. Laws that empower government officials to penalize or restrict constitutional rights of persons without clear standards setting forth the grounds upon which any such penalty or restriction can be imposed violate due process.

50. For the reasons stated above, the Sign Ordinance is vague and ambiguous.

51. Plaintiffs are residents of Holyoke and/or persons who drive in Holyoke who wish to display lawn signs and/or bumper stickers, but will be prevented and/or deterred from doing so if the City is permitted to enforce the Sign Ordinance.

52. The vagueness of the Sign Ordinance imposes a chilling effect on speech in violation of the rights of plaintiffs and the public to due process of law—an effect that is

amplified by the substantial monetary penalties to be imposed for violations under the Sign Ordinance.

53. The vagueness of the Sign Ordinance affords the Building Commissioner an unconstitutional degree of discretion in determining which signs (and thus which messages) will be subject to enforcement.

54. The actions of the defendants have caused and threaten to cause irreparable harm to the Plaintiffs by depriving them of their right to due process of law.

55. Plaintiffs have no adequate remedy at law.

COUNT III

Declaratory Judgment under G.L. c. 231A, § 1 et seq. Violation of Art. 16 of the Massachusetts Declaration of Rights

56. Plaintiffs repeat and incorporate the factual allegations above as if fully set forth herein.

57. Article 16 of the Massachusetts Declaration of rights provides, “The right of free speech shall not be abridged.”

58. Plaintiffs are residents of Holyoke who wish to display lawn signs and/or bumper stickers, but will be deterred or prevented from doing so if the City is permitted to enforce the Sign Ordinance.

59. For the reasons set forth above, the Sign Ordinance violates plaintiffs’ right to freedom of speech and of expression protected by Art. 16.

60. The actions of the defendants have caused and threaten to cause irreparable harm to the Plaintiffs by depriving them of their right to freedom of speech and expression.

61. Plaintiffs have no adequate remedy at law.

COUNT IV

**Declaratory Judgment under G.L. c. 231A, § 1 et seq.
Violation of Amend. Art. 46 of the Massachusetts Constitution**

62. Plaintiffs repeat and incorporate the factual allegations above as if fully set forth herein.

63. Section 1 of Amend. Art. 46 of the Massachusetts Constitution provides: “No law shall be passed prohibiting the free exercise of religion.”

64. The actions of the defendants have caused and threaten to cause irreparable harm to the Plaintiffs by infringing on their right to freedom of religion.

65. Plaintiffs have no adequate remedy at law.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) enter a declaratory judgment in their favor on all counts of the complaint;
- (2) issue a temporary restraining order and preliminary and permanent injunction enjoining defendants from enforcing Section 6.4.3(7) of the Holyoke Zoning Code to the extent it (1) prohibits “temporary signs” on residential or commercial properties between December 1 and March 1 or requires their registration during that period, and (2) forbids “temporary signs” on vehicles, including bumper stickers.
- (3) award to Plaintiffs’ counsel, as representatives of the Plaintiffs, reasonable costs and attorneys’ fees in this action pursuant to 42 U.S.C. § 1988; and

- (4) grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

KAITLIN MOLLOY, SARAH OELKER,
ANNE THALHEIMER, DANIELLE
RYAN, GABRIEL QUAGLIA, LISA
AHLSTROM, and DALE MELCHER,

By their attorneys,

/s/ Jeffrey J. Pyle

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Date: November 16, 2018

EXHIBIT A

6-4. - Signs.

6.4.1 *General.* For the purposes of this ordinance, any business or advertising sign exceeding six square feet in area shall be considered a separate structure and shall require a permit for its erection, alteration, or reconstruction.

6.4.2 *Exemptions.* The following shall not be considered signs within the context of this ordinance:

- (a) Flags and insignia of any government except when displayed in connection with commercial promotion.
- (b) Legal notices, or informational devices erected or required by public agencies.
- (c) Temporary devices erected for a charitable or religious cause, provided they are removed within seven days of erection.
- (d) Temporary displays inside windows, covering not more than 30 percent of window area, illuminated by building illumination only.
- (e) Standard gasoline pumps bearing thereon in usual size and form the name, type, and price of gasoline.
- (f) Integral decorative or architectural features of a building, except letters, trademarks, moving parts, or parts internally illuminated or decorated with gaseous tube or other lights.
- (g) Devices identifying a building as distinct from one or more of its occupants, such device being carved into or attached in such a way as to be an integral part of the building, not illuminated separate from building illumination, without color contrasting with sign background, and not exceeding four square feet in area.
- (h) Address identification through numerals or letters not exceeding three inches in height.
- (i) Textile or fabric banners that do not advertise a business or product. The material may be supported by framing and which is attached to the building by either a pole as in an "open" sign or directly to a building such as an architectural feature.
- (j)

Banners not extending into the public right-of-way unless permitted by the DPW, attached to the building facade often used as an architectural feature. No advertising, business name, or the like on such sign shall be greater than six square feet.

- (k) Banners attached to light poles. Sponsorship may be displayed on said banner provided that it not be greater than six square feet.

6.4.3 *Special regulations.*

1. *Projection.* Signs shall not project beyond property lines. Signs shall not project over public sidewalk areas without receiving a permit from the board of public works. Signs permitted by the board of public works must conform to the requirements of this ordinance. No projecting sign in a business or industrial district shall project more than six feet from the main wall of a building. Wall signs may not project more than 12 inches from the surface of the wall to which they are attached. On corner lots, no sign or portion thereof shall interfere with vehicular or pedestrian traffic and visibility.
2. *Signs in right-of-way.* Signs, other than an official traffic sign, shall not be erected within the right-of-way lines of any street unless such advertising sign is in conjunction with a service sign as described in M.G.L.A. c. 85, § 2D. Further, a fee for such sign shall be paid to the board of public works, and the board of public works shall determine the location of the sign, and its size.
3. *Height.* No sign shall be higher than the height limit for the district in which it is located. No sign shall be located upon the roof of any building.
4. *Painted wall signs.* No sign exceeding 60 square feet in area shall be painted upon the wall of a building or otherwise affixed so that it is not easily removable. Pre-existing historic wall advertisements shall be allowed to be restored to their original state and content.
5. *Temporary for sale signs.* All temporary signs advertising the sale or lease of the premises shall be removed within ten days after the transfer of the premises.
6. *Electronic signs.* No sign or advertising device shall, in any district, incorporate or be lighted by, flashing, scrolling or blinking lights, or be designed to attract attention by change in light intensity or direction, or by

repeated mechanical or electrical motion. Digital signs are allowed with the following exceptions: Image, text, or message area may only change once every 24 hours.

7. *Temporary sign.* Temporary signs shall include fixed signs, portable signs, banners, inflatables, balloon signs, sandwich boards, and other similar signs. Temporary signage greater than six square feet shall require a permit and shall comply with section 6.4.5 for such purposes as "grand openings", "coming soon" announcements, "going-out-of-business" sales and seasonal promotions. Not more than one sign shall be placed per business except in the case of a corner lot where two signs are permitted (one facing each street).
 - A sign for purposes of sales and general announcements shall be removed within 30 days.
 - Construction "coming soon" announcements shall be removed within one week of the final certificate of occupancy being granted.
 - Temporary signs shall not be placed on or affixed to vehicles. Permanent signs affixed to vehicles are exempt from this section.
 - No temporary signs may be placed in the right-of-way without obtaining a permit from the board of public works.
 - Sandwich boards are allowed within the right-of-way with a permit from the board of public works provided that they are only displayed during business hours.
8. *Sign glare.* No lighting or illumination shall be permitted to be used in any way in connection with an illuminated sign unless it is effectively shielded so as to prevent light from being directed at any portion of the traveled way or onto any other property. Signs shall not cause glare or impair the vision of the driver of any motor vehicle, or otherwise interfere with any drivers' safe operation of a motor vehicle.
9. *Wayfinding signs:* Signs placed on a premise to guide the public to a specific location on site. Signs may be placed at the entrance to a: parking lot, private right of way, private driveway or similar.
 - Sign shall be no greater than five feet in height above the surrounding

(natural) grade.

- Sign shall not exceed a total of 12 square feet maximum surface area.
- No sign shall be erected so as to interfere with vehicular or pedestrian line of sight.
- Co-location of multiple tenant sites is required.
- One sign for every continuous 300 feet of private roadway shall be allowed when placed within the grounds, development, or campus.

6.4.4 *Previously constructed, nonconforming signs.* Any new signs, as of the date of first publication of this revision on May 13, 2008, must comply with this section.

1. Signs legally existing at the time of this ordinance may continue as a nonconforming structure.
2. No nonconforming sign shall be structurally altered so as to change the shape, size, color, content, or type of the sign, nor shall any nonconforming sign be relocated.
3. No nonconforming sign shall be allowed to remain after the business has been discontinued.

6.4.5 *Signs in residence districts.* The following types of unanimated, non-illuminated signs are permitted in residential districts:

1. *Nameplate or identification signs.* A sign indicating the name or address of the occupant, or a permitted home occupation, not larger than one square foot in area shall be permitted. Only one such sign per dwelling unit is permitted, except in the case of a corner lot where two such signs (one facing each street) are permitted for each dwelling unit.
2. *Multifamily dwellings, rooming houses, nonresidential buildings, and businesses located in a mixed use building.* A single identification sign not exceeding 12 square feet in area and indicating only the name and address of the building and the name of the management or the name of the business may be displayed. On a corner lot two such signs (one facing each street), are permitted.
- 3.

Multifamily developments, residential subdivisions, assisted living facilities, etc. Monument signs shall be allowed in the above circumstances. A single identification sign not exceeding 40 square feet in area and indicating only the name of the facility and/or the name of the management may be displayed. In the case of a corner lot, and in case where there is more than one entrance to the facility, one such sign is permitted at each street, or one at each entrance, not both.

4. *Sale or rental signs advertising the sale or rental of the premises.* Said signs shall be permitted where they are erected by the owner or broker and signs bearing the word "sold" or "rented" with the name of the persons effecting the sale or rental. No such sign shall exceed four square feet in area. Not more than one sign shall be placed upon any property except in the case of a corner lot where two signs are permitted (one facing each street).
5. *Exempt and institutional signs.* Signs as identified in section 4.3 Table of Principal Uses, (B) Exempt & Institutional Uses:
 - Signage shall be allowed in accordance with section 6.4.6, Signs in Business and Industrial Districts shall follow that which is allowed for Business Highway (BH).
6. *Political signs.* Said signs shall not exceed six square feet and may be erected or posted in residential districts provided they are not within the public way.
7. *Bed and breakfast signs.* Signs shall identify the establishment rather than advertise it. Signs shall be limited to six square feet in size (was two square feet), one per establishment, and shall not be self-illuminated.
8. *Signs advertising the sale of any vehicle.* A sign advertising the sale of any vehicle, boat or any other item(s) of personal property may be erected or placed on or in proximity to the particular vehicle, boat or other personal property being offered for sale at the residence of the owner, provided however, that such vehicle, boat or other personal property being offered for sale is located exclusively in the driveway of the residence of the owner of such vehicle, boat or other personal property. No such sign shall be erected or placed on the premises of the owner for more than 30 continuous days. No such sign shall exceed four square feet in area. Not more than one such

sign shall be placed at such premises. This section shall not apply to lawful signs advertising a tag sale for which a permit was issued in accordance with section 66-91 of the Holyoke Code of Ordinances.

9. New signage as defined within section 6.4 may be permitted in residence districts when the following conditions are met:
 - The property is a legal pre-existing, non-conforming commercial/business use as determined by the building commissioner.
 - Is permitted to operate as regulated by the City of Holyoke.
 - The proposed sign is limited to one 12 square foot sign per place of business per side of building facing the street.

6.4.6. *Signs in business and industrial districts.* Political signs, not exceeding six square feet may be erected or posted in business and industrial districts, not within the public way, provided, however, that such restriction shall not apply to political signs erected or posted on campaign offices. All signs permitted in residence districts are permitted in business and industrial districts. Business announcement signs and signs advertising goods and services for sale on the premises are permitted in business and industrial districts in accordance with the following regulations:

1. *Total wall sign area.* No more than one wall sign per place of business shall be allowed per side of building fronting a street. In the case of wall-mounted signs, signs affixed to, suspended from, or incorporated as part of a building, they shall comply with the Table below, provided that the total area of the signs on a wall shall not exceed ten percent of the area of that wall.
2. *Total pylon sign area.* No more than one free standing sign per entrance for a single tenant site shall be allowed, and shall comply with the table below.
3. *Multi-tenant pylon signs.* In the case of a multi-tenant facility, co-location of signs on one pylon is required. One pylon sign per entrance to such facility shall be placed at the entrance listing all businesses within the facility.
4. *Special permit.* A special permit for an increase in size or for more than one sign per business on a wall may be granted by the planning board. The gross surface areas of signs on any premises shall not exceed those specified in the following table:

SIZE LIMITATIONS FOR SIGNS IN BUSINESS AND INDUSTRIAL DISTRICTS

DISTRICT	MAXIMUM SURFACE AREA PERMITTED FOR EACH SIGN AS OF RIGHT (SQ. FT.)	MAXIMUM SURFACE AREA OF SIGN AUTHORIZED BY SPECIAL PERMIT (SQ. FT.)
DR*	40	80
RO	40	80
BL	40	80
BC	40	80
BE	40	80
BG	40	80
BH	40	80
BH **	200	300
IG	75	150
WM	75	150
IP	75	150
SC	75	150

Note— See section 6.4.5.2 above for multi-tenant sites.

Note— *Signs for businesses within the DR zoning district shall comply with the above regulations.

;rn0;7;** Signs for businesses within the BH Zoning District 25,000 square feet or more of floor area.

Note— All residential uses within the DR district shall comply with section 6.4.4 signs in residential districts.

5. *Promotional, advertising, and civic signs are prohibited in an IP zone.*
6. *Window signs.* Signs affixed to the inside of windows or otherwise displayed inside a building such that they can only be viewed from outside the building are allowed, provided the total area of window signs is no larger than 20 percent of the area of first floor windows of the business displaying the window signs. The allowed area of window signs shall be calculated separately from either permanent or temporary signs, as described in other sections of this ordinance.
7. *Signs on canopies.* Signs shall be allowed on canopies with the display area being measured by drawing a box around the name of the business and any other graphic features of the sign. Such signs shall be painted on or attached flat against the surface of, but not extending beyond or attached to the underside. A minimum clearance above the sidewalk level of seven feet must be allowed for pedestrian clearance. If located over public sidewalks, a permit must be granted by the board of public works.

6.4.6.8 *Off-premises signs.*

1. Allowed only in IG zones within the off-premises sign overlay districts overlay districts, following the size limitations for signs in the business and industrial districts table.
2. May only be permitted on a parcel or abutting lot which has a legally occupied structure.
3. Monument, pole, or other ground sign is limited to 20 feet above surrounding natural grade.
4. No property shall have more than one off-premises sign without exception.
5. No sign shall be erected or maintained within the front or side yard in a manner which interferes with vehicular, pedestrian, or other traffic visibility or safety of egress from properties.
- 6.

All off-premises signs shall be allowed by way of a special permit of the city council. Said special permit shall accompany a fee pursuant to the terms of section 9-3.

7. An annual review of the special permit shall be conducted by the city council to ensure compliance with this ordinance.

6.4.6.8.1 *I-91 Exit 15 and I-391 off-premises sign overlay districts.*

1. *Establishment.* The off-premises sign overlay district is an overlay district having a land area of approximately 17 acres in size that is superimposed over the underlying industrial general (IG) zoning district and is shown on the zoning map as set forth on the map entitled "Holyoke Zoning Map, dated May 18, 2018", as amended. This map is hereby made a part of the Zoning Ordinance and is on file in the office of the city clerk.
2. *Sub-district.* The off-premises sign overlay district:
 - a. I-91 Exit 15 off-premises sign overlay district.
 - b. I-391 off-premises sign overlay district.

6.4.7 *Reserved*

6.4.8 *Signs for professional office or studio in professional office overlay district.* Signs for a professional office or studio located within the professional office overlay district located on Northampton Street from Beech Street to Dwight Street shall be limited to one and no greater than two feet by three feet, must be illuminated from outside rather than from within, and must be approved through the special permit process. All signage must be designed in a manner compatible to the existing structures as well as the surrounding neighborhood. Interiorly-lit signs that existed prior to December 20, 1994 shall be allowed to remain and/or be replaced with a sign of equal or lesser size.

6.4.9 *Advertising blimp.* See section 7.2.3.

6.4.10 *Enforcement.*

1. This ordinance shall be administered and enforced by the building commissioner.
- 2.

Violations and penalties. Any person, corporation or entity found in violation of any provisions of this ordinance shall be punished by a fine in accordance with the following schedule of fines. Each day that the violation continues shall constitute a separate offense per sign.

# of Offense	Penalty	Max Penalty
1st	Warning	N/A
2nd	\$25.00	\$100.00
3rd	\$100.00	\$500.00
4th and subsequent offense	\$300.00	No Cap

Notice of violation and procedures pertaining thereto shall be in accordance with M.G.L.A. c. 40, § 21D (non-criminal disposition).

(Ord. of 1-20-09 [92nd amd.], § 1; Ord. of 8-5-14 [124th amd.], § 1; Ord. of 11-21-17 [136th amd.] § 1; Ord. of 8-1-17 [137th amd.], § 1; Ord. of 5-15-18 [142nd amd.], § 1)

Editor's note— Ord. of 1-20-09 [92nd amd.], § 1, deleted the former § 6-4, §§ 6.4.1—6.4.8, and enacted a new § 6.4 as set out herein. The former § 6.4 pertained to signs and derived from Ord. of 2-19-02 [45th amd.], § 6.0; Ord. of 5-20-03 [53rd amd.], § 1.

EXHIBIT B



City of Holyoke

IN CITY COUNCIL

Introduced by Councilor **David K. Bartley**

Ordered, The City Council create a "temporary sign" ordinance that regulates when such temporary signs can be placed in homeowners' yards and on commercial buildings or otherwise in public view. The ordinance should regulate when the sign(s) can be installed, the sign(s) size as well as the deadline by when the sign(s) must be removed. The ordinance could then impose a penalty on the property owner and/or the vendor or candidate in whose favor the sign is for. The ordinance should also describe which city department(s) shall enforce this ordinance. (Background: my purpose in filing this order is not to punish vendors or political candidates but to emphasize that campaigns, for example, are only finite by nature and any political signs should only be temporary themselves and not be permanently posted in lawns or on buildings. This Order's intent is not to impose regulating the content of the vendor or political candidate's speech but only to preserve aesthetic appeal and traffic safety.) Any current political signs leftover from past campaigns shall not be exempt from this ordinance.

In City Council, December 5, 2017. Received and referred to the Ordinance Committee.

In City Council, on October 2, 2018, the report of Committee received and the Ordinance passed its first reading.

The Ordinance passed its second reading.

The Ordinance was passed to be enrolled.

The Committee has considered the same and find that it is truly and properly enrolled.

Report of Enrollment received.

The Ordinance was passed to be Ordained and Adopted on a call of the roll of the yeas and nays --Yeas 12--Nays 0--Absent 1 (Valentin).

Veto by the Mayor.

In City Council, on October 16, 2018 a motion was made and seconded to override the Mayors Veto.

The Mayor's veto was overridden on a call of the roll of the yeas and nays.

The Ordinance was passed to be Ordained and Adopted on a call of the roll of the yeas and nays --Yeas 9--Nays 3 (Lebron-Martinez, Lisi, Valentin)--Absent 1 (Anderson-Burgos).

Clerk

Presented to the Mayor	Mayor's Office
For Approval _____, 20	Holyoke, Mass. _____, 20

IN THE YEAR TWO THOUSAND AND EIGHTEEN

ONE HUNDRED AND FORTY-FOURTH AMENDMENT TO APPENDIX A OF THE REVISED CODE OF ORDINANCES OF THE CITY OF HOLYOKE, MASSACHUSETTS 1997

AN ORDINANCE

Be it ordained by the City Council of the City of Holyoke as follows:

SECTION 1. Section 6-4 entitled "Signs" of Section 6 entitled "General Regulations" of Appendix A entitled "Zoning" of the Revised Code of Ordinances of the City of Holyoke, Massachusetts, 1997, as amended, is hereby further amended by the following:

DELETING in its entirety:

Section 6.4.2(c), and shift letters accordingly

DELETING in its entirety:

Section 6.4.3(7)

ADDING in its place:

Section 6.4.3(7)

7. *Temporary sign.* Temporary signs shall include fixed signs, portable signs, banners, inflatables, balloon signs, sandwich boards, and other similar signs. Temporary signage greater than six square feet in business and industrial districts shall require a permit and shall comply with section 6.4.6. Temporary signs less than 6 square feet shall be allowed in all districts without a permit, and not more than one sign shall be placed per business except in the case of a corner lot where two signs are permitted (one facing each street).
 - Temporary signs shall not be placed on or affixed to vehicles. Permanent signs affixed to vehicles are exempt from this section.
 - No temporary signs may be placed in the right-of-way without obtaining a permit from the board of public works.
 - Sandwich boards are allowed within the right-of-way with a permit from the board of public works provided that they are only displayed during business hours.
 - No temporary signs shall be allowed in any district between the dates of December 1st and March 1st of each year in any location within the City. Signs to be placed in any location between these dates, for a duration longer than two (2) weeks, shall be registered with the Building Department prior to placement. Registrants shall provide a location of placement (address), duration of placement, and the materials of which the sign is made.

DELETING in its entirety:

Section 6.4.5(6), and shifting numbers accordingly

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 3. This ordinance shall take effect on the date of passage.

APPROVED AS TO FORM:


Crystal Barnes
Assistant City Solicitor

EXHIBIT C



Mayor Alex B. Morse

City of Holyoke

RECEIVED
2018 OCT 12 A 9:36
CITY OF HOLYOKE
CITY CLERK'S OFFICE

October 11, 2018

Holyoke City Council
536 Dwight Street
Holyoke, MA 01040

Re: Veto of Sign Ordinance

Dear Members of the City Council:

In accordance with Section 24 of the City Charter, I hereby veto the attached ordinance. This ordinance amends the Holyoke Zoning Ordinance to restrict the placement of temporary signs in the City.

This ordinance forces residents, for three months out of the year, to register their temporary signs with a government entity for any use, from exercising their right to free speech to putting up a "for sale" sign on their house. There are multiple problems with this ordinance:

1. **It places an undue burden on citizens and restricts their speech on their property** – The proposed ordinance adds language indicating that *"No temporary signs shall be placed between the dates of December 1st and March 1st of each year in any location within the City. Signs to be placed in any location between these dates shall be registered with the Building Department prior to placement."* The requirement to register a sign during the three winter months serves no discernible purpose but to dissuade citizens from placing signs on residential property, which are the most likely signs to express political views. Such an action is, intentionally or not, an unreasonable restriction on our residents' freedom of speech. While some residents may choose to register during such period out of the inalienable desire to exercise their free speech, it would still create an unreasonable barrier to one of our most fundamental rights.
2. **Undue burden on Building Department** – Some residents would be greatly inconvenienced but not dissuaded by the cumbersome measure described above. Others would have no choice but to register for very mundane and common occurrences, such as placing a "For Sale" or "For Rent" sign on their homes. Some residents and many faith-based organizations will also have to register signs for the many winter events during the holiday season and festivities. To the extent that the proposed ordinance will not dissuade all forms of temporary signage, such as these cases described, what it will accomplish is to substantially increase the surge of applicants to the Building Department, tying up their valuable time and scarce resources. This process will create an unnecessary distraction from the mission they are required to fulfill, particularly as Holyoke sees a surge in investment and building permit applications, construction inspections and blighted building demolitions that are vital to advance the safety and welfare of the community.



Mayor Alex B. Morse

City of Holyoke

3. **Improperly regulates vehicle signage and restricts speech through vehicles** – The ordinance purposefully adds language indicating that *“Temporary signs shall not be placed on or affixed to vehicles. Permanent signs affixed to vehicles are exempt from this section.”* The amended order language fails to define what distinguishes a temporary from a permanent sign. To the extent “temporary” is vague and up for interpretation, a likely interpretation is that “bumper stickers” are temporary and therefore prohibited in the City of Holyoke, encumbering anyone within our municipal boundaries to an unreasonable restriction to their speech. Furthermore, regulating how residents use their vehicles is not the purview of the municipal zoning ordinance. It is also unclear how or who in the City would take out enforcement action on temporary signage on any vehicle passing through or parked in the City. This language should be stricken from the Holyoke Zoning Ordinance.

Some of the proposed ordinance changes, such as striking down existent language that unfairly targets religious, political or other speech, as are existing sections 6.4.2(c) and 6.4.3(5), are a move in the right direction, as they are unconstitutional treatment of signage based on its content and are failings of the City’s existing Zoning Ordinance. I ask that you consider sustaining this veto and welcome an effort to address these matters in a separate order that does not infringe on speech or overburden the Citizens of Holyoke, or its Departments, with unnecessary regulations.

Sincerely,

Alex B. Morse, Mayor