

1 Introduced by Council Members Jones, Joost, Johnson, Redman, Brown,
2 Holt, Shad, Davis, Fussell & Gaffney, substituted by the Land Use
3 and Zoning Committee, and amended twice on the floor by Council:
4

5 **ORDINANCE 2009-401-E**

6 AN ORDINANCE AMENDING SECTION 326.103
7 (EXEMPTIONS), *ORDINANCE CODE*, & SECTION
8 656.1303 (ZONING LIMITATIONS ON SIGNS),
9 *ORDINANCE CODE*, TO PERMIT ADVERTISING ON
10 TRANSIT SHELTERS ON PUBLIC RIGHTS-OF-WAY,
11 PUBLICLY OWNED PROPERTY, OR PRIVATELY OWNED
12 PROPERTY; AMENDING SECTION 326.104 (UNLAWFUL
13 SIGN STRUCTURES), *ORDINANCE CODE*, TO CROSS
14 REFERENCE SECTION 326.103 (EXEMPTIONS),
15 *ORDINANCE CODE*, AS AMENDED; AMENDING SECTION
16 656.1333 (SIGNS PERMITTED), SECTION 656.1334
17 (SIGNS EXEMPTED) & SECTION 656.361.20
18 (STREETSCAPE DESIGN STANDARDS), *ORDINANCE*
19 *CODE*, TO LIST CRITERIA APPLICABLE DOWNTOWN;
20 AMENDING SECTION 307.106 (APPROVAL OF CHANGES
21 TO LANDMARKS, LANDMARK SITES, AND PROPERTY IN
22 HISTORIC DISTRICTS; APPLICATION PROCEDURES),
23 *ORDINANCE CODE*, REGARDING HPC APPROVAL OF
24 TRANSIT SHELTER DESIGN TYPES; PROVIDING FOR
25 SEVERABILITY THROUGHOUT; ATTACHING CURRENT
26 TEXT OF ORDINANCE CODE SECTIONS FOR REFERENCE;
27 PROVIDING AN EFFECTIVE DATE.
28

29 . **WHEREAS**, Section 337.408, *Florida Statutes*, permits transit
30 shelters, including advertising displayed thereon, within the
31 right-of-way limits of any municipal, county, or state road,

1 provided that such transit shelters are for the comfort or
2 convenience of the general public or are at designated stops on
3 official bus routes, as more particularly described in **Revised**
4 **Exhibit 1, attached hereto;** and

5 **WHEREAS,** on January 6, 2009, in Metro Lights, LLC v. City of
6 Los Angeles, the United States Court of Appeals, Ninth Circuit,
7 held that permitting advertising on transit shelters on public
8 rights-of-way or on transit shelters on public property, while
9 otherwise banning offsite signs to promote traffic safety and
10 aesthetics as substantial government interests, is not
11 unconstitutionally underinclusive under the First Amendment of the
12 United States Constitution, as more particularly described in
13 **Exhibit 2, attached hereto;** and

14 **WHEREAS,** while the Council of the City of Jacksonville remains
15 dedicated to protecting the substantial governmental interests of
16 promoting traffic safety and aesthetics which underlies the Charter
17 and Ordinance Code provisions regarding offsite commercial signs,
18 the Council is also mindful of the substantial governmental
19 interests in providing safe, efficient and convenient transit
20 service to the community, and maximizing the use of public dollars
21 for such purpose; now therefore,

22 **BE IT ORDAINED** by the Council of the City of Jacksonville:

23 **Section 1. Section 326.103 (Exemptions), Ordinance Code,**
24 **& Section 326.104 (Unlawful Sign Structures), Ordinance Code,**
25 **Amended.** Section 326.103 (Exemptions), *Ordinance Code*, & Section
26 326.104 (Unlawful Sign Structures), *Ordinance Code* are hereby
27 amended, in part, to read as follows:

28
29 **CHAPTER 326. SIGNS AND OUTDOOR DISPLAY STRUCTURES.**

30 **PART 1. GENERAL REGULATIONS.**

31 * * *

1 **Sec. 326.103. Exemptions.**

2 * * *

3 (p) Signs on transit shelters located on public rights-of
4 way, publicly owned property, or privately owned property, all
5 subject to Section 326.108 (Zoning Limitations on Signs).

6 In the event that any portion of this section, including any
7 exception contained herein, is declared invalid, unenforceable,
8 unconstitutional or void, or is permanently enjoined, or if the
9 existence of any provision of this section would result in any
10 other portion of this Chapter or Chapter 656 or Article 23 of the
11 Charter being held to be invalid, unenforceable, unconstitutional
12 or void, and the court does not sever such invalid portion of this
13 section, then the invalid portion of this section is repealed and
14 invalid and thereafter no signs of the type included within the
15 exemption shall be erected without compliance with the remainder of
16 this Chapter and this Ordinance Code. It is the specific intent
17 that the invalidity of any portion of this section shall not affect
18 any other section, subsection, paragraph, subparagraph, sentence,
19 phrase, clause or word of this Chapter, Chapter 656, Article 23 of
20 the Charter, or this Ordinance Code.

21 * * *

22 **Sec. 326.104. Unlawful sign structures.** It shall be unlawful
23 and a violation of this Building Code to erect, alter or maintain a
24 sign which:

25 * * *

26 (d) Is placed in a public space or street right-of-way,
27 except as provided in Section 326.103(p), and that subdivision
28 identification signs may be installed under the provisions of
29 Sections 746.107 and 656.1308.

30 * * *

1 Section 2. Section 656.361.20 (Streetscape design
2 standards), Ordinance Code, Amended. Section 656.361.20
3 (Streetscape design standards), *Ordinance Code*, is hereby amended,
4 in part, to read as follows:

5 CHAPTER 656. ZONING CODE.

6 * * *

7 PART 3. SCHEDULE OF DISTRICT REGULATIONS.

8 * * *

9 SUBPART H. DOWNTOWN OVERLAY ZONE AND DOWNTOWN DISTRICT REGULATIONS.

10 * * *

11 Section 656.361.20. Streetscape design standards.

12 *Purpose and Intent.* The streetscape design standards are
13 established to provide design criteria which require a certain
14 level of quality; enhance street level design to attract pedestrian
15 use; develop a system of pedestrian-oriented streets and walkways;
16 improve pedestrian and transit links among key activity centers and
17 districts; emphasize, protect and enhance entrances and edges of
18 the central business district subdistricts; promote continuity
19 between public and private developments; provide for protection of
20 air quality through the mitigating effects of trees and provide
21 shade and enhance the appearance of the central business district.
22 All new buildings and structures, and rehabilitation of existing
23 buildings and structures, and any other proposed projects, public
24 or private, that would affect, modify or change the streetscape
25 shall meet the following criteria:

26 (a) A streetscape shall be constructed in accordance
27 with the provisions of this subsection and the design standards set
28 forth in the Downtown Jacksonville Streetscape Standards, including
29 Downtown Sidewalk Utility Design Standards, a copy of which is on
30 file with the Legislative Services Division, the City Engineer's
31 Office and the JEDC, which are hereby adopted as the streetscape

1 design standards for the Downtown Overlay Zone, whenever any new
2 building or structure is erected in the central business district
3 or whenever any existing building or structure undergoes major
4 renovation, or whenever any improvements are made to the
5 streetscape. The streetscape shall include the following items,
6 unless the proposed project is only for improvements to the
7 streetscape, then only the proposed changes to the streetscape
8 shall adhere to the following, except as provided in clause (xi) of
9 subsection (5), or unless staff determines that the proposed
10 changes to the streetscape are substantial enough to warrant the
11 entire streetscape affected to be improved to the full standard:

12 * * *

13 (5) Transit Shelters. Transit shelters shall be
14 installed where appropriate. The type and design, number, spacing
15 and location of transit shelters shall be approved by the DDRB
16 pursuant to Section 656.361.9(d)(2)(iii) and comply with the
17 standards set forth in the Downtown Jacksonville Streetscape
18 Standards, and as approved by the City's Engineer, if required.
19 The transit shelter design type shall be chosen from at least three
20 options provided by JTA, whose design shall be in keeping with the
21 historic character of the downtown streetscape furniture and street
22 lights. Such approval by the City's Engineer, if required, shall
23 occur before final approval of the transit shelter by the DDRB. Any
24 changes to the transit shelter after the DDRB approval by JTA
25 and/or the City's Engineer shall be communicated to the DDRB, and
26 approval granted by the DDRB prior to the City's Engineer approving
27 such changes. The following criteria shall apply:

28 (i) The permitted transit shelter site,
29 excluding overhangs, shall be no larger than 16 feet long by 10 feet
30 high by 5 feet wide, and no larger than 80 square feet in size.

31 (ii) The overhang shall have a minimum

1 clearance of 8 feet and be set back from the back of curb a minimum
2 of 2 feet.

3 (iii) Site location of transit shelters
4 must provide a minimum of 6 feet clearance to pedestrians on the
5 sidewalk or other surface allowing for pedestrians.

6 (iv) Transit shelters must be at least 6
7 feet from any driveway.

8 (v) Transit shelters shall only number
9 one per side of street per block, except the bus rapid transit
10 stations as shown on JTA's Jacksonville BRT Phase I map, a copy
11 which is on file with the JEDC.

12 (vi) Transit shelters must be a minimum
13 of 10 feet from an intersection or crosswalk.

14 (vii) Transit shelters must be a minimum
15 of 6 feet from any building entrance or exit.

16 (viii) Transit shelters may not obstruct
17 any view of traffic or roadway signage.

18 (ix) Transit shelters may be illuminated
19 with lighting that is interior to the structure and shall not
20 interfere with the ability of vehicular users of the road to read
21 traffic signs or see traffic signals.

22 (x) Transit shelters shall include, at a
23 minimum, one trash can per shelter and the trash can shall not
24 obstruct the minimum 6 feet requirement for pedestrian clearance on
25 the sidewalk or other surface allowing for pedestrians.

26 (xi) Transit shelters that disrupt more
27 than 50% of any one side of the street, per block, shall meet the
28 Downtown Streetscape Design Standards for the side of the street,
29 per block, that is disrupted.

30 (xii) Existing transit shelters shall not
31 be required to meet these standards until replaced with a new

1 transit shelter, which shall meet the requirements of clauses (i)
2 through (xii) and (xiii) of this subsection.

3 (xiii) Any signage associated with transit
4 shelters and associated areas shall be subject to Chapter 656, Part
5 13, Subpart B.

6 (xiv) In the event that any portion of
7 this section, including any exception contained herein, is declared
8 invalid, unenforceable, unconstitutional or void, or is permanently
9 enjoined, or if the existence of any provision of this section
10 would result in any other portion of this Chapter or Chapter 326 or
11 Article 23 of the Charter being held to be invalid, unenforceable,
12 unconstitutional or void, and the court does not sever such invalid
13 portion of this section, then the invalid portion of this section
14 is repealed and invalid and thereafter no signs of the type
15 included within the exemption shall be erected without compliance
16 with the remainder of this Chapter and this Ordinance Code. It is
17 the specific intent that the invalidity of any portion of this
18 section shall not affect any other section, subsection, paragraph,
19 subparagraph, sentence, phrase, clause or word of this Chapter,
20 Chapter 326, Article 23 of the Charter, or this Ordinance Code.

21 **Section 3. Section 656.1303 (Zoning Limitations on**
22 **Signs), Ordinance Code, Section 656.1333 (Signs Permitted),**
23 **Ordinance Code, & Section 656.1334 (Signs Exempted), Ordinance**
24 **Code, Amended. Section 656.1303 (Zoning Limitations On Signs),**
25 **Ordinance Code, Section 656.1333 (Signs Permitted), Ordinance Code,**
26 **& Section 656.1334 (Signs Exempted), Ordinance Code, are hereby**
27 **amended, in part, to read as follows:**
28

29 **CHAPTER 656. ZONING CODE.**

30 * * *

31 **PART 13. SIGN REGULATIONS.**

* * *

Sec. 656.1303. Zoning limitations on signs.

* * *

(k) *Special exemptions:*

* * *

(3) Signs on transit shelters located on public rights-of way, publicly owned property, or privately owned property, subject to the following criteria and superseding any other provisions in Chapter 656, except as provided in Section 656.361.20.

(i) Transit shelters with advertising and internal sign illumination are not permitted on or adjacent to AGR, CSV, ROS, or RR-Acre zoning districts, and are not permitted within PUD zoning districts in AGR, CSV, ROS, or RR land use categories.

(ii) Transit shelters with advertising and internal sign illumination are permitted by sign waiver on or adjacent to all RLD zoning districts, RMD-A and RMD-B zoning districts, PUD zoning districts in an LDR land use category, and adjacent to schools and parks in a PBF land use category.

(iii) Transit shelters with advertising and internal sign illumination are permitted by right on or adjacent to RMD-C, RMD-D, CO, and CRO zoning districts if the transit shelter location is on an identified corridor according to the JTA Corridor Route Map, and the transit shelter is at least 200 feet from a single family use. All others on or adjacent to RMD-C, RMD-D, CO, and CRO zoning districts are permitted by sign waiver.

(iv) Transit shelters with advertising and internal sign illumination are permitted by right on or adjacent to RMD-MH, RHD-A, RHD-B, CN, CCG-1, CCG-2, IBP, IL, IH, IW, PBF-1 (except schools and parks), PBF-2 (except schools and parks), PUD (unless otherwise limited herein), and PUD-SC (unless otherwise

1 limited herein) zoning districts, and within the CBD land use
2 category.

3 (v) Transit shelters with advertising and/or
4 internal sign illumination are not permitted in the San Marco
5 Overlay Zone, Riverside Avondale Zoning Overlay, the Riverside
6 Avondale Historic District, the Springfield Zoning Overlay, the
7 Springfield Historic District, or any other locally or nationally
8 designated historic districts.

9 (vi) Signs shall not exceed 24 square feet in
10 size per transit shelter with a dimension no higher or wider than
11 the size dimensions of the shelter side that the sign is to be
12 placed or attached to, below the bottom of the roofline and the
13 sidewalk, or other surface, the shelter is attached to.

14 (vii) Signs shall not exceed a maximum of two
15 (2) signs on a transit shelter structure.

16 (viii) Transit shelters with advertising and
17 internal illumination shall not be deemed non-conforming uses if
18 its zoning district or the adjacent zoning district changes after
19 installation of the transit shelter.

20 (ix) JTA shall report each year to the City
21 Council to provide an assessment of transit shelters with
22 advertising. The report shall document the transit shelter
23 construction locations, and provide a correlation based on
24 ridership demand and special needs.

25 (x) In the event that any portion of this
26 section, including any exception contained herein, is declared
27 invalid, unenforceable, unconstitutional or void, or is permanently
28 enjoined, or if the existence of any provision of this section
29 would result in any other portion of this Chapter or Chapter 326 or
30 Article 23 of the Charter being held to be invalid, unenforceable,
31 unconstitutional or void, and the court does not sever such invalid

1 portion of this section, then the invalid portion of this section
2 is repealed and invalid and thereafter no signs of the type
3 included within the exemption shall be erected without compliance
4 with the remainder of this Chapter and this Ordinance Code. It is
5 the specific intent that the invalidity of any portion of this
6 section shall not affect any other section, subsection, paragraph,
7 subparagraph, sentence, phrase, clause or word of this Chapter,
8 Chapter 326, Article 23 of the Charter, or this Ordinance Code.

9 * * *

10 **SUBPART B. DOWNTOWN SIGN OVERLAY**

11 * * *

12 **Sec. 656.1333. Signs permitted.**

13 * * *

14 (f) Pylon/pole, roof, and monument signs, and transit
15 shelter signs: Allowed only by special exception approved by the
16 Downtown Development Review Board using the criteria set forth in
17 subsection (2) of this Section, except transit shelter signs.
18 Unless otherwise provided in the special exception, all pylon/pole
19 signs shall meet the setback requirements of Section 656.1303(i).
20 Transit shelter signs shall meet the requirements in Section
21 656.1333(h) and shall not be eligible for a special sign exception
22 under Section 656.1331(j), but shall only be allowed by special
23 exception following the criterion outlined under Section
24 656.1333(h).

25 * * *

26 (h) Transit shelter signs with advertising: Transit shelter
27 signs with advertising shall be subject to Section 656.1333 (f) and
28 shall only be permitted subject to the following criteria:

29 (1) Signs do not exceed 24 square feet in size per
30 transit shelter with a dimension no higher or wider than the size
31 dimensions of the shelter side that the sign is to be placed or

1 attached to, below the bottom of the roofline and the sidewalk, or
2 other surface, the shelter is attached to.

3 (2) Signs do not exceed a maximum of two (2) signs on a
4 transit shelter structure

5 (3) Advertisement content is consistent with
6 Jacksonville Transportation Authority's advertising policy dated
7 October 26, 2006, a copy of which is on file with the JEDC. Any
8 modifications to this policy that affects downtown shall be
9 reviewed and approved by the DDRB.

10 (4) Transit route information signs shall not exceed 6
11 square feet in size and shall meet the same clear view zone
12 dimensional requirements as universal parking signs pursuant to
13 Section 656.1333(d)(2)(C), and shall not obstruct the minimum 6
14 feet requirement for pedestrian clearance on the sidewalk or other
15 surface allowing for pedestrians.

16 (5) DDRB staff shall be authorized to review changes to
17 advertisement content and design within a previously DDRB approved
18 transit shelter and associated advertisement signage plan provided
19 the location and size of the advertisement signage plan has not
20 changed and the advertisement signage plan is consistent with the
21 Jacksonville Transportations Authority's advertisement policy as
22 approved by DDRB. If DDRB staff determine a proposed advertisement
23 to be changed out is not consistent with the Jacksonville
24 Transportation Authority's advertising policy, then the
25 Jacksonville Transportation Authority shall not place the proposed
26 advertisement on the affected transit shelter until said
27 advertisement is considered by DDRB staff to be consistent with
28 said advertisement policy.

29 (6) In the event that any portion of this section,
30 including any exception contained herein, is declared invalid,
31 unenforceable, unconstitutional or void, or is permanently

1 Board Development Authority:

2 * * *

3 (4) Signs on transit shelters located on public
4 rights-of-way, on publicly owned property, or privately owned
5 property, as permitted by Section 656.1303 and subject to Sections
6 656.361.20 and 656.1333.

7 (b) The following signs do not require permits, fee payment,
8 or design review by the Downtown Development Review Board
9 ~~Development Authority~~, so long as such signs meet the requirements
10 of the Sections indicated:

11 * * *

12 (c) The following signs do not require permits, fee payment,
13 or design review by the Downtown Development Review Board
14 ~~Development Authority~~:

15 * * *

16 **Section 4. Section 307.106 (Approval of changes to**
17 **landmarks, landmark sites, and property in historic districts;**
18 **application procedures), Ordinance Code, amended. Section**
19 **307.106 (Approval of changes to landmarks, landmark sites, and**
20 **property in historic districts; application procedures), Ordinance**
21 **Code, is hereby amended, in part, to read as follows:**

22 **CHAPTER 307. HISTORIC PRESERVATION AND PROTECTION.**

23 **PART 1. GENERAL PROVISIONS.**

24 * * *

25 **Section 307.106. Approval of changes to landmarks,**
26 **landmark sites, and property in historic districts; application**
27 **procedures.**

28 * * *

29 (v) The Historic Preservation Commission shall review and
30 approve the transit shelter design type for any locally or
31 nationally designated historic district. The transit shelter

1 design type shall be chosen from at least three options provided by
2 JTA, whose design shall be in keeping with the applicable Historic
3 District Regulations. No COA shall be required for any transit
4 shelter which conforms to the transit shelter design type approved
5 by the Historic Preservation Commission. Pursuant to Section
6 656.1303(k)(3)(v), transit shelters with advertising and/or
7 internal sign illumination are not permitted in the San Marco
8 Overlay Zone, Riverside Avondale Zoning Overlay, the Riverside
9 Avondale Historic District, the Springfield Zoning Overlay, the
10 Springfield Historic District, or any other locally or nationally
11 designated historic districts.

12 * * *

13 **Section 5. Conformance with Code.** The Jacksonville
14 Municipal Ordinance Code is hereby amended throughout all sections
15 of the Ordinance Code to conform with the intent of the provisions
16 in Sections 1 through 4 of this ordinance. The Office of General
17 Counsel along with the Municipal Code codifiers are authorized and
18 directed to ensure code changes are properly codified as approved
19 herein.

20 **Section 6. Severability Clause.** It is the specific
21 intent of the Council that in the event that any portion of this
22 ordinance, including any exception contained herein, is declared
23 invalid, unenforceable, unconstitutional or void, or is permanently
24 enjoined, or if the existence of any provision of this ordinance
25 would result in any other portion of Chapter 326, Chapter 656 or
26 Article 23 of the Charter being held to be invalid, unenforceable,
27 unconstitutional or void, and the court does not sever such invalid
28 portion of this section, then the invalid portion of this ordinance
29 is repealed and invalid and thereafter no signs of the type
30 included within the exemption shall be erected without compliance
31 with the remainder of the applicable Chapter or Article. It is the

1 specific intent that the invalidity of any portion of this
2 ordinance shall not affect any other section, subsection,
3 paragraph, subparagraph, sentence, phrase, clause or word of
4 Chapter 326, Chapter 656, Article 23 of the Charter, or the
5 Jacksonville Municipal Ordinance Code.

6 **Section 7. Current Code Attached.** The current text of
7 the Ordinance Code Sections amended by this Ordinance is **attached**
8 **hereto** for reference as **Revised Exhibit 3**.

9 **Section 8. Effective Date.** This Ordinance shall become
10 effective upon the satisfaction of all of the following: (i) upon
11 the written agreement ("Defense Agreement") between the City and
12 Jacksonville Transportation Authority for the defense of the City's
13 offsite commercial billboard ban in a suit which may be filed
14 challenging the ban because of the exemption for transit shelter
15 advertisements created by this Ordinance; and (ii) upon signature
16 by the Mayor or upon becoming effective without the Mayor's
17 signature. The Mayor and Corporation Secretary are authorized to
18 execute the Defense Agreement on the following terms: defense shall
19 be at all levels, including appeal, and cover all costs of
20 litigation and appeal with respect to the issue set forth above;
21 JTA will participate with the City in the costs of defense and will
22 provide up to the first \$250,000 of such costs and participate
23 50/50 thereafter at the option of the City; JTA may choose to
24 utilize the Office of General Counsel, at the current rates and
25 charges available to City departments; in the event that JTA
26 determines at any time to discontinue defense efforts, JTA will
27 tender defense of the action to the City, at which time the City
28 may continue such defense or Council may effect a repeal of this
29 Ordinance in order to moot the action, and JTA shall support either
30 action of the City; and JTA shall incorporate an anti-
31 grandfathering provision in any contract with a shelter advertiser.

1 Form Approved:

2
3 

4 Office of General Counsel

5 Legislation Prepared By: Shannon K. Eller

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Select Year:

The 2009 Florida Statutes

Title XXVI
PUBLIC
TRANSPORTATION

Chapter 337
CONTRACTING; ACQUISITION, DISPOSAL, AND
USE OF PROPERTY

[View Entire
Chapter](#)

337.408 Regulation of benches, transit shelters, street light poles, waste disposal receptacles, and modular news racks within rights-of-way.--

(1) Benches or transit shelters, including advertising displayed on benches or transit shelters, may be installed within the right-of-way limits of any municipal, county, or state road, except a limited access highway, provided that such benches or transit shelters are for the comfort or convenience of the general public or are at designated stops on official bus routes and provided that written authorization has been given to a qualified private supplier of such service by the municipal government within whose incorporated limits such benches or transit shelters are installed or by the county government within whose unincorporated limits such benches or transit shelters are installed. A municipality or county may authorize the installation, without public bid, of benches and transit shelters together with advertising displayed thereon within the right-of-way limits of such roads. Any contract for the installation of benches or transit shelters or advertising on benches or transit shelters which was entered into before April 8, 1992, without public bidding is ratified and affirmed. Such benches or transit shelters may not interfere with right-of-way preservation and maintenance. Any bench or transit shelter located on a sidewalk within the right-of-way limits of any road on the State Highway System or the county road system shall be located so as to leave at least 36 inches of clearance for pedestrians and persons in wheelchairs. Such clearance shall be measured in a direction perpendicular to the centerline of the road.

(2) Waste disposal receptacles of less than 110 gallons in capacity, including advertising displayed on such waste disposal receptacles, may be installed within the right-of-way limits of any municipal, county, or state road, except a limited access highway, provided that written authorization has been given to a qualified private supplier of such service by the appropriate municipal or county government. A municipality or county may authorize the installation, without public bid, of waste disposal receptacles together with advertising displayed thereon within the right-of-way limits of such roads. Such waste disposal receptacles may not interfere with right-of-way preservation and maintenance.

(3) Modular news racks, including advertising thereon, may be located within the right-of-way limits of any municipal, county, or state road, except a limited access highway, provided the municipal government within whose incorporated limits such racks are installed or the county government within whose unincorporated limits such racks are installed has passed an ordinance regulating the placement of modular news racks within the right-of-way and has authorized a qualified private supplier of modular news racks to provide such service. The modular news rack or advertising thereon shall not exceed a

height of 56 inches or a total advertising space of 56 square feet. No later than 45 days prior to installation of modular news racks, the private supplier shall provide a map of proposed locations and typical installation plans to the department for approval. If the department does not respond within 45 days after receipt of the submitted plans, installation may proceed.

(4) The department has the authority to direct the immediate relocation or removal of any bench, transit shelter, waste disposal receptacle, public pay telephone, or modular news rack that endangers life or property, except that transit bus benches that were placed in service before April 1, 1992, are not required to comply with bench size and advertising display size requirements established by the department before March 1, 1992. Any transit bus bench that was in service before April 1, 1992, may be replaced with a bus bench of the same size or smaller, if the bench is damaged or destroyed or otherwise becomes unusable. The department may adopt rules relating to the regulation of bench size and advertising display size requirements. If a municipality or county within which a bench is to be located has adopted an ordinance or other applicable regulation that establishes bench size or advertising display sign requirements different from requirements specified in department rule, the local government requirement applies within the respective municipality or county. Placement of any bench or advertising display on the National Highway System under a local ordinance or regulation adopted under this subsection is subject to approval of the Federal Highway Administration.

(5) A bench, transit shelter, waste disposal receptacle, public pay telephone, or modular news rack, or advertising thereon, may not be erected or placed on the right-of-way of any road in a manner that conflicts with the requirements of federal law, regulations, or safety standards, thereby causing the state or any political subdivision the loss of federal funds. Competition among persons seeking to provide bench, transit shelter, waste disposal receptacle, public pay telephone, or modular news rack services or advertising on such benches, shelters, receptacles, public pay telephone, or news racks may be regulated, restricted, or denied by the appropriate local government entity consistent with this section.

(6) Street light poles, including attached public service messages and advertisements, may be located within the right-of-way limits of municipal and county roads in the same manner as benches, transit shelters, waste disposal receptacles, and modular news racks as provided in this section and in accordance with municipal and county ordinances. Public service messages and advertisements may be installed on street light poles on roads on the State Highway System in accordance with height, size, setback, spacing distance, duration of display, safety, traffic control, and permitting requirements established by administrative rule of the Department of Transportation. Public service messages and advertisements shall be subject to bilateral agreements, where applicable, to be negotiated with the owner of the street light poles, which shall consider, among other things, power source rates, design, safety, operational and maintenance concerns, and other matters of public importance. For the purposes of this section, the term "street light poles" does not include electric transmission or distribution poles. The department shall have authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section. No advertising on light poles shall be permitted on the Interstate Highway System. No permanent structures carrying advertisements attached to light poles shall be permitted on the National Highway System.

(7) A public pay telephone, including advertising displayed thereon, may be installed within the right-of-way limits of any municipal, county, or state road, except on a limited access highway, if the pay telephone is installed by a provider duly authorized and regulated by the Public Service Commission under s. 364.3375, if the pay telephone is operated in accordance with all applicable state and federal telecommunications regulations, and if written authorization has been given to a public pay telephone provider by the appropriate municipal or county government. Each advertisement must be limited to a size no greater than 8 square feet, and a public pay telephone booth may not display more than three advertisements at any given time. An advertisement is not allowed on public pay telephones located in rest areas, welcome centers, or other such facilities located on an interstate highway.

(8) Wherever the provisions of this section are inconsistent with other provisions of this chapter or with the provisions of chapter 125, chapter 335, chapter 336, or chapter 479, the provisions of this section shall prevail.

History.--s. 21, ch. 85-180; s. 61, ch. 94-237; s. 30, ch. 95-257; s. 63, ch. 96-323; s. 82, ch. 2002-20; s. 22, ch. 2004-366; s. 11, ch. 2009-85.

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display."); *Saladin v. City of Milledgeville*, 812 F.2d 687, 692 (11th Cir.1987) ("[A]t least three of the plaintiffs regularly receive correspondence on city stationery bearing the seal. . . . [T]he presence of . . . the seal offends the appellants because the seal represents the City's endorsement of Christianity."); *Vasquez*, 487 F.3d at 1249 (Ninth Circuit); *Caldwell v. Caldwell*, 545 F.3d 1126, 1131-34 (9th Cir.2008).

V

The panel majority's certification order treats standing as a nuisance to be swatted aside rather than as "an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). Standing serves a purpose in our system of government. "The power to declare the rights of individuals and to measure the authority of governments, [the Supreme Court] said 90 years ago, is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy." *Valley Forge*, 454 U.S. at 471, 102 S.Ct. 752 (internal quotation marks omitted). By unjustifiably re-inventing the holdings of our religious display cases, the panel majority disregards these limits.

I acknowledge that those limits are not always clear and bright or easily discernible. Still, "[t]he absence of precise definitions . . . hardly leaves courts at sea in applying the law of standing." *Allen v. Wright*, 468 U.S. 737, 751, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984). Some principles should be clear. This is one of them. A plaintiff who is psychologically injured by the mere thought of associating with people who hold different views cannot claim that he has suffered a legally cognizable injury-in-fact.

VI

For the foregoing reasons, I respectfully dissent from our failure to rehear this case en banc.



METRO LIGHTS, L.L.C., a New York
limited liability company,
Plaintiff-Appellee,

v.

CITY OF LOS ANGELES, a California
municipal corporation, Defendant-
Appellant.

Metro Lights, L.L.C., a New York
limited liability company,
Plaintiff-Appellant,

v.

City of Los Angeles, a California
municipal corporation,
Defendant-Appellee.

Nos. 07-55179, 07-55207.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted June 4, 2008.

Filed Jan. 6, 2009.

Background: Company owning and operating outdoor signs in a variety of markets, including Los Angeles, brought action against the city of Los Angeles seeking declaratory and injunctive relief, as well as damages, in asserting various First Amendment claims relating to a sign ordinance prohibiting most offsite commercial advertising, but excluding from its reach city-owned transit stops. The United States District Court for the Central Dis-

trict of California, Gary A. Feess, J., granted company's motion for partial summary judgment, but denied company an award of damages. Both parties appealed.

Holding: The Court of Appeals, O'Scannlain, Circuit Judge, held that ordinance was not unconstitutionally underinclusive under the First Amendment.

Reversed and remanded.

1. Constitutional Law ⇄1537

The Constitution accords a lesser protection to commercial speech than to other constitutionally guaranteed expression; the protection available for particular commercial expression turns on the nature both of the expression and of the governmental interests served by its regulation. U.S.C.A. Const.Amend. 1.

2. Constitutional Law ⇄1541

Under *Central Hudson's* four-part test for assessing the constitutionality of a restriction on commercial speech: (1) if the communication is neither misleading nor related to unlawful activity, then it merits First Amendment scrutiny as a threshold matter; in order for the restriction to withstand such scrutiny, (2) the State must assert a substantial interest to be achieved by restrictions on commercial speech; (3) the restriction must directly advance the state interest involved; and (4) it must not be more extensive than is necessary to serve that interest. U.S.C.A. Const. Amend. 1.

3. Constitutional Law ⇄1541

Traffic safety and aesthetics constitute substantial government interests under *Central Hudson's* four-part test for assessing the constitutionality of a restriction on commercial speech. U.S.C.A. Const.Amend. 1.

4. Constitutional Law ⇄1541

In determining whether a regulation directly advances the governmental interest asserted, as required under *Central Hudson's* four-part test for assessing the constitutionality of a restriction on commercial speech, a regulation may have exceptions that undermine and counteract the interest the government claims it adopted the law to further; such a regulation cannot directly and materially advance the government's aim. U.S.C.A. Const. Amend. 1.

5. Constitutional Law ⇄1490

Self-defeating speech restrictions violate the First Amendment. U.S.C.A. Const.Amend. 1.

6. Constitutional Law ⇄1504

Exceptions that make distinctions among different kinds of speech must relate to the interest the government seeks to advance in order to be constitutional under the First Amendment. U.S.C.A. Const.Amend. 1.

7. Constitutional Law ⇄1655

Municipal Corporations ⇄718

City's contract with successful bidder, under which bidder would install public facilities at city-owned transit stops across the city in exchange for exclusive advertising rights on those facilities, did not insure that ordinance prohibiting most offsite commercial advertising, but excluding from its reach city-owned transit stops, would fail to achieve its end, or so undermine the ordinance that the ordinance could not materially advance its aim of promoting traffic safety and aesthetics, so as to make the ordinance unconstitutionally underinclusive under the First Amendment; although contract permitted some advertising, the ordinance combined with the contract still arrested the uncontrolled proliferation of signage, going a long way toward cleaning up the clutter, which the

city believed to be a worthy legislative goal. U.S.C.A. Const.Amend. 1.

8. Taxation ⇄2005

Raising revenue by taxation, though by itself perfectly legitimate state action, does not allow a state selectively to prohibit constitutionally protected conduct.

Kenneth T. Fong, Deputy City Attorney for the City of Los Angeles, CA, argued the cause for the defendant-appellant and cross-appellee and filed the briefs; Rockard Delgadillo, City Attorney, Claudia McGee Henry, Senior Assistant City Attorney, and Jeri L. Burge, Assistant City Attorney, Los Angeles, CA, were on the briefs.

Laura W. Brill, Attorney for Amici Curiae CBS-Decaux LLC and California League of Cities, Irell & Manella LLP, Los Angeles, CA, also argued the cause for the defendant-appellant and cross-appellee and filed briefs.

Laurence H. Tribe, Attorney, Cambridge, MA, argued the cause for the plaintiff-appellee and cross-appellant; Paul E. Fisher, Attorney, Newport Beach, CA, filed the briefs; Eric V. Rowen, Scott D. Bertzyk, and Karin L. Bohmholdt, Attorneys, Greenberg Traurig LLP, Santa Monica, CA, were on the briefs.

Appeal from the United States District Court for the Central District of California; Gary A. Feess, District Judge, Presiding. D.C. Nos. CV-04-01037-GAF(Ex), CV-04-01037-GAF.

1. As discussed in greater detail *infra*, offsite advertising, or offsite signage, refers to a sign on private property advertising commercial

Before: DAVID R. THOMPSON,
DIARMUID F. O'SCANLAIN, and
RICHARD C. TALLMAN, Circuit Judges.

OPINION

O'SCANLAIN, Circuit Judge:

We must determine whether a city violates the First Amendment by prohibiting most offsite commercial advertising while simultaneously contracting with a private party to permit sale of such advertising at city-owned transit stops.

I

This case lies at the crossroads of two courses of action that the City of Los Angeles has followed. First, in December 2001, the City entered into a contract with Viacom Decaux LLC, later to become CBS-Decaux LLC ("CBS"), under which CBS would install public facilities at city-owned transit stops across the city in exchange for exclusive advertising rights on those facilities. Five months later, the City enacted an ordinance ("the Sign Ordinance") generally banning offsite advertising¹ but excluding from its reach, among other places, such transit stops. Los Angeles Municipal Code ("L.A.M.C.") §§ 91.101.4, 91.101.5, 91.6205.11.

A

Since 1987, the City has engaged in an almost unbroken chain of agreements with private contractors in which the City granted the exclusive right to advertise on transit shelters in exchange for the installation of such facilities and annual payments. The first contract provided for the "exclusive right to display advertising materials on [transit] shelters" in exchange for the installation of 2,500 shelters, as

services or wares purveyed elsewhere than on the premises where the sign is located.

well as annual payments of the greater of either a percentage of gross advertising receipts or a lump sum.

In May 1999, after the first contract had expired, the City entered into the Norman Bus Bench Franchise agreement, modeled after its predecessor. The City gave Norman, the franchisee, the exclusive right to place commercial advertising on bus stop benches in the City, in exchange for the installation and maintenance of 6,000 to 8,770 benches, a similar fee structure, and a commitment to place public service announcements on them.

The City decided to deviate from the model somewhat in late 2001. It would supersede the Norman Contract by means of a new form of agreement, which would require a franchisee to install not only new bus stop benches, but also other public facilities such as shelters at bus stops, automated self-cleaning public toilets, trash receptacles, public amenity kiosks, and news racks. Otherwise, the new contract would be identical to the Norman Contract. The City initiated an open bidding process, stating that its objectives included: (1) the use of one contractor to establish a single point of accountability; (2) the significant upgrade of "the appearance and quality of street furniture on Los Angeles City streets"; and (3) the improvement of the "visual character of the streetscape," particularly by "reduc[ing] physical and visual clutter on sidewalks" and ensuring that "[t]he streets of the City are[not] littered with various street elements that are situated in unplanned ways

2. Those purposes are: (1) ensuring "[t]hat the design, construction, installation, repair and maintenance of signs will not interfere with traffic safety or otherwise endanger public safety;" (2) providing "reasonable protection to the visual environment while providing adequate conditions for meeting sign users['] needs;" (3) reducing "incompatibility between signs and their surroundings;" (4) providing

... creating general chaotic visual impacts on the street." While the new contract provided for exclusive advertising rights on the new public facilities, it said nothing about municipal regulation of offsite signs.

CBS (then known as Viacom Decaux LLC), was the successful bidder and, on December 21, 2001, entered into a twenty-year contract with the City. Under the terms of that contract, called the Street Furniture Agreement ("the SFA"), first Viacom Decaux, and then CBS, agreed to install the new public facilities and to make annual payments according to a formula similar to those the City had used in its earlier deals. The bus stop shelters and other facilities would remain City property, and the City would retain control over much of the design of the installed street furniture.

B

On April 30, 2002, the Los Angeles City Council adopted its Sign Ordinance, which listed six purposes, mostly connected to traffic safety and aesthetics.² Essentially, the new law, which amended L.A.M.C. § 91.6205.11, provided that "[s]igns are prohibited if they ... [a]re off-site signs, except when off-site signs are specifically permitted pursuant to a variance, legally adopted specific plan, supplemental use district or an approved development agreement. This shall also apply to alterations or enlargements of legally existing off-site signs." The L.A.M.C. defines "Off-Site Sign" as "[a] sign which displays any message directing attention to a business,

"the public and sign users" with "signs having improved legibility, readability and visibility;" (5) "equalizing the opportunity for messages to be displayed;" and (6) providing that "adequacy of message opportunity will be available to sign users without dominating the visual appearance of the area." L.A.M.C. § 91.6201.2

product, service, profession, commodity, activity, event, person, institution or any other commercial message, which is generally conducted, sold, manufactured, produced, offered or occurs elsewhere than on the premises where such sign is located." L.A.M.C. § 91.6203. The prototypical off-site sign, it seems, is the common billboard, whether freestanding or affixed to a building or other structure. The exhibits in the record show, however, that posters set in glass cases that are then affixed to structures also count as offsite signs.

The ban applies exclusively to commercial signs. *Id.*³ In addition, under L.A.M.C. §§ 91.101.4, 91.101.5, the City's Building Code (of which the ban is a part) does not apply to "work located primarily in a public way," such as public transit shelters and other facilities. The Sign Ordinance did not alter or amend this additional exemption.⁴

At the time the Sign Ordinance became effective, there were approximately 18,500 transit stops in the City.

C

Metro Lights, LLC, ("Metro Lights") owns and operates outdoor signs in a variety of markets, including Los Angeles. Around December 2003, the City issued Metro Lights numerous citations for violating the Sign Ordinance by installing new offsite signs. In response, Metro Lights brought this suit, seeking declaratory and injunctive relief, as well as damages, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 & 2202. The City moved

to dismiss, while Metro Lights moved for a preliminary injunction to enjoin the City from enforcing the Sign Ordinance as to twenty specified signs. The district court granted the City's motion in part, dismissing several but not all of the First Amendment claims, but also granted Metro Lights's motion for a preliminary injunction.

Metro Lights responded by filing its second amended complaint, which also raised various First Amendment claims under § 1983. Metro Lights ultimately moved for partial summary judgment on its First Amendment claims, arguing that the SFA undermined the City's purported grounds for enacting the Sign Ordinance. After the district court had held a hearing but before it had ruled on Metro Lights's motion, the City filed its own motion for partial summary judgment on the same constitutional claims, arguing that the Sign Ordinance was constitutional in light of the City's interests in promoting aesthetics and traffic safety.

On August 11, 2006, the district court entered its final order granting Metro Lights' motion for partial summary judgment on the merits of its First Amendment claim. According to the district court, "[t]he City cannot, on the one hand, preclude Plaintiff from displaying messages on its off-site signs as a supposed legitimate exercise of its police powers while, on the other hand, authorizing its Street Furniture contractor to erect off-

3. Metro Lights argues that "the City completely prohibits off-site signs regardless of whether they convey commercial or non-commercial speech," but our precedent forecloses such claim. See *Clear Channel Outdoor Inc. v. City of L.A.*, 340 F.3d 810, 815 (9th Cir. 2003) ("In effect, [L.A.M.C. § 91.6203] creates an exemption for noncommercial off-site signs.").

4. The City earnestly argues that this is not really an exemption but simply the non-application of the statute to the public way. We fail to see any difference sufficient to change our analysis and so we do not opt for one label over the other.

site signs in or near the public rights of way throughout the City of Los Angeles.”

After this defeat, the City filed a motion for summary judgment asserting that Metro Lights was not entitled to damages. This time the City met with some success, as the district court granted the motion and denied Metro Lights an award of damages.

Judgment was entered on January 23, 2007.⁵ The City timely appealed from the grant of summary judgment as to the First Amendment claims, and Metro Lights timely cross-appealed from the grant of summary judgment denying its claim for damages.

II

[1] The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.” It applies to state and local governments, such as the City of Los Angeles, through the Fourteenth Amendment’s Due Process Clause. *Near v. State of Minn.*, 283 U.S. 697, 707, 51 S.Ct. 625, 75 L.Ed. 1357 (1931). However, “[e]ven a cursory reading” of the Supreme Court’s opinions in this area of the law “reveals that at times First Amendment values must yield to other societal interests.” *Metro Media, Inc. v. City of San Diego*, 453 U.S. 490, 501, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981). See also *Members of City Council of City of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 804, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984) (“It has been clear since [the Su-

5. The district court’s order also granted the City’s claim for summary judgment as to an equal protection claim Metro Lights made, a disposition the parties have not appealed.

6. Metro Lights briefly argues that the district court erred in applying *Central Hudson* because the regulation in this case purportedly is content-based. However, whether or not the City’s regulation is content-based, the *Central Hudson* test still applies because of the reduced protection given to commercial speech. See *Bullen v. City of Redmond*, 466 F.3d 736, 743–44 (9th Cir.2006). Metro Lights cited a number of cases in support of its argument, but none of them concerned regulation of commercial speech, and hence did not discuss the applicability of *Central Hudson*.

preme] Court’s earliest decisions concerning the freedom of speech that the state may sometimes curtail speech when necessary to advance a significant and legitimate state interest.”). Furthermore, “[t]he Constitution . . . accords a lesser protection to commercial speech than to other constitutionally guaranteed expression. The protection available for particular commercial expression turns on the nature both of the expression and of the governmental interests served by its regulation.” *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of New York*, 447 U.S. 557, 562–63, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980) (internal citation omitted).

[2] In *Central Hudson*, the Supreme Court announced a four-part test for assessing the constitutionality of a restriction on commercial speech: (1) if “the communication is neither misleading nor related to unlawful activity,” then it merits First Amendment scrutiny as a threshold matter; in order for the restriction to withstand such scrutiny, (2) “[t]he State must assert a substantial interest to be achieved by restrictions on commercial speech;” (3) “the restriction must directly advance the state interest involved;” and (4) it must not be “more extensive than is necessary to serve that interest.” *Id.* at 564–66, 100 S.Ct. 2343; see *Clear Channel Outdoor, Inc.*, 340 F.3d at 815. No one argues that this test should not apply here;⁶ since we are dealing with a regulation on commer-

cial speech, *Central Hudson* plainly controls.

A

[3] The parties do not dispute that the offsite advertising at issue in this case merits First Amendment protection because it is neither misleading nor related to unlawful activity.⁷ Nor is there any serious contention that the City has not asserted a substantial interest. It is well-established that traffic safety and aesthetics constitute substantial government interests. See *Metromedia*, 453 U.S. at 507-08, 101 S.Ct. 2882. The L.A.M.C., indeed, stresses the City's interests in traffic safety and aesthetics several times, as did the City's proposal for bids for the SFA. *Central Hudson* requires at most that the City "assert a substantial interest," 447 U.S. at 564, 100 S.Ct. 2343; such references constitute just such an assertion. Recognizing the straightforwardness of such result, the parties have focused their argument, and we therefore focus our analysis, upon the third and fourth elements of the *Central Hudson* test. That is, we ask whether the City's restriction "directly advances" the government interest and whether the City's restriction is narrowly tailored to its aim.

B

The Supreme Court has said that "[t]he last two steps of the *Central Hudson* analysis basically involve a consideration of the 'fit' between the legislature's ends and the means chosen to accomplish those ends." *United States v. Edge Broadcasting Co.*,

7. We note that the district court's analysis confused this part of the test, though the court came to the correct conclusion as to this point. It relied in part on the observation that "[a]dvertising is undisputably a lawful activity." That is not the point, since not all advertisements receive First Amendment pro-

tection. *Central Hudson* asks if the commercial speech is "related to unlawful activity." 447 U.S. at 564, 100 S.Ct. 2343. Thus, in the context of advertising, one must ask whether the goods or services the party advertises are illegal.

509 U.S. 418, 427-28, 113 S.Ct. 2696, 125 L.Ed.2d 345 (1993) (internal quotation marks omitted). It has not always been clear how this basic inquiry differs with respect to the last two steps of the *Central Hudson* analysis, and indeed the Supreme Court has observed that the steps of the analysis are "not entirely discrete." *Greater New Orleans Broadcasting Ass'n, Inc. v. United States*, 527 U.S. 173, 183, 119 S.Ct. 1923, 144 L.Ed.2d 161 (1999). But several important threads specific to each step bear a closer look.

1

When one asks (referring to *Central Hudson's* third element) whether a "regulation directly advances the governmental interest asserted[,] . . . [i]t is readily apparent that this question cannot be answered by limiting the inquiry to whether the governmental interest is directly advanced as applied to a single person or entity." *Edge Broadcasting*, 509 U.S. at 427, 113 S.Ct. 2696 (internal quotation marks omitted). Thus, we must look at whether the City's ban advances its interest in its general application, not specifically with respect to Metro Lights.

[4] Another consideration in the direct advancement inquiry is "underinclusivity," which Metro Lights has made the centerpiece of its First Amendment challenge on appeal. Though it may seem counter-intuitive at first, the Supreme Court has held that a regulation can be unconstitutional if it "in effect restricts too little speech because its exemptions discriminate on the basis of the signs' messages [or

tection. *Central Hudson* asks if the commercial speech is "related to unlawful activity." 447 U.S. at 564, 100 S.Ct. 2343. Thus, in the context of advertising, one must ask whether the goods or services the party advertises are illegal.

because] [t]hey may diminish the credibility of the government's rationale for restricting speech in the first place." *City of Ladue v. Gilleo*, 512 U.S. 43, 50–51, 52, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994). To put it in the context of the *Central Hudson* test, a regulation may have exceptions that "undermine and counteract" the interest the government claims it adopted the law to further; such a regulation cannot "directly and materially advance its aim."⁸ *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 489, 115 S.Ct. 1585, 131 L.Ed.2d 532 (1995) (striking down a federal law prohibiting labels on beer products from showing alcohol content but permitting beer advertisements from containing such information and permitting such information on wine and spirits).

The Supreme Court has struck down several arrangements at least in part because they were unconstitutionally underinclusive. In one case, an advertising magazine sued the City of Cincinnati because it prohibited, in the interests of aesthetics and sidewalk safety, the distribution of commercial handbills in newsracks but permitted the distribution of non-commercial handbills. *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 424, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993). The Court held that "the distinction [between commercial and non-commercial publications] bears no relationship whatsoever to the particular interests that the city has asserted." *Id.* at 424, 113

S.Ct. 1505 (emphasis in original). The decision made it clear that, absent "some basis for distinguishing between [non-commercial] newspapers and commercial handbills that is relevant to an interest asserted by the city," Cincinnati could not rely on either the lower value of commercial speech for First Amendment purposes or the mere fact that by banning one kind of newsrack it was advancing its interest because, of course, there would be fewer newsracks. *Id.* at 428, 426–27, 113 S.Ct. 1505 (internal quotation marks omitted). In other words, *Central Hudson* requires a logical connection between the interest a law limiting commercial speech advances and the exceptions a law makes to its own application.

In *Greater New Orleans*, a case Metro Lights cites repeatedly, the Supreme Court further clarified the meaning of unconstitutionally underinclusivity. Building on prior cases, especially *Rubin*, 514 U.S. 476, 115 S.Ct. 1585, the Court struck down a federal law which banned broadcast advertising for most private casinos but exempted, among others, advertising for Indian tribal casinos. 527 U.S. at 195–96, 119 S.Ct. 1923. The Court found that "there was little chance that the speech restriction could have directly and materially advanced its aim"—"minimizing casino gambling and its social costs"—because its exemptions defeated its purpose. *Id.* at 193, 119 S.Ct. 1923 (internal quotation marks omitted). It seems to us crucial to

8. It is not always clear to which element of *Central Hudson* an underinclusivity analysis relates. In *Valley Broadcasting Co. v. United States*, for instance, we struck down an underinclusive regulation because it did not directly advance the government's interest, the requirement of the third element of *Central Hudson*. 107 F.3d 1328, 1333–36 (9th Cir. 1997). We have also had occasion, however, to analyze a regulation for unconstitutionally underinclusivity under the narrow tailoring requirement of *Central Hudson*—the fourth ele-

ment. See *Ballen*, 466 F.3d at 742–44. One might reconcile these cases by noting that in *Valley Broadcasting* the underinclusivity simply undermined the statute's ability to advance the government's interest, 107 F.3d at 1334, whereas in *Ballen* it reflected a content-based discrimination in speech, 466 F.3d at 743–44. By discriminating on the basis of content, the statute that *Ballen* struck down was "more extensive than necessary" to advance the government's interest. *Central Hudson*, 447 U.S. at 566, 100 S.Ct. 2343.

the Court's conclusion in *Greater New Orleans* that forbidding one type of advertising but not another "would merely channel gamblers to one casino rather than another." *Id.* at 189, 119 S.Ct. 1923. Since the government had failed to convince the Court that tribal casino gambling was any less problematic than private casino gambling, such mere redistribution of gamblers was a fatal inefficacy.

[5,6] Thus, under Supreme Court precedent, regulations are unconstitutionally underinclusive when they contain exceptions that bar one source of a given harm while specifically exempting another in at least two situations. First, if the exception "ensures that the [regulation] will fail to achieve [its] end," it does not "materially advance its aim." *Rubin*, 514 U.S. at 489, 115 S.Ct. 1685. This is the lesson of *Greater New Orleans*: self-defeating speech restrictions will violate the First Amendment. *See Greater New Orleans*, 527 U.S. at 190, 119 S.Ct. 1923 ("The operation of [the regulation] . . . is so perched by exemptions and inconsistencies that the Government cannot hope to exonerate it."). Second, exceptions that make distinctions among different kinds of speech must relate to the interest the government seeks to advance. *Discovery Network*, 507 U.S. at 418-19, 113 S.Ct. 1505 (also noting the "minimal impact" the regulation would achieve as a result of the exception).

2

As to narrow tailoring, the fourth element of the *Central Hudson* test requires that the challenged regulation not be "more extensive than is necessary to serve

9. The law also banned noncommercial signage, but the Court distinguished the commercial and noncommercial applications of the law for purposes of its analysis. *See Metromedia*, 453 U.S. at 506-07, 101 S.Ct.

that interest." *Central Hudson*, 447 U.S. at 566, 100 S.Ct. 2343. The Supreme Court has clarified that this requirement does not demand that the government use the least restrictive means to further its ends. Rather,

what [precedent] require[s] is a fit between the legislature's ends and the means chosen to accomplish those ends—a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served; that employs not necessarily the least restrictive means but . . . a means narrowly tailored to achieve the desired objective.

Bd. of Trustees of the State Univ. of N.Y. v. Fox, 492 U.S. 469, 480, 109 S.Ct. 3028, 106 L.Ed.2d 388 (1989) (internal quotation marks and citation omitted).

III

As we now turn to the application of *Central Hudson* to the case before us, we are faced with a difficult threshold question. For the City argues that a more recent Supreme Court decision, *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800, controls the result. In *Metromedia*, the Supreme Court, applying *Central Hudson*, upheld a law similar to the City's insofar as it regulated commercial speech.

A

Much like the Sign Ordinance in this case, the City of San Diego law at issue in *Metromedia* banned commercial offsite signs, but not onsite signs.⁹ Specifically,

2882. A majority of the Court upheld the constitutionality of the ban to the extent that it only prohibited commercial advertising, but a plurality ultimately overturned the ordinance because its reach included "signs

San Diego prohibited “[a]ny sign which advertises or otherwise directs attention to a product, service or activity . . . produced or offered elsewhere than on the premises where such sign is located.” 453 U.S. at 493 n. 1, 101 S.Ct. 2882. In addition to leaving onsite signs untouched, the ordinance created twelve exemptions for certain offsite signs, including “government signs” and “signs located at public bus stops.” *Id.* at 494, 495 n. 3, 101 S.Ct. 2882.

The *Metromedia* Court began by limiting its holding to billboard advertising. *Id.* at 501, 101 S.Ct. 2882 (“Each method of communicating ideas is a law unto itself and that law must reflect the differing natures, values, abuses and dangers of each method. We deal here with the law of billboards.” (internal quotation marks and footnote omitted)). Because we too, deal with a law regulating billboards, at least in significant part, *Metromedia* applies to this case as an initial matter, whether or not it dictates the final result.

The Court then applied *Central Hudson*. *Id.* at 507, 101 S.Ct. 2882. San Diego, much like Los Angeles does now, argued that the ban furthered its interests in enhancing “traffic safety and the appearance of the city.” *Id.* Just as we do in this case, the Court quickly concluded that the advertising in question was not illegal or misleading and that the City’s proffered interests were substantial. *Id.* Indeed, the Court also dismissed the fourth *Central Hudson* element (narrow tailoring), summarily holding that San Diego’s ordinance was no broader than necessary. *Id.* at 508, 101 S.Ct. 2882 (“If the city has a sufficient basis for believing that billboards

are traffic hazards and are unattractive, then obviously the most direct and perhaps the only effective approach to solving the problems they create is to prohibit them.”). We shall return to narrow tailoring in more detail below.

“The more serious question,” the Court thought, “concerns the third of the *Central Hudson* criteria: Does the ordinance ‘directly advance’ governmental interests in traffic safety and in the appearance of the city?” *Id.* In other words, was the ordinance underinclusive? The Court first recognized “the accumulated, common-sense judgments of local lawmakers and of the many reviewing courts that billboards are real and substantial hazards to traffic safety,” *id.* at 509, 101 S.Ct. 2882, and that “billboards by their very nature, wherever located and however constructed, can be perceived as an ‘esthetic harm.’” *Id.* at 510, 101 S.Ct. 2882.

Most importantly, the Court rejected the argument that San Diego “denigrates its interest in traffic safety and beauty and defeats its own case by permitting onsite advertising and other specified signs.” *Id.* at 510–11, 101 S.Ct. 2882. The Court based its rejection of this underinclusivity argument on three grounds. First, the law’s non-application to onsite advertising, the Court noted, did not alter the direct relation between the city’s goals and the ban’s application to most offsite advertising. *Id.* at 511, 101 S.Ct. 2882. In other words, a ban on some offsite signs still advances traffic safety and aesthetics more than a ban on none.¹⁰ Second, the Court accepted the reasonableness of the suppo-

carrying noncommercial advertising,” such that the “ordinance reaches too far into the realm of protected speech.” *Id.* at 512–521, 101 S.Ct. 2882. As noted, we have held that the Los Angeles Sign Ordinance only prohibits commercial offsite signs. See *Clear Channel Outdoor Inc.*, 340 F.3d at 815.

10. As indicated by the discussion *supra*, at 905–06, this reason, standing alone, does not appear sufficient to overcome a First Amendment challenge. *Discovery Network*, 507 U.S. at 426–27, 113 S.Ct. 1505.

sition that "offsite advertising, with its periodically changing content, presents a more acute problem than does onsite advertising." *Id.* Finally, the Court observed, "San Diego has obviously chosen to value one kind of commercial speech—onsite advertising—more than another kind of commercial speech—offsite advertising." *Id.* at 512, 101 S.Ct. 2882. In a statement of deference most relevant to this case, the Court insisted that "[t]he ordinance reflects a decision by the city that the former interest, but not the latter, is stronger than the city's interests in traffic safety and esthetics. The city has decided that in a limited instance . . . its interests should yield. We do not reject that judgment." *Id.*

Though the deference *Metromedia* shows may seem to be in some tension with other underinclusivity cases such as *Discovery Network* and *Greater New Orleans*, the Supreme Court has reaffirmed *Metromedia* in numerous contexts since the decision. In *Taxpayers for Vincent*, the Court approvingly reviewed *Metromedia's* conclusion that cities have a valid interest in regulating the "visual evil" of billboards. 466 U.S. at 808 n. 27, 104 S.Ct. 2118. *Taxpayers* relied in part on *Metromedia's* rejection of "the argument that a prohibition against the use of unattractive signs cannot be justified on esthetic grounds if it fails to apply to all equally unattractive signs wherever they might be located." *Id.* at 810, 104 S.Ct. 2118 (emphasis added). The Court also recognized the continuing vitality of *Metromedia* in *City of Ladue v. Gilleo*, 512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36, when it cited the earlier opinion as bedrock for its analysis of a law restricting signs on residential property. *Id.* at 49, 114 S.Ct. 2038.

B

[7] The ordinance considered in *Metromedia* is virtually identical to the ordi-

nance before us now—a total ban on offsite signs, with an exception for shelters at transit stops among other exceptions, enacted to promote traffic safety and aesthetics. Furthermore, *Metromedia* explicitly addressed an underinclusivity challenge. Nevertheless, *Metro Lights* argues that *Metromedia* does not control this case.

1

Metro Lights argues that we are not bound by *Metromedia* for two reasons. First, it points out that "although the upheld city ordinance [in *Metromedia*] exempted bus benches, the topic of bus benches was not substantively discussed or considered" in the decision. Second, and more importantly, *Metro Lights* argues that the SFA, as an exception to the application of the Sign Ordinance, violates *Central Hudson*.

a

Metro Lights focuses more on the reasoning than the holding of *Metromedia*. For *Metro Lights* does not dispute, as it cannot, that *Metromedia* upheld a ban on offsite commercial advertising that included an exception for bus stop benches. *Metro Lights* insists however, that the exception was insignificant to the Court's holding, because the bus stop bench and other exceptions that the Court considered in *Metromedia* were *de minimis*, unlike the public transit exemption that Los Angeles has carved out of its Sign Ordinance. Indeed, counsel for *Metro Lights* at oral argument contended that the bus bench exception in *Metromedia* only came to the Supreme Court's attention because counsel for *Metromedia* described it as so minimal that it could not save San Diego's law from being a total prohibition on offsite advertising.

This proffered distinction fails to convince us in light of what *Metromedia* actually says. The Court expressly mentioned the twelve exceptions to San Diego's offsite sign ban. *Metromedia*, 463 U.S. at 495 n. 3, 101 S.Ct. 2882 (including in the list of exceptions "[a]ny sign erected and maintained pursuant to and in discharge of any governmental function" and "[b]ench signs located at designated public transit bus stops"). *Metromedia's* reasoning confirms that the Court was well aware of the exceptions to the law and conscious that, in approving the San Diego ordinance's commercial application, it was approving those exceptions too. Indeed, the Court held the statute unconstitutional with respect to its noncommercial application in part *because* of its exceptions. *Id.* at 512-16, 101 S.Ct. 2882. Responding to Chief Justice Burger's dissent, the plurality commented that "the Chief Justice . . . misunderstands the significance of the city's extensive exceptions to its billboard prohibition." *Id.* at 520, 101 S.Ct. 2882. It was, indeed, the Chief Justice, not the plurality, who suggested "that the favored categories [were] for some reason *de minimis* in a constitutional sense." *Id.* at 519, 101 S.Ct. 2882. By negative implication, the majority seems to have taken the opposite position.

It is true that this second portion of the majority's argument does not mention the bus stop bench exception by name, but focuses instead on other exceptions. *See id.* (mentioning the exceptions for onsite commercial advertising and temporary political campaign advertising). But even though it is unclear whether the bus stop bench exception was foremost in the mind of the *Metromedia* Court, that hardly jus-

tifies us in ignoring its presence in the statute which, in relevant part, the Court upheld. In any event, except for counsel's reference at oral argument, Metro Lights provides no support for its argument that "the bus shelter and other exceptions" considered in *Metromedia* were "*de minimis*," or that they were significantly different in scope than the exemption in this case. Thus we must conclude that *Metromedia* is essentially indistinguishable from this case insofar as the challenged ordinances, in their commercial applications, are concerned.

b

Metro Lights also points to the SFA to distinguish this case from *Metromedia*. Indeed, its counsel, at oral argument, conceded that *Metromedia* "probably would" control without the SFA.¹¹ The district court, too, concluded that the Sign Ordinance, standing alone, would satisfy the *Central Hudson* test. According to Metro Lights, however, the advertising permitted under the SFA is equally dangerous—and arguably more so—than the advertising banned under the Sign Ordinance and therefore the ordinance cannot "directly advance" the City's interests in traffic safety and aesthetics. Metro Lights essentially contends, in other words, that the SFA so warps the regulatory scheme of the Sign Ordinance that it makes it more like the underinclusive statute the Supreme Court struck down in *Greater New Orleans* (and similar cases) than the San Diego ordinance upheld in *Metromedia*. Although we do find the SFA a troubling companion to the Sign Ordinance, we must nonetheless conclude that it does not break the grip of *Metromedia* over this case.¹²

11. Counsel also did add that *Metromedia* would only control "if [the Sign Ordinance] was a ban on all offsite commercial signs," that is, without an exception for public transit facilities. But as we explained *supra*, this ca-

veat does not hold water because the law at issue in *Metromedia* itself contained such an exception.

12. Incidentally, we note a weakness inherent in Metro Lights' reliance on the SFA as a

The Court in *Metromedia* squarely faced an underinclusivity challenge to San Diego's law and rejected it. It is true that such challenge focused on the exclusion of onsite signs rather than the exclusion of signs at public transit stops. However, the Court did note the exception for "other specified signs" at the start of its substantive discussion. More importantly, nothing in its analysis, which exudes deference for a municipality's reasonably graduated response to different aspects of a problem, binds its holding inextricably to the particular onsite-offsite distinction.

This becomes apparent once one reconsiders the three main reasons the Court gave for its decision in *Metromedia*. See *id.* at 511-512, 101 S.Ct. 2882; see also *supra* at 907-08. First, just like in *Metromedia*, the specific exception in question here does not weaken the direct link between the City's objectives and its general prohibition of offsite advertising. Metro Lights, as did the district court, points to a photograph that shows two offsite signs, one on a bus shelter and one on an adjacent building. They are the same size and bear the same advertisement. According to Metro Lights, this literally illustrates how the SFA undermines the City's objectives. But in fact it illustrates quite the opposite. Without the Sign Ordinance, there are two signs; with it, there would be only one. Thus the Sign Ordinance would halve the clutter on the street shown in the photograph.

Second, the *Metromedia* Court accepted that offsite advertising "present[ed] a

distinction between this case and *Metromedia*, a distinction the City never pointed out. For *Metromedia* teaches that a municipality may constitutionally bar offsite advertising with an exception for public transit stops. It would be strange, then, if the prohibition suddenly violated the Constitution because the municipality made use of such an exception. But that is what Metro Lights urges us to hold,

more acute problem than does onsite advertising" simply because of the former's "periodically changing content." *Metromedia*, 463 U.S. at 511, 101 S.Ct. 2882. Here, Los Angeles essentially argues that the proliferation of offsite advertising by numerous and disparate private parties creates more distracting ugliness than a single, controlled series of advertisements on city property over which the City wields contractual supervision. If periodically changing content was sufficient for San Diego to disfavor offsite signs in general, then we must accept that uncontrolled and incoherent proliferation is sufficient for Los Angeles to disfavor offsite signs away from transit stops.

Finally, and most importantly, *Metromedia*'s third rationale, with its emphasis on deference to legislative judgment, resounds quite clearly in this case. Los Angeles, just like San Diego, "has obviously chosen to value one kind of commercial speech"—controlled offsite advertising on public transit facilities—"more than another kind of commercial speech"—uncontrolled offsite advertising spread willy-nilly about the streets. *Id.* at 512, 101 S.Ct. 2882. Just as in *Metromedia*, "[t]he ordinance reflects a decision by the city that the former interest, but not the latter, is stronger than the city's interests in traffic safety and esthetics. The city has decided that in a limited instance . . . its interests should yield." *Id.* As the district court noted, the City has been compensated handsomely for this classically legislative decision, not only in money but in the

since the SFA grants CBS the right to sell advertising where the Sign Ordinance did not apply in the first place—transit stops. How can it be constitutional to make an exception to a law, but unconstitutional for the exception to operate in practice? Metro Lights makes its argument without facing this uncomfortable question.

installation of presumably more attractive public transit facilities and in a veto over the design of advertisements that appear at those facilities. The *Metromedia* Court declined to overrule such a legislative judgment, *id.*, and so do we.

To apply the *Metromedia* analysis to the Sign Ordinance before us today is also to understand why Metro Lights' attempt to cast this case in the mold of *Greater New Orleans* and other underinclusivity cases fails. There, the Court found the ban on broadcast advertising of private casinos to be completely ineffective with respect to Congress's goal. Gamblers, particularly compulsive gamblers, would simply redirect their business to Indian casinos instead of private casinos. But here the Sign Ordinance allows the City to put a firm cap on the quantum of advertising it allows, precisely because, even when combined with the SFA, the ordinance prevents any redirection or "channeling" in response to it. There is only one agreement with the City, giving one company exclusive advertising rights where the Sign Ordinance already did not apply. Private offsite advertisers cannot now flood transit stops with signs the way formerly private casino gamblers could flood tribal casinos.

Furthermore, unlike, for instance, the distinction between commercial and non-commercial newsracks in *Discovery Network*, here there is "some basis for distinguishing" offsite commercial signage concentrated and controlled at transit stops and uncontrolled, private, offsite commercial signage "that is relevant to an interest asserted by the city," *see Discovery Network*, 507 U.S. at 428, 118 S.Ct. 1505. Metro Lights and the district court appear to ignore that without a ban, offsite signage generates precisely the "visual clutter" that motivated both the ordinance and the SFA. Ultimately, whether one considers the Sign Ordinance

from the perspective of the City's interest in traffic safety or its interest in aesthetics, the SFA does not work at inexcusable cross-purposes to it. Although the SFA permits some advertising, a regime that combines the Sign Ordinance and the SFA still arrests the uncontrolled proliferation of signage and thereby goes a long way toward cleaning up the clutter, which the City believed to be a worthy legislative goal.

At one point in its briefs, Metro Lights suggests that *Metromedia* is inconsistent with cases like *Discovery Network* (and, by implication, *Greater New Orleans*). We take no position on whether such inconsistency is real, but we simply note that we are bound to follow the Supreme Court precedent most directly on point. *See Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989) ("If a precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions."). For the reasons we have explained, *Metromedia* is such a case, and it controls the outcome.

2

It remains to discuss the applicability of *Metromedia's* analysis of the fourth element of the *Central Hudson* test, narrow tailoring. Metro Lights' argument holds even less water here because the narrow tailoring requirement guards against over-regulation rather than under-regulation, *Central Hudson*, 447 U.S. at 565, 100 S.Ct. 2343. As *Metromedia* observed: "[I]f the city has a sufficient basis for believing that billboards are traffic hazards and are unattractive, then obviously the most direct

and perhaps the only effective approach to solving the problems they create is to prohibit them." *Id.* at 508, 101 S.Ct. 2882. If a complete prohibition would be sufficiently narrowly tailored, then a partial one must also be. All the same, we find several arguments that demand further consideration.

a

First, we note that the district court concluded that the sign ordinance was not narrowly tailored to the City's interests because the City could have "impose[d] the same requirements on other private advertisers that it did on [CBS]," such as by "requir[ing] that any advertisements meet certain specifications . . . to promote the City's goals with regard to traffic safety and aesthetics." The district court failed to account for the fact that the City's plan allowed it to supervise a more concentrated supply of offsite signage, which plausibly contributes to its interest in visual coherence as a part of aesthetic quality. This plausible explanation would seem to satisfy *Metromedia's* deferential review, even if the district court's criticism might have some appeal were we writing on a *tabula rasa*.

b

Metro Lights further argues that the Sign Ordinance, when combined with the SFA, creates a content-based regime rather than a content-neutral one. According to Metro Lights, this justifies a more measured analysis of the narrow tailoring requirement than the summary treatment of *Metromedia*. Indeed, Metro Lights urges us to follow our decision in *Ballen*, where we refused to apply *Metromedia* to a municipal law prohibiting portable signs but creating several "content-based exceptions" for various signs, including real estate signs. 466 F.3d at 743. In our view,

the municipality "protected outdoor signage displayed by the powerful real estate industry from an Ordinance that unfairly restricts the First Amendment rights of, among others, the lone bagel shop owner [who is the plaintiff]." *Id.* Metro Lights urges us to interpret the SFA as a similar example of a city playing favorites with whose First Amendment rights it chooses to respect.

But the analogy to *Ballen* fails. First of all, the Sign Ordinance is not by its terms a content-based regulation, nor is its non-application to public transit facilities a content-based exception. As counsel for Metro Lights argued, "[the contents of] signs on kiosks are defined by who the speaker is, not by the message." If this is true, then it supports the City's position. For we believe it a false comparison to argue that the City favors CBS over other speakers. CBS doesn't say anything; it only sells space to advertisers who say things. And Metro Lights has shown no evidence that the City or CBS discriminate among advertisers in the sale of advertising space. Nor is Metro Lights challenging the bidding process by which the City chose CBS as its counter-party to the SFA.

Not to be deterred, Metro Lights drew our attention to additional precedents at oral argument in support of a further variation on this allegation of unconstitutional favoritism. Upping the rhetorical ante, Metro Lights accused the City of "auction[ing] off First Amendment rights" to the highest bidder, in this case CBS. This is strong, if rather sloganeering, language, but after reviewing the case law on which Metro Lights relies, we believe it to be little more than a canard.

Metro Lights bases its argument on a passage from *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987). In *Nollan* the Supreme Court found a taking without just

compensation, in violation of the Fifth Amendment, where a zoning board conditioned a building permit on the grant of an easement to the government. *See generally id.* The Court began by acknowledging that if the refusal to grant a building permit was not a taking, then "a permit condition that serves the same legitimate . . . purpose as a refusal to issue the permit should not be found to be a taking [either]." *Id.* at 836, 107 S.Ct. 3141. However, "[t]he evident constitutional propriety disappears," according to the Court, "if the condition substituted for the prohibition utterly fails to further the end advanced as the justification for the prohibition." *Id.* at 837, 107 S.Ct. 3141. The Court then made the analogy which counsel for Metro Lights emphasized at oral argument, namely that without such a connection:

the situation becomes the same as if [state] law forbade shouting fire in a crowded theater, but granted dispensations to those willing to contribute \$100 to the state treasury. While a ban on shouting fire can be a core exercise of the State's police power to protect the public safety, and can thus meet even our stringent standards for regulation of speech, adding the unrelated condition alters the purpose to one [i.e., raising revenue] which, while it may be legitimate, is inadequate to sustain the ban. Therefore, even though, in a sense, requiring a \$100 tax contribution in order to shout fire is a lesser restriction on speech than an outright ban, it would not pass constitutional muster.

Id. at 837, 107 S.Ct. 3141.

According to Metro Lights, the Sign Ordinance, coupled with the SFA, amounts to just such an unconstitutional dispensation-with-taxation system. In reality, however, this is merely the underinclusivity argument repackaged, which we reject for the reasons explained *supra*, at 909-12.

Nonetheless, we take this contention on its own terms, and we find it premised on a fundamental misreading of *Nollan*.

[8] What makes the tax on shouting fire in a crowded theater unconstitutional, according to the majority in *Nollan*, is that, as a matter of logical necessity, it *changes* the purpose justifying the underlying ban on shouting fire—no longer for public safety but now for raising revenue. And raising revenue by taxation, though by itself perfectly legitimate state action, does not allow a state selectively to prohibit constitutionally protected conduct. But the SFA does not have the same effect as the hypothetical dispensation-tax; it does not make the Sign Ordinance about raising revenue instead of about safety and aesthetics. It is not as if CBS, by paying the City money and building handsome street furniture, is allowed to sell offsite advertisements wherever it wants, like the man who pays for the privilege of shouting fire in a crowded theater. Moreover, and more importantly, *even if there were no SFA* but only the Sign Ordinance, the City would *still* exercise proprietary control over who gets to advertise on its transit facilities. Indeed, the City did just that with the two contracts that preceded the SFA. Such control is not an assertion of police power which the City relinquishes at a price, like the hypothetical ban on shouting fire, but a simple attribute of the City's ownership of the transit facilities. What the SFA really does is harmonize the City's interest as a proprietor of discrete pieces of property with its police power interest, manifested in the Sign Ordinance, in goals such as traffic safety and aesthetics.

It appears to us, therefore, that the slogan Metro Lights has advanced, that "First Amendment rights are not for sale," simply misses the point. Certainly the government cannot silence one speaker but

not another because the latter has paid a tax, even though it could constitutionally silence both. But that doesn't mean the City cannot silence speakers in general but permit them to bid for the right to speak on City-owned land, assuming that the speakers on City-owned land do not undermine the goal of the City's general prohibition. As we have explained, the City has not done that in this case because the SFA does not "ensure[] that the [Sign Ordinance] will fail to achieve [its] end," or so undermine it that it cannot "materially advance its aim." *Rubin*, 514 U.S. at 489, 116 S.Ct. 1585.¹³

IV

Having considered the four elements of the *Central Hudson* test in light of *Metromedia*, we conclude that the SFA does not render the Sign Ordinance unconstitutional under the First Amendment. Indeed, we believe that *Metromedia* compels such conclusion. Though Metro Lights cross-appealed the district court's grant of summary judgment for the City on the issue of damages, such issue is now moot because the City is entitled to summary judgment in its favor on the merits.

V

For the foregoing reasons, we reverse the district court's grant of summary judgment for Metro Lights and its denial of summary judgment for the City with respect to Metro Lights' First Amendment

13. We are aware of other variants of the charge that the City has shown illegal favoritism. Metro Lights has implied several times that the City's overall scheme makes the City a monopolist in the supply of commercial advertising space. Even the district court found the SFA suspect because of its proximity in time to the enactment of the Sign Ordinance and its broad scope relative to the City's previous advertising agreements. But the First Amendment does not prohibit mu-

claims and remand with instructions to dismiss. We dismiss as moot Metro Lights' cross-appeal of the district court's grant of summary judgment for the City with respect to damages.¹⁴

REVERSED.



UNITED STATES of America,
Plaintiff-Appellee,

v.

Gwaine Lavon COLLINS, a/k/a Gwaine
Collins, Defendant-Appellant.

No. 06-50339.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted March 6, 2008.

Filed Jan. 7, 2009.

Background: Defendant was convicted in the United States District Court for the Central District of California, R. Gary Klausner, J., of conspiracy to possess and distribute methamphetamine and distributing methamphetamine. Defendant appealed.

Holdings: The Court of Appeals, Gibson, Circuit Judge, held that:

unicipal monopolies. As long as the City can show with plausibility sufficient to merit the deference of *Metromedia* that the Sign Ordinance, even coupled with the SFA, advances the City's interests and is narrowly tailored, then the City's policy survives First Amendment scrutiny.

14. We also dismiss as moot the various requests that the Court take judicial notice.

Sec. 326.103. Exemptions.

This chapter shall not apply to the following signs:

- (a) Signs not exceeding one square foot in area and bearing only property numbers, post box numbers, names of occupants of premises or other identification of premises not having commercial connotations.
- (b) Legal notices or identification, informational or directional signs erected or required by governmental bodies.
- (c) Integral decorative or architectural features of buildings, except letters, trademarks, moving parts or moving lights.
- (d) On-premises incidental directional or directing signs designated to guide or direct pedestrian or vehicular traffic for information only, which shall not contain any form of advertisement, provided such signs do not exceed two square feet in size.
- (e) Signs which do not exceed four square feet.
- (f) Signs erected pursuant to sections 656.1306 and 656.1307.
- (g) Poster signs erected behind glass windows or signs painted on glass windows.
- (h) Signs painted or attached to trucks or other vehicles for identification purposes.
- (i) Signs posted on electric poles or light standards maintained by the JEA and advertising events in publicly-owned facilities or holiday decorations, the posting of which on the poles is approved by Council resolution; provided, that the construction and installation of the signs or decorations has been approved by the Managing Director of the JEA.
- (j) Historical markers erected by duly authorized public authorities.
- (k) Signs erected upon property warning the public against hunting, fishing or trespassing thereon; provided, that no such sign shall exceed two square feet in area.
- (l) Signs being fabricated, manufactured or constructed off the site on which they are to be located.
- (m) Signs located on property owned or leased by a federal, or state or local government or signs used in connection with any event sponsored or authorized by a federal, state or local governmental entity.
- (n) Signs located on machinery or equipment which advertise products sold therein.
- (o) Signs erected at athletic fields at schools and amateur athletic association fields (whether on public or private property) to recognize sponsors providing contributions of money, goods or services to the school or amateur athletic association; provided, however, that the signs shall be erected so as to face and be oriented toward the interior of the athletic field, attached to the perimeter fencing of the field's boundaries, but shall not extend above the top of the fencing, and painted black, green, white or other appropriate color to coordinate with the fence on the back portion of the sign. These signs shall not exceed twenty-five square feet in area for each sign and the number of signs will be limited by the length of the boundary fence around the field. No sign erected pursuant to this exemption shall advertise or promote alcohol or tobacco products.

(Ord. 71-342-174; Ord. 73-1175-622, § 1; Ord. 83-591-400, § 1; Ord. 85-1201-663, § 6; Ord. 86-1523-871, § 3; Ord. 93-174-1054, § 14; Ord. 1999-833-E, § 2)

Note: Former § 900-1600.3; § 334.103.

Sec. 326.104. Unlawful sign structures.

It shall be unlawful and a violation of this Building Code to erect, alter or maintain a sign which:

- (a) Does not meet all requirements of this Building Code, including the issuance of a permit therefor.
- (b) Is tacked, tied or pasted to a hydrant, tree, lamppost, telephone, telegraph or electric utility pole, fence or building.
- (c) Is hung or supported from another sign and is not built as an integral part thereof.
- (d) Is placed in a public space or street right-of-way, except that subdivision identification signs may be installed under the provisions of sections 746.107 and 656.1308.
- (e) Is of a temporary nature not permanently anchored to the ground or other structure, such as A-frame signs or portable signs, but not including mobile signs as provided in section 326.208.
- (f) Contains lighting which includes illuminations that produce glare to vehicular traffic or electric incandescent bulbs with a rating exceeding forty percent of the lumen output of a one-hundred-watt clear bulb, with the lighting located less than twenty feet above the ground surface.
- (g) Contains illumination or electrical lighting, either of which pulsates, flashes, flickers, alternates or otherwise changes intensity, where the lighting or illumination is located within ten feet of a street right-of-way.
- (h) Consist of streamers, ribbons, pennants, or wind activated devices which encompass an area or areas, singularly or in the aggregate, greater than twenty-five square feet.

(Ord. 71-342-174; Ord. 71-700-400, § 4; Ord. 72-1206-631, § 3; Ord. 74-1196-540, § 1; Ord. 82-421-174, § 2; Ord. 83-591-400, § 1; Ord. 85-1201-663, § 6; Ord. 92-264-286, § 2; Ord. 93-174-1054, § 15)

Editor's note: Section 3 of Ord. 80-611-278 waived the provisions of this section for the purposes of the "Neighborhood Watch Program" authorized by § 1 of Ord. 80-611-278.

Note: Former § 900-1601; § 334.104.

Sec. 656.361.20. Streetscape Design Standards.

Purpose and Intent . The streetscape design standards are established to provide design criteria which require a certain level of quality; enhance street level design to attract pedestrian use; develop a system of pedestrian-oriented streets and walkways; improve pedestrian and transit links among key activity centers and districts; emphasize, protect and enhance entrances and edges of the central business district subdistricts; promote continuity between public and private developments; provide for protection of air quality through the mitigating effects of trees and provide shade and enhance the appearance of the central business district. All new buildings and structures and rehabilitation of existing buildings and structures shall meet the following criteria:

(a) A streetscape shall be constructed in accordance with the provisions of this subsection and the design standards set forth in the Downtown Jacksonville Streetscape Standards, including Downtown Sidewalk Utility Design Standards, a copy of which is on file with the Legislative Services Division, the City Engineer's Office and the JEDC, which are hereby adopted as the streetscape design standards for the Downtown Overlay Zone, whenever any building or structure is erected in the central business district or whenever any building or structure undergoes major renovation. The streetscape shall include the following items:

(1) *Trees*. Trees shall be planted in the streetscape. The type of tree, number of trees, and spacing of trees shall comply with the standards set forth in the Downtown Jacksonville Streetscape Standards.

(i) Trees shall be a minimum of 16 feet in height, four-inch caliper, with seven feet of clear trunk. Liriope groundcover will be used as the tree planter cover.

(ii) Irrigation systems shall be installed underground to service all trees and other landscape material, and the irrigation system shall be maintained in operable condition at all times. The type and size of irrigation system shall comply with City's Land Development Standards.

(iii) Inspection of trees planted pursuant to this subsection shall occur six months after planting to ensure all trees are in healthy condition. Trees found to be in a declining condition shall be replaced within 30 days of notice thereof. If replacement is necessary, there shall be a reinspection six months after replacement and the provisions of this subsection shall apply to the reinspection.

(2) *Streetlights*. The type, number, and spacing of streetlights shall comply with the standards set forth in the Downtown Jacksonville Streetscape Standards and as approved by the City's Traffic Engineer.

(3) *Paving*. Paving shall be installed in the streetscape. The type of paving, design and paving materials shall comply with the standards as set forth in the Downtown Jacksonville Streetscape Standards.

(4) *Street Furniture*. Street furniture shall be installed where appropriate. The type, number and spacing of street furniture shall comply with the standards as set forth in the Downtown Jacksonville Streetscape Standards.

(b) *Streetscape maintenance agreement*. At the time of issuance of a certificate of occupancy, all property owners constructing streetscapes shall be required to execute a maintenance agreement or other similar agreement, in a form acceptable to the City, in which the property owner agrees to (a) maintain and repair all elements of the streetscape when needed, unless the City determines it will maintain and repair the streetscape improvements, and (b) comply with the provisions of Part 5 of Chapter 518.

Sec. 656.1303. Zoning limitations on signs.

Signs shall comply with the requirements of Chapters 320 and 326 and with the applicable provisions of F.S. Ch. 479. In addition, the following restrictions shall apply in the indicated zoning districts:

(a) Residential zoning districts:

(1) RR, RLD, RMD-A and RMD-B zoning districts--

(i) One nonilluminated sign not exceeding a maximum of one square foot in area and mounted flat against the wall of the building or structure is permitted, unless otherwise specifically prohibited in the Zoning Code.

(ii) One nonilluminated sign not exceeding a maximum of 24 square feet in area may be allowed, provided it is specifically authorized in the grant of exception, unless otherwise specifically prohibited in the Zoning Code.

(2) RMD-C, RMD-D, RMD-E and RHD zoning districts--

(i) One nonilluminated sign not exceeding a maximum of 24 square feet in area is permitted, unless otherwise specifically prohibited in the Zoning Code.

(3) In all residential zoning districts, ground signs or free-standing signs shall not exceed 20 feet in height and shall not be located in any required yard.

(4) In addition to the signs permitted in subsections (a)(1) and (2) of this Section, two nonilluminated noncommercial signs not exceeding four square feet in area shall be permitted in RR and RLD districts.

(5) Roof signs, neon signs, changing message devices and strip lighting are prohibited.

(b) Assembly and institutional uses located in residential zoning districts, other than in historic districts designated under Chapter 307, Ordinance Code--

(1) One nonilluminated or externally illuminated monument sign not exceeding 12 square feet in area is permitted; or

(2) One nonilluminated or externally illuminated monument sign not exceeding a maximum of 24 square feet in area may be allowed, provided it is specifically authorized in the grant of zoning exception, and further provided that the following performance standards and development criteria are met:

(i) The sign shall be located no closer than 50 feet from a residential use located in a residential zoning district and may not be located in a required front yard;

(ii) The sign must not exceed eight feet in height;

(iii) Illumination associated with the sign must be external, provided that the source of such illumination shall be designed, installed and maintained in a manner which prevents any glare or light from shining onto residentially used property; or

(3) One nonilluminated or externally illuminated monument sign not exceeding one square foot in area for each five linear feet of street frontage, per street, to a maximum of 50 square feet, provided the signs are located no closer than 200 feet apart, as measured by a straight line between such signs, and further provided that the sign(s) are located on a street classified as a collector street or

higher, and the following performance standards and development criteria are met:

(I) The sign shall be located no closer than 100 feet from a principal residential structure located in a residential zoning district and may not be located in a required front yard;

(II) The sign must be a sign, not exceeding 12 feet in height;

(III) Illumination associated with the sign must be external, provided that the source of such illumination shall be designed, installed and maintained in a manner which prevents any glare or light from shining onto residentially used property.

(4) For purposes of this Part assembly and institutional uses shall include, but are not limited to, churches, schools, lodges.

(5) These provisions shall not apply to any assembly or institutional use located in a residential zoning district located within a historic district designated under Chapter 307, Ordinance Code. It is intended that signs within residentially zoned areas of historic districts shall be governed by specific provisions within the historic district zoning overlay regulations for the particular district or by Section 656.1303(a) hereinabove, until such time as such regulations are adopted.

(c) *Commercial zoning districts:*

(1) CO and CRO zoning districts--

(i) One nonilluminated or externally illuminated monument sign not exceeding a maximum of 24 square feet in area and 12 feet in height is permitted; and

(ii) One five square foot nonilluminated, externally illuminated or internally illuminated wall sign is permitted; or

(iii) In lieu of (i) and (ii), above, one nonilluminated, externally illuminated or internally illuminated wall sign not exceeding 32 square feet in area is permitted.

(iv) In lieu of the wall sign allowed under (ii) or (iii) above, the following wall signs are allowed, provided the property has at least 200 feet of street frontage, is at least three acres in size and meets all other applicable requirements of this section regarding occupancy frontage:

(A) For buildings less than three stories in height:

(1) Two wall signs not exceeding, collectively, 100 square feet if located on the side of the building facing an arterial or higher roadway, and

(2) Two wall signs, per side of building, not exceeding, collectively, 75 square feet in area if located on the side of the building facing any other roadway.

(B) For buildings three stories or higher in height:

(1) Two wall signs not exceeding, collectively, 150 square feet in area if located on the side of the building facing an arterial or higher roadway, and

(2) Two wall signs, per side of building, not exceeding, collectively, one 100 square feet in area if located on the side of a building facing any other roadway.

- (C) The wall signs allowed under this subsection (iv) shall be allowed only if the sign structure is not located within 250 feet of any residential zoning district.
- (v) Assembly and Institutional uses located in CO and CRO zoning districts, other than in historic districts designated under Chapter 307, Ordinance Code:
- (A) One nonilluminated or externally illuminated monument sign not exceeding 12 square feet in area is permitted; or
- (B) One nonilluminated or externally illuminated monument sign not exceeding a maximum of 24 square feet in area may be allowed, provided it is specifically authorized in the grant of zoning exception, and further provided that the following performance standards and development criteria are met:
- (1) The sign shall be located no closer than 50 feet from a residential use located in a residential zoning district and may not be located in a required front yard;
 - (2) The sign must not exceed 12 feet in height;
 - (3) Illumination associated with the sign must be external, provided that the source of such illumination shall be designed, installed and maintained in a manner which prevents any glare or light from shining onto residentially used property; or
- (C) One externally illuminated sign not exceeding one square foot for each five linear feet of street frontage, per street, to a maximum of 50 square feet, provided the signs are located no closer than 200 feet apart, as measured by a straight line between such signs, and further provided that the sign(s) are located on a street classified as a collector street or higher, and the following performance standards and development criteria are met:
- (1) The sign shall be located no closer than 100 feet from a principal residential structure located in a residential zoning district and may not be located in a required front yard;
 - (2) The sign must be a monument sign, not exceeding 12 feet in height;
 - (3) Illumination associated with the sign must be external, provided that the source of such illumination shall be designed, installed and maintained in a manner which prevents any glare or light from shining onto residentially used property.
- (D) One nonilluminated or externally illuminated wall sign per building, not exceeding 24 square feet.
- (E) For purposes of this part, assembly and Institutional uses shall include, but are not limited to, churches, schools, lodges.
- (F) These provisions shall not apply to any assembly or Institutional use located in a commercial zoning district located within a historic district designated under Chapter 307, Ordinance

Code. It is intended that signs within commercially zoned areas of historic districts shall be governed by specific provisions within the historic district zoning overlay regulations for the particular district or by section 656.1303(c)(i-v) hereinabove, until such time as such regulations are adopted.

(2) CN zoning district--

(i) One street frontage sign per lot not exceeding one square foot for each linear foot of street frontage, per street, to a maximum size of 200 square feet in area for every 200 linear feet of street frontage or portion thereof is permitted, provided they are located no closer than 200 feet apart.

(ii) Wall signs are permitted.

(3) CCG, CCBD and CR zoning districts--

(i) One street frontage sign per lot not exceeding one square foot for each linear foot of street frontage, per street, to a maximum size of 300 square feet in area for every 300 linear feet of street frontage or portion thereof is permitted, provided they are located no closer than 200 feet apart.

(ii) Wall signs are permitted.

(iii) One under the canopy sign per occupancy not exceeding a maximum of eight square feet in area is permitted; provided, any square footage utilized for an under the canopy sign shall be subtracted from the allowable square footage that can be utilized for wall signs.

(iv) In lieu of the street frontage sign permitted in subsection (i) above, a flag containing a business logo or other advertising is permitted; provided, the square footage of any such flag shall not exceed 100 square feet, or 35 percent of the allowable square footage of the street frontage sign permitted in subsection (i) above, whichever is smaller; and provided further that the pole upon which such flag is flown shall not exceed the height limitation set forth in subsection (h)(1), below. Only one flag containing a business logo or other advertising shall be permitted for a premises, regardless of any other factors such as number of tenants on the premises or total amount of street frontage. Further, any flag allowed pursuant to this subsection shall not be illuminated by any means, with the exception of lighting associated with an American flag being flown on the same flag pole.

(4) In CO and CRO Districts changing message devices and illuminated and indirect lighting signs are also prohibited.

(d) *Industrial zoning districts:* The allowable signs and the sign restrictions and requirements shall be the same as in CCG, CCBD and CR zoning districts.

(e) *Agriculture (AGR) zoning district:*

(1) One nonilluminated sign not exceeding a maximum of 16 square feet in area is permitted.

(2) One nonilluminated sign not exceeding a maximum of 32 square feet in area may be allowed, provided it is specifically authorized in the grant of an exception.

(f) *Public Building and Facilities (PBF) Zoning Districts:*

(1) PBF-1 and PBF-3 District--

(i) One street frontage sign per lot not exceeding one square foot for each linear foot of street frontage, per street, to a maximum size of 300 square feet in area for every 300 linear feet of street frontage or portion thereof, is permitted, provided they are located no closer than 200 feet apart.

(ii) Wall signs are permitted.

(2) PBF-2 District—

(i) One on-site sign not exceeding one square foot for each five linear feet of street frontage, per street, to a maximum of 48 square feet in area, provided the signs are located no closer than 200 feet apart.

(ii) Wall signs are permitted.

(g) *Conservation (CSV) zoning district*: One nonilluminated sign not exceeding a maximum of 24square feet in area is permitted.

(h) *Recreation and open space (ROS) zoning district*: One nonilluminated sign not exceeding a maximum of 24square feet in area is permitted.

(i) *General criteria*:

(1) Height of signs—Signs shall not exceed 50 feet in maximum height above the level of the adjacent ground, except as otherwise provided in this Chapter; provided, however that signs located in commercial and industrial zoning districts may exceed that height; provided that, the sign is located not more than 660feet from the centerline of an interstate highway exit and not more than 660 feet from the centerline of an interstate highway; provided further the sign does not exceed 65 feet in height.

(2) Location of signs—Notwithstanding any other provisions of the Ordinance Code to the contrary, no sign shall be located within 25 feet of any intersection of two or more right-of-way lines, nor shall any sign be located closer than ten feet from any street right-of-way; provided, however, that any flag permitted by subsection (b)(3), above, located in the CBD zoning district shall not be subject to this ten foot set back requirement.

(3) Changing message devices are permitted as part of any allowable sign unless otherwise prohibited.

(4) The restrictions contained in this Part apply only to signs which can be seen unaided from any location on the ground which is not on the lot or parcel where the sign is located.

(j) *Special criteria*:

(1) Whenever a provision of subsection (h) of this Section conflicts with a specific provision for a zoning district as set forth in subsections (a)–(d) of this Section, the specific provision for that zoning district shall prevail.

(2) Two, but no more than two, signs or sign structures may be erected as a single unit if such signs are in the same vertical plane, are contiguous, and are built at one time by a single owner.

(3) Wall signs shall not exceed ten percent of the square footage of the occupancy frontage or respective side of the building abutting a public right-of-way or approved private street.

(k) *Special exemptions*:

(1) Signs erected and maintained pursuant to and in discharge of any governmental function, or as required by law, are permitted in all districts.

(2) Signs recognizing sponsors providing contributions of money, goods or services may be erected and maintained on athletic fields at schools and amateur athletic association fields (whether located on public or private property). Signs shall be erected so as to face and be oriented towards the interior of the field and attached to the perimeter fencing of the field's boundaries, but shall not extend above the top of the fencing. Signs shall be painted black, green, white or other appropriate color to coordinate with the fence on the back portion of the sign. These signs shall not exceed 25 (25) square feet for each sign and the number of signs will be limited by the length of the boundary fence around the field. No sign erected pursuant to this exemption shall advertise or promote alcohol or tobacco products.

(l) Prohibited signs in all districts:

(1) Mobile billboards.

(2) Signs which are unlawful under Section 326.104 or Sections 614.142 or 656.1320 are prohibited in all districts.

(3) No permit shall be issued for any sign that would lie within 200 feet of a structure listed on the National Register of Historic Places (other than a sign which identifies or describes the historic structure), unless the sign to be permitted is a wall sign, freestanding sign or ground sign which is located immediately adjacent to the wall of a building, is parallel to, or virtually parallel to the wall and does not extend beyond the vertical or horizontal limits of the wall. Distance measurements shall be calculated from the property line of the land on which the historic structure is located and shall be measured along any street which provides street frontage for the historic structure.

(4) In addition to the signs prohibited above, no signs shall be permitted in any locations which are expressly prohibited by the provisions of F.S. Ch. 479, as required by F.S. § 479.15(1).

(5) Animated, flashing and revolving signs are prohibited in all districts.

(6) Remote controlled blimps containing commercial advertising.

(m) Signage allowed to be exempt in all zoning districts for locally designated historic landmarks or historic landmark sites: Signage on historic landmarks or historic landmark sites which have been designated by the Council, pursuant to Section 307.104, shall be exempt from the requirements of this Part and any other conflicting provisions of the Ordinance Code, provided that the Council designates the landmark or landmark site as a historic landmark or historic landmark site and finds that the signage must remain (or remain after modification) in order to preserve the integrity of the historic landmark or historic landmark site.

(n) Landmark signs. Signs not associated with a locally designated landmark or landmark site but which are determined to have historical, architectural, cultural, or unique community significance and which are designated as landmark signs by the City Council shall be exempt from the requirements of this Part in all zoning districts. Upon the Jacksonville Historic Preservation Commission finding that a sign meets four of the following eight criteria:

(1) It is at least 30 years old;

(2) The sign is an integral part of an existing principal structure which is being adaptively re-used;

- (3) It is suitable for preservation and restoration;
- (4) It poses no threat to traffic safety or public safety;
- (5) It has value as a significant reminder of the cultural, historical or architectural heritage of the City, state, or nation;
- (6) It has historical, cultural, architectural, or unique community significance;
- (7) It is recognized for the quality of its architecture, design or specific design feature(s) and it retains sufficient elements showing its architectural or design significance; or
- (8) It has distinguishing characteristics of a certain era or period

the City Council may designate a sign as a landmark sign. In the process of designating a landmark sign, the Historic Preservation Commission may recommend, and the Council may include in the legislation designating the sign, any condition(s) it deems necessary or appropriate to maintain the landmark nature of the sign, such as a limitation concerning any modification to the face of the sign.

(o) Any sign structure in violation of this Section is hereby declared to be contraband and subject to civil forfeiture to the City. A violation has been proved if the owner, or person in control of the structure, has been convicted of using a sign structure in violation of this Section. A conviction shall include a plea of *nolo contendere* or a withhold of adjudication. In addition, a violation may be proved in a separate civil action. The City shall seek forfeiture of the sign through any appropriate civil action, which may include declaratory judgment or a mandatory injunction.

(Ord. 91-59-148, § 1; Ord. 91-462-235, § 1; Ord. 91-761-410, § 1; Ord. 92-955-674, § 9; Ord. 92-416-940, § 1; Ord. 92-1768-1444, § 2; Ord. 93-174-1054, § 7; Ord. 94-300-250, § 1; Ord. 95-956-599, § 1; Ord. 98-1017-E, § 1; Ord. 1999-833-E, § 1; Ord. 1999-1237-E, §§ 1, 2; Ord. 1999-1306-E, § 1; Ord. 2003-1050-E, §§ 2, 3; Ord. 2004-428-E, § 3)

Sec. 656.1333. Signs permitted.

(a) *Building identification signs* :

(1) *Types:*

(i) *Wall signs:* Wall signs painted on or affixed to buildings up to five stories in height shall not exceed ten percent of total area of the facade fronting a street or 300 square feet, whichever is less, and buildings over five stories shall not exceed ten percent of the total area of the facade fronting a street or 400 square feet, whichever is less. (See Figure 2, located following Section 656.1336).

(ii) *Projecting signs:* Projecting signs shall not exceed 24 square feet in area. Signs projecting into any public right-of-way, except alleys, shall have a minimum clearance of eight feet over adjacent sidewalk or other grade. Signs projecting into alleys shall have a minimum clearance of 14 feet over adjacent grade. No permanent signs shall extend into any public right-of-way to within less than two feet of the curbline, or more than six feet beyond the property line, except that at street intersections, signs which project from the intersecting street property lines may extend to the intersection of the six-foot projection margins on each street. Marquee signs may be permitted, provided that they shall not project more than 12 inches beyond the front of the marquee, nor closer than two feet to the curbline. Marquee signs may not exceed 30 inches in height above the top of the marquee, and the total vertical dimension may not exceed five feet. Only one sign may be placed on or attached to an end face of a marquee. The copy area of marquee signs shall not exceed 80 percent of the surface area of the marquee sign face. No barberpole, including brackets and fastenings for the barberpole, shall extend more than one foot into any public right-of-way. No temporary sign made of rigid material shall extend more than four inches into the public right-of-way. (See Figure 2).

(iii) *Awning signs:* The maximum projection over the sidewalk or other grade shall not exceed seven feet. The maximum lettering or logo height shall not exceed 20 inches. Where the sign message exceeds one row of lettering, the maximum height shall be measured by all rows combined, not per row. One square foot of sign size is allowed for every linear foot of street frontage with a maximum signage amount of 300 square feet, whichever is less. All other dimensional requirements as listed under Section 656.1333(a)(ii) for projecting signs shall apply. Awning signs projecting less than 30 inches from the building wall shall be considered to be wall signs. (See Figure 2).

(2) *Number:*

(i) Each building may have one building identification sign per side of street frontage.

(3) Signs on parking garages shall not be governed by this subsection, but may have the signs allowed by subsection (5) of this Section.

(b) *Ground floor signs* :

(1) *Types:*

(i) Multi-Story buildings with ground floor retail sales or services tenants are allowed one square foot of signage per every linear foot of street frontage for additional wall, window, awning, canopy, or projecting signs. (See Figure 2). Multiple signs will only be approved by DRC when it can be shown that multiple signs significantly enhance the creative impact of the signage concept and are not detrimental to the building, the surrounding context or signage opportunities

of adjoining uses.

(2) Number:

(i) Multiple signs permitted under Section 656.1333(2)(a) are allowed, however the aggregate square footage of all such signs shall not exceed one square foot per one linear foot of street frontage. Multiple signs shall be designed with a unified program of graphics, materials, illumination, etc. Where multiple signs are proposed, a comprehensive sign plan for the entire building shall be submitted to DRC for review and approval. This plan shall indicate how tenant sign allowances are to be allocated among all eligible building uses, approximate designated sign locations, and allowable types of sign construction and illumination. In situations where maximum sign area must be allocated among several tenants, applicants other than the property owner shall be required to provide evidence of authorization from the property owner authorizing the tenant to provide the comprehensive sign plan and to make application for the requested sign area. In addition to other signs allowed under this Subsection 656.1333(2), the following additional signs are allowed:

(A) Under canopy signs, not to exceed one under canopy sign per tenant and four square feet in area for each such sign.

(B) Temporary window signs, so long as such signs do not collectively exceed, per side of street frontage, 35 square feet or 20 percent of the total window area, whichever is less.

(c) Exterior directory signs:

(1) Types:

(i) Wall, window, or projecting sign identifying the occupants of the building are allowed, so long as such signs do not exceed six square feet in area per building entrance. (See Figure 2).

(2) Number:

(i) One sign per building entrance under the supervision of the building owner.

(d) Surface parking signs:

(1) Types:

(i) Commercial surface parking lots are allowed pylon/pole, or monument signs not to exceed 24 square feet, except as provided in subsection (b), below, and be no taller than 15 feet from top of sign to grade level. Signs erected pursuant to this subsection shall not be required to comply with the setback requirements of Section 656.1303(i), so long as the sign maintains the cross visibility requirements of Section 656.1218. (See Figure 2).

(2) Number:

(i) One per surface parking lot, unless the lot has access from more than one street, in which case one sign per street may be erected at a permitted entrance, with a maximum sign area as follows:

(A) Primary entrance: 24 square feet

(B) Second entrance: 12 square feet

(C) Third or fourth entrance: six square feet containing only the universal symbol for parking (white "P" on blue background (See Figure 2)), and a directional arrow.

(e) *Parking garage signs:* Parking garages are allowed wall signs, projecting signs or awning signs not exceeding a combined total of 75 square feet in area per side of street frontage. (See Figure 2). Provided, however, if the parking garage has ground floor retail sales or services, the maximum sign area shall not exceed 150 square feet per side of street frontage. In addition to other signs allowed pursuant to this subsection, there may be erected at each vehicle entrance to the parking garage one sign not exceeding six square feet containing only the universal symbol for parking (white "P" on blue background (See Figure 2)), and a directional arrow.

(f) *Pylon/pole, roof and monument signs:* Allowed only by special exception approved by the Downtown Development Review Board using the criteria set forth in subsection (2) of this Section. Unless otherwise provided in the special exception, all pylon/pole signs shall meet the setback requirements of Section 656.1303(l).

(g) *Temporary A-frame and message board signs:* Temporary A-frame and message board signs shall be allowed only when they meet the following criteria:

- (1) Maximum width of temporary sign structures shall not exceed 24 inches;
- (2) Maximum height of temporary sign structures shall not exceed 30 inches per side;
- (3) Sign message face shall not exceed 4 square feet per side;
- (4) A sign shall only be allowed to be placed on the same block and on the same side of the street as is located the main entrance to the business it is advertising;
- (5) Signs shall only be displayed during the hours of operation of the business it is advertising;
- (6) Only one sign shall be allowed per business;
- (7) All signs shall display the name of the business and the business' hours of operation;
- (8) Signs shall not be placed in a location or manner which impedes pedestrian access or interferes with the public health, safety or welfare.

Failure to comply with any of these regulations shall subject a sign to immediate confiscation.

(h) *Sign area computation:* For signs erected pursuant to this Section, the area of each sign surface shall be calculated as provided in Section 656.1302(u).

(i) *Special sign exceptions:* The Downtown Development Review Board may approve special sign exceptions to Section 656.1333 provided the proposed sign plan shows, in addition to the criteria set forth in Section 656.1335 and Section 656.1303(c):

- (1) An exceptional effort toward visual harmony between the signs, structures, and other features of the property through the use of a consistent design theme,
- (2) Preserves a desirable existing design or siting pattern for signs in the area,
- (3) Minimizes view obstruction or preserve views of historically or architecturally significant structures.

(j) *Other signs prohibited:* Any sign not specifically allowed in this Section or exempted under Section 656.1334 shall be prohibited.

(k) *Compliance with Building Codes:* In addition to meeting the requirements of this Subpart, signs in the Downtown Sign Overlay Zone shall also meet all applicable requirements of the Florida Building Code and the City of Jacksonville Building Code - Administrative Provisions.

(Ord. 2002-446-E, § 1; Ord. 2007-564-E, § 21)

Sec. 656.1334. Signs exempted.

(a) The following signs do not require permits or fee payment but are subject to design review by the Downtown Development Authority:

- (1) Decorative banners placed on JEA light poles;
- (2) Public information signs;
- (3) Special event signs and banners.

(b) The following signs do not require permits, fee payment, or design review by the Downtown Development Authority, so long as such signs meet the requirements of the Sections indicated:

- (1) Real estate signs (Section 656.1306);
- (2) Construction signs (Section 656.1307);
- (3) Temporary window signs erected behind glass windows as allowed by Section 656.1333(2)(b)(I)(B);
- (4) Historic landmark signs (Section 656.1303(n));
- (5) Political signs (Section 601.105).

(c) The following signs do not require permits, fee payment, or design review by the Downtown Development Authority:

- (1) Legal notices;
- (2) Street address numerals not exceeding 12 inches in height.

(Ord. 2002-446-E, § 1)

Sec. 307.106. Approval of changes to landmarks, landmark sites, and property in historic districts; application procedures.

Procedures with respect to changes to historic landmarks, landmark sites, and property in historic districts shall be as follows:

(a) The ordinance designating a landmark or landmark site or historic district shall designate those activities which require the issuance of a certificate of appropriateness. Nothing in this section shall be construed to require a certificate of appropriateness for the demolition of a noncontributing structure or any accessory building deemed noncontributing by the Planning and Development Department in an historic district.

(b) Whenever any alteration, new construction, demolition, except demolition of a noncontributing structure in an historic district, or relocation as specified in subsection (a) of this Section is undertaken on a landmark, landmark site, or property in an historic district without a certificate of appropriateness, or when work has been done in violation of a previously approved certificate of appropriateness, the Director of the Planning and Development Department, or his or her designee, is authorized to issue a notice of violation to stop all work. Nothing herein shall prevent any City Department from also prosecuting violations of any City codes in any other manner authorized by law.

(c) The City of Jacksonville and each independent agency of the City of Jacksonville or their agents or contractors shall be required to notify the Commission prior to planning and construction of improvement projects within an historic district or affecting a landmark or landmark site including, but not limited to, street improvements or repaving, sidewalks and curbs, drainage, water and sewer projects, street lighting, public utility poles, construction of utilities, building construction or demolition, tree trimming or removal, and other similar public improvements, except emergency actions that must be undertaken to protect the health, safety and welfare of the public.

(d) A certificate of appropriateness shall be required, in addition to any other building permits, zoning exceptions, variances, or administrative deviations required by law, prior to commencing any alteration, new construction, demolition, relocation or any other action regulated by this Chapter affecting a landmark, landmark site or property located in an historic district. A certificate of appropriateness shall not be required for issuance of a permit to a contractor who is in possession of an order from the City to proceed with demolition, emergency action or boarding up of an unsafe structure. Any conditions contained in the certificate of appropriateness shall be included as a requirement to any building permit for which the certificate of appropriateness was issued.

(e) The Historic Preservation Section of the Planning and Development Department shall forward to the Planning and Development Department each application for a certificate of appropriateness that would authorize an alteration, new construction, demolition or relocation affecting a landmark, landmark site, or a property in an historic district. The applicant shall complete an application form provided by the Planning and Development Department. The Planning and Development Department shall determine when an application is complete and may request additional information when such application is determined to be incomplete. The Planning and Development Department shall determine if the application can be administratively approved and if so state its reason for said approval. For those Certificate of Appropriateness applications determined to require Commission approval, the Planning and Development Department shall review the application and forward its recommendations and findings to the Commission prior to the public hearing.

(f) The Commission shall be responsible for reviewing and taking action upon certificate of appropriateness applications forwarded by the Planning and Development Department. All certificates of appropriateness shall be made in the form of a final order

and signed by the Chairman. The Commission is authorized to prescribe procedural and administrative rules it deems necessary or appropriate to administer this function. The Commission shall promulgate appropriate rules providing for the establishment and maintenance of a record of applications for certificate of appropriateness considered by the Commission. The Commission shall establish the record in sufficient degree to disclose the factual basis for its determination with respect to each application.

(g) The Commission shall hold a public hearing on each application for a certificate of appropriateness at its next regular meeting, after a completed application has been filed with the Planning and Development Department, at least 21 calendar days before the meeting. The Commission shall make a decision on each application within 30 days after the hearing provided that the Commission may extend the time for decision an additional 30 days when the application is for relocation, new construction, or demolition. Any decision on a certificate may be deferred for a time certain upon mutual consent between the Commission and the applicant.

(h) Notice of the time and place of the public hearing which is required to be held with respect to an application for a certificate of appropriateness, shall be posted, by the Planning and Development Department, by United States mail to the applicant and the owner of the designated property as listed on the application, at least seven days in advance of the hearing.

(i) The applicant for a certificate of appropriateness shall post signs at intervals of not more than 200 feet along all street sides of land upon which the request for a certificate of appropriateness is made. Signage should be posted at least 14 days prior to the scheduled public hearing. Where the land does not have frontage on a public street, the signs shall be erected on the nearest street right-of-way with an attached notation indicating generally the direction and distance to the land upon which the application for a certificate of appropriateness has been filed, or at such other locations and at such intervals, as determined by the Planning and Development Department, as will ensure that the signs will be seen by as many persons as possible. The signs shall be maintained by the applicant until a final determination has been made by the Commission on the application for a certificate of appropriateness. If the signs are not posted within the time requirements, the public hearing notice will be deemed inadequate and no action shall be taken until proper posting is accomplished. The signs shall be removed by the applicant within ten days after final action.

(j) The Commission shall approve, approve with conditions, approve the withdrawal of, or deny each application, based on the applicable Historic District Design Regulations, if any, and the criteria contained in this Section. An order on each application shall be issued within 15 calendar days of the last hearing or meeting at which the application was considered and decided and shall contain findings upon which the Commission's decision is based. The order shall be executed by the Chairman or Vice-Chairman. The effective date of the order, and the date upon which the order is deemed to be issued, is the date upon which the order is actually signed by the last of all persons who are required to sign the order. Notice of the decision of the Commission shall be sent by regular mail within seven calendar days of the effective date of the order to the applicant and the owner of the property and copies shall be made available by the Department to all persons who appeared before the Commission or filed a qualifying written statement concerning the application, or to any other interested persons.

(k) In considering an application for a certificate of appropriateness for alterations, new construction, demolition, or relocation, the Commission, in addition to considering whether the proposed activity complies with the applicable Historic Design regulations, if any, shall be guided by the following general criteria:

- (1) The effect of the proposed work on the landmark, landmark site or property within an historic district upon which such work is to be done;

- (2) The relationship between such work and other structures on the landmark site or other property in the historic district;
- (3) The extent to which the historic, architectural, or archaeological significance, architectural style, design, arrangement, texture and materials of the landmark or the property will be affected;
- (4) Whether the plans may be carried out by the applicant within a reasonable period of time.

(l) Applications for certificates of appropriateness for alterations shall be considered by the Commission based on the applicable Historic District Design Regulations, if any, and in accordance with the following additional criteria, which are based on the United States Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings:

- (1) Every reasonable effort shall be made to use a property for its originally intended purpose, or to provide a compatible use for a property that requires minimal alteration of the building structure, or site.
- (2) The distinguishing original qualities or character of a building, structure, or site shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features shall be avoided when possible.
- (3) Each building, structure, and site shall be recognized as a product of its own time. An alteration which has no historical basis and which seeks to create an earlier appearance shall be discouraged.
- (4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- (5) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site, shall be treated with sensitivity.
- (6) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material shall match the material being replaced in composition, design, color, texture, and other visual qualities. However, technologically advanced materials shall be considered and used as replacement alternatives. Repair or replacement of missing architectural features shall be based on accurate duplications of features, substantiated by historical, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- (7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall be not undertaken.
- (8) Every reasonable effort shall be made to protect and preserve archaeological resources affected by, or adjacent to, any acquisition, protection, stabilization, preservation, rehabilitation, restoration, or reconstruction project.

(m) In considering an application for certificate of appropriateness for new construction, the Commission shall consider the applicable Historic District Design Regulations, if any, and the following additional criteria:

- (1) *Height.* The height of any proposed alteration or construction shall be compatible with the style and character of the landmark and with surrounding

structures in an historic district.

(2) *Proportions of windows and doors.* The proportions and relationships between doors and windows shall be compatible with the architectural style and character of the landmark and with surrounding structures in an historic district.

(3) *Relationship of building masses, setbacks and spaces.* The relationship of a structure within an historic district to the open space between it and adjoining structures shall be compatible.

(4) *Roof shape.* The design of the roof shall be compatible with the architectural style and character of the landmark and surrounding structures in an historic district.

(5) *Landscaping.* Landscaping shall be compatible with the architectural character and appearance of the landmark and of surrounding structures and landscapes in an historic district.

(6) *Scale.* The scale of the structure after alteration, construction, or partial demolition shall be compatible with its architectural style and character and with surrounding structures in an historic district.

(7) *Directional expression.* Facades in historic districts shall blend with other structures with regard to directional expression. Structures in an historic district shall be compatible with the dominant horizontal or vertical expression of surrounding structures. The directional expression of a landmark after alteration, construction, or partial demolition shall be compatible with its original architectural style and character.

(8) *Architectural details.* Architectural details including materials and textures shall be treated so as to make a landmark compatible with its original architectural style and character and to preserve and enhance the architectural style or character of a landmark or historic district. The Commission will give recommendations as to appropriate colors for any landmark or historic district.

(9) *Impact on archaeological sites.* New construction shall be undertaken in such a manner as to preserve the integrity of archaeological sites and landmark sites.

(n) In considering an application for certificate of appropriateness for demolition, the Commission shall consider the applicable Historic District Design Regulations, if any, and the following additional criteria:

- (1) The historic or architectural significance of the building or structure;
- (2) The importance of the building or structure to the ambience of the historic district;
- (3) The difficulty or the impossibility of reproducing such a building or structure because of its design, texture, material, detail or unique location;
- (4) Whether the building or structure is one of the last remaining examples of its kind in the neighborhood, the County or the region;
- (5) Whether there are definite plans for reuse of the property if the proposed demolition is carried out, and what effect of those plans on the character of the surrounding area would be;
- (6) The difficulty or the impossibility of saving the building or structure from collapse;
- (7) Whether the building or structure is capable of earning reasonable economic

return on its value;

- (8) Whether there are other feasible alternatives to demolition;
- (9) Whether the property no longer contributes to an historic district or no longer has significance as an historic, architectural or archaeological landmark; and
- (10) Whether it would be undue economic hardship to deny the property owner the right to demolish the building or structure.

The Commission may request assistance from interested individuals and organizations in seeking an alternative to demolition. The Commission may require applicants to submit such additional information as the Commission deems necessary to be used in making its determination. The Commission shall not deny a request for a certificate of appropriateness for demolition without also considering such request as a request for a certificate for relocation.

(o) When an applicant seeks to obtain a certificate of appropriateness for the relocation of a landmark, a building or structure on a landmark site, or a building in an historic district, or wishes to relocate a building or structure to a landmark site or to a property in an historic district, the Commission shall, in addition to considering the applicable Historic District Design Regulations, if any, also consider the following criteria:

- (1) The contribution the building or structure makes to its present setting;
- (2) Whether there are definite plans for the site to be vacated;
- (3) Whether the building or structure can be moved without significant damage to its physical integrity; and
- (4) The compatibility of the building or structure with the proposed site and adjacent properties.

(p) In any instance where an undue economic hardship, as defined in this Chapter, is claimed by a property owner, the property owner may submit to the Commission any or all of the following information before the Commission makes a decision on the application for certificate of appropriateness:

- (1) An estimate of the cost of the proposed construction, alteration, demolition, or removal;
- (2) A report from a licensed engineer, contractor or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation;
- (3) The estimated market value of the property in its current condition; after completion of the proposed construction, alteration, demolition, or removal; and, in the case of a proposed demolition, after renovation of the existing property for continued use;
- (4) In the case of a proposed demolition, an estimate from an architect, developer, licensed contractor, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property;
- (5) The amount paid for the property, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased, and any terms of financing between the seller and buyer;
- (6) The annual gross income from the property for the previous two years; itemized operating and maintenance expenses for the previous two years; and

depreciation deduction and annual cash flow before and after debt service, if any, during the same period;

(7) The remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two years;

(8) All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;

(9) Any listing of the property for sale or rent, price asked, and offers received, if any, within the previous two years;

(10) The assessed value of the property according to the two most recent assessments;

(11) The real estate taxes for the previous two years;

(12) The form of ownership or operation of the property, whether sole proprietorship, for profit or not-for-profit corporation, limited partnership, joint venture, or other;

(13) Any other information considered necessary by the Commission to a determination as to whether the property does yield or may yield a reasonable return to the property owner.

The Commission may require that the property owner furnish such additional information as the Commission believes is relevant to the Commission's determination of any alleged undue economic hardship. No decision of the Commission shall result in undue economic hardship for the property owner. In any case where undue economic hardship is claimed, the Commission shall make two specific findings. First, the Commission shall determine if the owner would be entitled to a certificate of appropriateness without consideration of undue economic hardship. Second, the Commission shall determine whether the owner demonstrated an undue economic hardship. The Commission shall hold a hearing on both matters at the same time; except that, any property owner, may request a separate hearing on each.

(q) When a certificate of appropriateness has been applied for in connection with the replacement of roof covering, windows or doors, the Commission shall allow the property owner's original design plans when the applicable Historic District Design Regulations will result in a cost in excess of 20 percent of the property owner's original plans. The owner shall be required to show to the Commission's satisfaction that the work to be performed will be in accordance with the original roof lines and conform to the original door and window openings of the structure and the replacement of windows, doors or roof materials with the less expensive alternative will achieve a savings in excess of 20 percent over historically compatible materials otherwise required under this Chapter.

(r) All work performed pursuant to the issuance of a certificate of appropriateness shall conform to the requirements of such certificate. It shall be the duty of the Building Inspection Division to inspect from time to time any work being performed pursuant to such certificate to assure such compliance. In the event work is not performed in accordance with such certificate, the Chief of Building Inspection or his designated representative shall issue a notice of violation to stop all work and all work shall cease. No additional work shall be undertaken as long as such notice shall continue in effect.

(s) Any certificate of appropriateness which has been approved pursuant to the provisions of this Section shall expire 12 months from the date of issuance if the work authorized is not commenced within this period. Further, such certificate shall expire if the work authorized is not completed within five years of the date of issuance, unless otherwise extended by the Commission.

(t) In any case where the Chief of Building Inspection or the Chief of Property Safety determines that there are emergency conditions dangerous to life, health or property affecting a landmark, a landmark site, or a property in an historic district, either Chief may order the remedying of these conditions in accordance with other applicable laws or regulations without the approval of the Commission or issuance of a required certificate of appropriateness. This Section specifically includes those structures that have been defined to be unsafe pursuant to Section 548.102(a), (3), (12) or (13), Ordinance Code. The Chief of Building Inspection or Chief of Property Safety shall promptly notify the Chairman of the Commission of the action being taken.

(u) When a landmark, building or structure on a landmark site or building or structure within an historic district, or any portion of such building or structure, has been destroyed or damaged by an act of God, the building or structure may be reconstructed to its pre-existing condition. This provision shall not be construed so as to waive any portion of the Zoning Code or the building, fire, health or safety codes, of the Ordinance Code.

(Ord. 90-706-486, § 3; Ord. 94-337-183, § 10; Ord. No. 96-362-453, § 2; Ord. 2001-622-E, § 2; Ord. 2003-460-E, § 1; Ord. 2004-1003-E, § 4; Ord. 2004-482-E, § 1; Ord. No. 2006-847-E, § 1)

ORDINANCE 2009-401-E

CERTIFICATE OF AUTHENTICATION

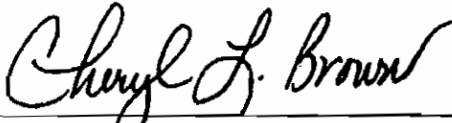
ENACTED BY THE COUNCIL

October 13, 2009



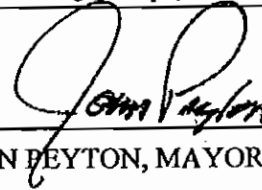
RICHARD CLARK
COUNCIL PRESIDENT

ATTEST:



CHERYL L. BROWN
COUNCIL SECRETARY

APPROVED: OCT 16 2009



JOHN PEYTON, MAYOR

