



AMERICAN CIVIL LIBERTIES UNION

FOUNDATION OF THE NATION'S CAPITAL

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Via online submission (policy.ddot@dc.gov)

Ms. Alice Kelly
Manager, Policy Branch
Policy, Planning and Sustainability Administration
D.C. Department of Transportation
55 M St., S.E. 5th floor
Washington, DC 20003

Re: Notice #3120895 (August 17, 2012, Adding new DCMR Title 13 on signs)

Dear Colleagues:

The following comments are submitted on behalf of the American Civil Liberties Union (ACLU) of the Nation's Capital in response to the Office of the Mayor's Notice of Proposed Rulemaking to add a new Title 13 to D.C. Municipal Regulations to update and consolidate the District of Columbia's current sign regulations. This office of the ACLU is established by its 4,000 local members to defend the individual rights and liberties of all those in the District. Since its founding, the ACLU has advocated for broad protection of First Amendment rights in a wide range of different contexts to ensure that free expression that is at the heart of the marketplace of ideas remains vigorous and unrestricted.

Would-be regulators should tread carefully. The Supreme Court warned in a 1994 case about a sign ordinance in Ohio that "regulation of a medium inevitably affects communication itself" and, in its work protecting free expression from over-regulation, the Court has often had to review the constitutionality of municipal ordinances prohibiting the display of certain outdoor signs.¹ The effort to clarify and consolidate District sign rules has been substantial and some revisions are very welcome; we offer recommendations for further improvement.

The proposed rule deregulates signs in several good ways: no permit is needed for a temporary sign in public space (§ 13-605) or for noncommercial signs on residential property (§ 13-706.6). Gone is the old rule in § 24-108.11 requiring urgent filing with the District government of two copies of a temporary sign in public space. These improve protection of D.C. residents' constitutional right to share information and voice their opinions through temporary signs on public property and noncommercial signs on residential property.

However, several proposed provisions threaten protected speech activities and therefore should be revised:

First, the rule includes excessive penalties (as much as \$2,000 per violation) that are entirely disproportional to the harm caused by a violation of a sign regulation. Moreover, many more types of violations are subject to penalties. The current regulations impose fines for violations in two general areas: posting signs on lampposts and trees (§§ 24-1380.3, 24-108.1-2). The proposed rule provides for a schedule of infractions and fines

¹ *City of Ladue v. Gilleo*, 512 U.S. 43, 48 (1994).

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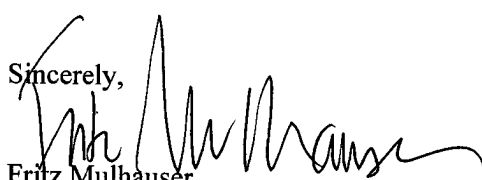
including a staggering 116 categories of penalties (§ 13-1201). For example, there is a new \$2,000 fine for marking a sidewalk for the purposes of advertising and a \$500 fine for stapling or tacking any sign to a tree on public space. A complicated rule with drastic penalties runs the risk of chilling lawful speech—the speaker gives up rather than try to figure out what’s OK and not in the 78 page regulation.

Second, business owners are treated differently in regard to signs on private property. They need a permit to display even a noncommercial sign on private property (§ 13-702.1), though individuals need no such permit for a noncommercial sign on residential property (§ 13-706.6). The permit application process, requiring the submission of contact information, construction documents and plans, seems a needless burden for a business owner who may seek simply to put up a campaign sign in a store window (§ 13-703). The regulations should exempt from a permit requirement all noncommercial signs on private property.

Third, the rule prohibiting any “advertising sign” that is “transported” over public space (except signs advertising the owner’s *bona fide* business) (§ 13-609.1) seems overbroad, as it likely prohibits even bumper stickers for favorite teams, products or web sites—signs that obviously pose no hazard. A rule barring video displays on motor vehicles makes sense, but the ban on all vehicular advertising (unrelated to the owner’s business) goes beyond any significant government interest, such as public safety, as required by the First Amendment.²

Thank you for your consideration of our comments. We look forward to improvements in the final rule.

Sincerely,



Fritz Mulhauser
Senior Staff Attorney

² See, e.g., *National Advertising Co. v. Town of Babylon*, 900 F.2d 551, 556 (2d Cir. 1990) (invalidating sign regulations that had “no statement of a substantial governmental interest and the towns offered no extrinsic evidence of such an interest”).