UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PATRICK WITHERS,

Plaintiff,

v.

THE VILLAGE OF AIRMONT, THE BOARD OF TRUSTEES OF THE VILLAGE OF AIRMONT, JOSEPH MEYERS AS DEPUTY MAYOR AND TRUSTEE, MAUREEN SCHWARZ AS TRUSTEE, AND ROY DOUGHERTY AS BUILDING CODE INSPECTOR OF THE VILLAGE OF AIRMONT, IN EACH OF THEIR INDIVIDUAL AND OFFICIAL CAPACITIES,

Defendants.

07 Civ. 9674 (SCR)

OPINION AND ORDER

STEPHEN C. ROBINSON, District Judge:

Plaintiff, Patrick Withers, brings this suit against the Village of Airmont, the Board of Trustees of the Village of Airmont, Joseph Meyers as Deputy Mayor and Trustee, Maureen Schwarz as Trustee, and Roy Dougherty as Building Code Inspector of the Village (collectively, the Defendants) for violating his First Amendment and Equal Protection rights under federal and state constitutional law. Plaintiff claims that Defendants impermissibly limited Plaintiff's freedom of speech by enforcing an unconstitutional Village Code governing the posting of temporary and political signs. Plaintiff also claims that Defendants have not enforced the Village Code in a uniform manner by selectively prohibiting signs that opposed Defendant Meyers in his election campaign. Both parties have moved for summary judgment on the question of whether the Village Code violates the First Amendment. Defendants also seek to dismiss the

claims against the individual defendants under a theory of legislative and qualified immunity.

I. BACKGROUND

The Village Code that Plaintiff challenges regulates the time, place, size, and manner of posting temporary signs within the Village. The Village Code provides that temporary signs require a permit and security deposit, although some types of signs are exempt from this requirement. Code of the Village of Airmont, New York ("Village Code") § 210-61, 64(A)(1). A security deposit of $250 is required for political signs, and $100 for all other temporary signs. Village Code, § 106-6(B)(2).

Political signs must not be posted more than 45 days prior to the nomination, primary, election or referendum to which it pertains, and they must be removed one week afterwards. Village Code, § 210-64(D)(1)-(3). All temporary signs are subject to size limitations—they may not exceed 16 square feet in sign area in a commercial district and 8 square feet in a residential district. Village Code, § 210-64(D)(5), (E)(4). Certain signs that are exempt from the provisions regulating temporary signs also have specific size limitations. Village Code, § 210-62. Permanent signs are regulated by a different section of the Village Code and have their own permit, size and placement requirements. Village Code, § 210-65. The relevant sections of the law are included as Exhibit A to this Opinion.

Plaintiff was a candidate running for office of the 12th Legislative District in the County of Rockland, which includes the Village of Airmont in the 2007 election. During that election, Defendant Meyers was also a candidate for the 12th Legislative District.

Members of the Village Board of Trustees were of the same party as Defendant Meyers, and at least Trustee Maureen Schwarz was actively involved in Defendant Meyers' campaign. Defendant Meyers was also an active member of Preserve Ramapo, a political action group in Rockland County, and the group's candidate for County Legislature.

Plaintiff posted hundreds of political signs in the Village of Airmont supporting his candidacy. *See* Defendant's Cross-Motion, Patrick Withers Aff. ("Withers Aff."), at 30. On August 14, 2007, Defendant Schwarz sent an email to Plaintiff identifying herself as campaign manager of the "Friends of Joe Meyers" group and asked Plaintiff to remove campaign signs that had been posted at the Wal-Mart shopping center, Route 59 in the Village of Airmont. *See* Complaint, ¶ 29. She claimed that Defendant Meyer's campaign had exclusive rights to post signs there, and that if Plaintiff did not come to claim them, they would be removed. *See* Plaintiff's Motion, Ex. E; Complaint, ¶ 29.

Plaintiff claims that on August 26, 2007, Defendant Meyers directed the Ramapo Police Department to remove Plaintiff's signs from the Wal-Mart Property. Complaint, ¶ 31; Withers Aff. at 64-66. He also alleges that another 60 to 70 signs were stolen. Complaint, ¶ 32. On September 25, 2007, Defendant Roy Doherty issued a Violation Notice to inform Plaintiff that he had violated the Village Code by posting a political sign in excess of the size limitations. Complaint, ¶ 36. Although Defendants dispute this fact, Plaintiff claims that other signs in the Village of Airmont exceeded the size of Plaintiff's but they were not issued a notice of violation. Complaint, ¶ 39. According to the Complaint, Plaintiff was also discouraged from posting signs earlier in his campaign by the threat of enforcement of the Village Code and any resulting negative publicity. Complaint, ¶ 40.

II. LEGAL STANDARD FOR SUMMARY JUDGMENT

Under Fed. R. Civ. P. 56(c), summary judgment is warranted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A fact is "material" when it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Id.* The burden of demonstrating that no material fact exists lies with the party seeking summary judgment. *See, e.g., Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970).

A court considering a motion for summary judgment must construe the evidence in the light most favorable to the non-moving party, drawing all inferences in that party's favor. *See Niagara Mohawk Power Corp. v. Jones Chem., Inc.*, 315 F.3d 171, 175 (2d Cir. 2003). Rather than asking if "the evidence unmistakably favors one side or the other," a court must ask whether "a fair-minded jury could return a verdict for the plaintiff on the evidence presented." *Anderson*, 477 U.S. at 252. If so, the court may not grant a defendant's motion for summary judgment. Assessing the credibility of witnesses and choosing between conflicting versions of events are roles for the fact finder, not for the court on summary judgment. *See Rule v. Brine, Inc.*, 85 F.3d 1002, 1011 (2d Cir. 1996).

The non-moving party must present sufficient evidence such that a jury could reasonably find in its favor – "the mere existence of a scintilla of evidence in support of

the plaintiff's position" is not enough. *Anderson*, 477 U.S. at 252. "The non-moving party may not rely on mere conclusory allegations or speculation, but instead must offer some hard evidence showing that its version of the events is not wholly fanciful." *D'Amico v. City of New York*, 132 F.3d 145, 149 (2d Cir. 1998). Since both parties have made a motion for summary judgment, the Court must apply this standard to both parties' positions.

III. DISCUSSION

The parties seek summary judgment on the question of the Village Code's constitutionality and the liability of the Village and the individual defendants. The Court finds the Village Code to be unconstitutional because it impermissibly regulates speech based on content and is not narrowly tailored to serve a compelling government interest. The Court finds that the Village is liable under a *Monell* analysis, but the individual defendants are entitled to legislative immunity for any actions taken in by Defendant Meyers and Schwarz in their capacity as members of the Village Board of Trustees, and qualified immunity for Defendant Dougherty for objectively reasonable actions taken as the Building Inspector. The Court acknowledges that Defendant Meyers and Schwarz may be liable on other claims to the extent that they acted outside of their legislative functions.

a. Village Code is unconstitutional

Plaintiff moves for summary judgment on the grounds that the Village Code violates his First Amendment rights through content-based regulation of political signs and excessive discretion to Village officials.

i. Content-based regulation

The Supreme Court has held that political speech is entitled to the highest form of protection by the Free Speech Clause of the First Amendment. *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995) ("[T]here is practically universal agreement that major purpose of [the First] Amendment was to protect the free discussion of governmental affairs, . . . of course includ[ing] discussions of candidates . . . .") (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966)). However, the government may impose reasonable time, place, and manner restrictions on speech as long as they are content-neutral, narrowly tailored to serve a significant government interest, and leave open alternative channels of communication. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

The conventional approach to analyzing whether a government burden on political speech will be permitted begins with a determination of whether the burden is content-based or content-neutral. *See Curry v. Prince George's County, Md.*, 33 F.Supp.2d 447, 452 (D.Md. 1999). Content discrimination in government regulations is presumptively unconstitutional. *City of Ladue v. Gilleo*, 512 U.S. 43, 59 (1994) (O'Connor, J., concurring). A statute that regulates speech on the basis of content is subject to strict scrutiny and the municipality must show that the "regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Boos v. Barry*, 485 U.S. 312, 321 (1988). Courts determine that a statute is content-based when it is necessary to look at the content to determine whether the statute applies. *See Forsyth County v. The Nationalist Movement*, 505 U.S. 123, 134 (1992); *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 516 (1981) (finding that ordinance is content-

based because it "distinguishes in several ways between permissible and impermissible signs at a particular location by reference to their content").

The Court finds that the Village Code is content-based regulation because it is necessary to look at the content of the sign to know which provisions apply, even within the category of temporary signs. Political signs are in their own section of the Code with different limitations than those that apply to other temporary signs. *Compare* Village Code, § 210-64(E) *with* § 210-64(D). Additionally, other temporary signs are exempt from permit requirements on the basis of their content, such as historical markers, flags, number and name plates, private for-sale signs, real estate for-sale and for-rent signs, window signs, and price signs at gas stations. Village Code, § 210-62. The Code is clearly content-based regulation, and therefore strict scrutiny applies.

Plaintiff challenges the fact that political signs may not be posted until 45 days before the relevant nomination, primary, referendum, or other election; that they must not exceed 8 square feet in a residential district or 16 square feet in a commercial district; and that the security deposit for political signs is $250 while it is only $100 for other temporary signs. Plaintiff also claims that political signs are further regulated based on content because the amendment passed by the Board of Trustees in July 2007 exempted political signs that do not relate to a specific candidate or election, such as Preserve Ramapo's signs, from the "political sign" limitations.

Defendants argue that there are durational and size limits that apply to all temporary signs, and so the Code is content-neutral. *See, e.g., Sugarman v. Village of Chester*, 192 F.Supp.2d 282, 294-95. Defendants have also raised the point that they in no way sought to regulate the actual content of any political signs. *See* Defendant's

Memorandum of Law, at 4. In making these arguments, Defendants confuse what it means for a regulation to be content-based. "Content-based" does not necessarily mean that the regulations require or prohibit certain content; rather, restrictions on the size, duration, and placement of signs can be considered content-based if they only apply to signs with one type of content and not to others. *See Forsyth*, 505 U.S. at 134. Many of the Village's regulations vary based on the content of sign.

Here, only political signs relating to campaigns and elections are subject to the 45-day posting limit. Other political signs are exempt from this requirement, as well as all other temporary signs which may be posted year-round. It is true that in general temporary signs may only be posted for 30 days at a time, but there are other temporary signs that have no durational limit. Within the section "Exempt Signs," there are signs with no duration limits whatsoever (e.g., historical markers, flags, on-premise signs indicating home offices, number and name plates identifying residents, lawn signs identifying residents, and private-owner merchandise sale sign for a garage sale or auction) and other signs that only regulate when they must be removed but have no limit on how long or when they can be posted (e.g., real estate for-sale and for-rent signs; signs listing the architect, engineer, contractor and/or owners on premises where work is being done).

Content-based "durational limits on signs have been repeatedly declared unconstitutional." *Knoeffler v. Twn. of Mamakating*, 87 F.Supp.2d 322, 333 (S.D.N.Y. 2000); *see also Curry*, 33 F.Supp.2d at 453 (citing cases that found pre-election durational limitations on political campaign signs to be unconstitutional content-based regulation). When strict scrutiny is applied to a content-based regulation, the regulation

is likely to fail because state interests in aesthetics and traffic safety are rarely compelling enough to support content-based regulation. *Clear Channel Outdoor, Inc. v. Twn. Bd. of Twn. of Windham*, 352 F.Supp.2d 297, 304 (N.D.N.Y. 2005) (citing *Savago v. Village of New Platz*, 214 F.Supp.2d 252, 259 (N.D.N.Y. 2002); *Knoeffler*, 87 F.Supp.2d at 327; *Curry*, 33 F.Supp.2d at 452. In part, this is because content-based regulations are not usually narrowly tailored to serve the compelling state interest. In the case of regulating signs, a municipality often "selectively exempt[s] those messages the municipality presumes are valuable enough to outweigh the community interest that justified the sign regulation in the first place . . . . [and that] can lead to an unconstitutional ordinance in restricting too little speech." *Clear Channel Outdoor, Inc.*, 352 F.Supp.2d at 304.

The Village Code suffers from this defect. It singles out political signs for certain durational limits while exempting other temporary signs altogether. There is no reason why political signs, as opposed to other temporary signs, would pose more of a risk to the public health, welfare, and safety of the Village. Therefore, the content-based durational limit on political signs is unconstitutional.

The same analysis reveals that the Village Code's size regulation also fails. Defendants argue that all temporary signs must abide by the same size regulation—8 square feet in a residential area and 16 square feet in a commercial area. However, Defendants do not address the exemption for real estate for-sale and for-rent signs which may be up to 15 square feet in a residential area and 30 square feet in a commercial area. Village Code, § 210-62 (I). There is no reason why the Village should privilege the content of these types of signs over political signs since they affect traffic safety and Village aesthetics as much as any other temporary sign. Therefore, the Code is

constitutionally defective because it is not narrowly tailored. *See, e.g.*, *Clear Channel Outdoor, Inc.*, 352 F.Supp.2d at 304.

The Court also finds that even though the security deposit is fully refundable, the fact that a person who wants to post political signs would be required to give a larger deposit than for any other temporary sign is a content-based burden on political speech. Defendants cite to the decision in *Sugarman* regarding the Greenwood Lake permit fees to argue that a fully refundable security deposit to ensure prompt removal of signs is a reasonable time, place, or manner restriction. *Sugarman*, 192 F.Supp.2d at 293. However, in that case all temporary signs were subject to the deposit. Here, the deposit is specifically content-based. There is nothing to suggest that it is necessary to collect a large security deposit for political signs to serve a compelling state interest. It seems to the Court that sign removal would depend on the number and size of the sign, not the content of the sign. To the extent that security deposits impose some financial burden on those who wish to post signs, the regulation violates the First Amendment by regulating political speech differently from other kinds of speech.

The Court concludes that the Village Code is unconstitutional because it engages in impermissible content-based regulations, such as the durational, size, and security deposit requirements, that are not narrowly tailored to serve a compelling state interest.

ii. Excessive discretion

The Supreme Court has found that "[t]he First Amendment prohibits the vesting of . . . unbridled discretion in a government official." *Forsyth*, 505 U.S. at 132. An ordinance regulating signs can be struck down as unconstitutional if it does not provide any standards to guide local officials in their decision to grant or deny sign permits. *See,*

e.g., *Knoeffler*, 87 F.Supp.2d at 327. The reason for such standards is to prevent the "danger . . . that the ordinance permits a rogue decision maker to delay the issuance of a sign permit for any reasons he or she deems appropriate." *Sugarman*, 192 F.Supp.2d at 296. Here, there are no such standards in the Code. Therefore, the Court finds that the Code violates the First Amendment by giving Village officials excessive discretion over granting sign permits.

b. Municipality is liable under *Monell*

It is well settled that a municipality may be held liable in a § 1983 suit for unconstitutional or illegal policies. *Monell v. Dep't of Social Services*, 436 U.S. 658, 691 (1978). "[A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents," rather "it is when execution of a government's policy or custom . . . inflicts the injury that the government as an entity" is liable. *Id.* at 694. This is undoubtedly true when local officials enforce an unconstitutional ordinance. *Monell*, 436 U.S. at 694.

Moreover, as the Supreme Court observed in *Pembaur v. City of Cincinnati*, "[n]o one has ever doubted . . . that a municipality may be liable under § 1983 for a single decision by its properly constituted legislative body—whether or not that body had taken similar action in the past or intended to do so in the future—because even a single decision by such a body unquestionably constitutes an act of official government policy." 475 U.S. 469, 480 (1986).

In this case, Plaintiff has shown that the Village has a policy of violating First Amendment rights through its unconstitutional sign regulations. Also, the Court considers the actions of the Board of Trustees taken to exempt some types of political

signs from the political sign restrictions by redefining political sign as a deliberate choice to perpetuate the illegal policy of discriminating against certain political signs. Therefore, the Village is liable under *Monell* for the unconstitutionality of its Code and its policy of content-based regulation.

c. Defendants Meyers and Schwarz are entitled to legislative immunity

In *Bogan v. Scott-Harris*, the Supreme Court upheld legislative immunity for local legislators for acts within "the sphere of legitimate legislative activity." 523 U.S. 44, 45 (1998) (citing *Tenney v. Brandhove*, 341 U.S. 367, 376). The determination of whether an act is legislative activity depends on the nature of the act itself, not the motive or intent of the official performing it. *Id.*

Plaintiff brings this suit against Defendants Meyers and Schwarz in their individual capacity for violations of his constitutional rights. As members of the Village's Board of Trustees, Meyers and Schwarz are responsible for policy making and Village administration, including the Code at issue in this case. Their actions as board members in participating in discussions during meetings, passing amendments, and upholding the current Code clearly fall within the ambit of legislative activity. Therefore, Plaintiff's claims against Defendant Meyers and Schwarz for actions taken as board members are dismissed because Meyers and Schwarz are entitled to legislative immunity.

Plaintiff also alleges that Defendant Meyers and Schwarz engaged in activities outside the scope of their position on the Board of Trustees that chilled Plaintiff's exercise of free speech. *See* Complaint, ¶¶ 28-32. According to the Complaint, Defendant Schwarz, acting in her capacity as Meyers' campaign manager, threatened to remove Plaintiff's signs from the Wal-Mart property. *See* Complaint, ¶¶ 29-30. Plaintiff

also claims that Defendant Meyers, acting outside his role as a board member, directed the Ramapo Police to remove Plaintiff's signs from the Wal-Mart property. *See* Complaint, ¶ 31; Withers Aff. at 63-66. Defendant Meyers and Schwarz would not be entitled to legislative immunity for these actions because they fall outside the scope of legislative activities. Thus, the claims against them cannot be dismissed. However, because there are material disputes of fact concerning these actions, the issue of Meyers and Schwarz's liability for violating Plaintiff's rights by acting outside of the scope of their legislative duties is not ripe for summary judgment.

d. Defendant Dougherty is entitled to qualified immunity

The doctrine of qualified immunity protects government officials from liability if the challenged action "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The concern is that government officials may not be able to perform their jobs under the "constant threat of individual liability resulting from the actions taken in compliance with the law of the time." *Poulsen v. City of North Tonawanda*, 811 F.Supp. 884, 898 (W.D.N.Y. 1993).

It is important to note that the relevant inquiry is not whether the defendant should have known there was a federal right such as freedom of speech, but whether the defendant should have known that his specific actions violated that right. *See Knoeffler*, 87 F.Supp.2d at 329 (citing *Lewis v. Cowen*, 165 F.3d 54, 166-67 (2d Cir. 1999)). Courts apply an objective reasonableness test to determine if qualified immunity should apply as a matter of law. *Id.*

In this case, Defendant Dougherty is entitled to qualified immunity if it was objectively reasonable for him to believe he could enforce the Village Code in giving Plaintiff a Notice of Violation without violating Plaintiff's constitutional rights. On the other hand, if a reasonable trier of fact could find that Defendant Dougherty's actions were objectively unreasonable, he may be held individually liable for the violation of Plaintiff's rights. *Knoeffler*, 87 F.Supp.2d at 329. The Court concludes that Defendant Dougherty is entitled to qualified immunity because there is no record that Dougherty was acting outside the scope of his duties as a Building Inspector. Certainly there is no evidence that Dougherty was acting with malice or with the intention of infringing; or acting with the belief that he was infringing Plaintiff's First Amendment rights. In this case it was objectively reasonable for the Building Inspector to enforce this Village ordinance without believing that doing so would violate Plaintiff's constitutional rights. Therefore, Plaintiff's claims against Defendant Dougherty are dismissed.

IV. CONCLUSION

The Court finds that the Village Code violates Plaintiff's First Amendment rights and is unconstitutional. It grants summary judgment in favor of Plaintiff on that issue, and finds that the Village is liable under a *Monell* analysis. However, Defendants Meyers and Schwarz are entitled to legislative immunity, and so the Court dismisses Plaintiff's First Amendment claims against them. The Court does not decide the issue of whether they are liable for any actions taken outside the scope of their legislative duties since there are material facts in dispute and the parties did not request summary judgment on Plaintiff's Equal Protection claims. All claims are dismissed against Defendant

Dougherty because he is entitled to qualified immunity. The Clerk of the Court is directed to close docket numbers 12 and 18.

It is So Ordered.

Dated: White Plains, New York
April 30, 2010

Stephen C. Robinson, U.S.D.J.

Exhibit A: Code of Village of Airmont, § 210

§ 210-59. Legislative purpose.

A. The purpose of this article is to promote and protect the public health, welfare and safety by regulating existing and proposed outdoor signs of all types and indoor signs visible from outdoors. It is intended to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the Village, protect architectural and historical heritage of the Village, and provide for a more pleasing and enjoyable community. It is further intended to reduce the sign or advertising distractions and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way, and curb the deterioration of the community environment.

B. This article is intended to promote attractive signs which clearly present the visual message in a manner that is compatible with its surroundings. The appearance, character and quality of a community are affected by the location, size, construction and graphic design of its signs. Therefore, such signs should convey their message clearly and simply to enhance their surroundings.

C. It is the further intent of these regulations to encourage that any structure occupied for a commercial or industrial use be identified by an approved sign.

D. The provisions of this chapter shall govern the construction, alteration, repair, display and maintenance of all signs together with their appurtenant and auxiliary devices.

. . .

§ 210-61. Permit required.

Except as specifically exempted in this article, no sign shall hereafter be erected, re-erected, constructed, enlarged or altered without a sign permit.

§ 210-62. Exempt signs.

The following types of signs may be erected and maintained without permits or fees, providing such signs comply with the general requirements of this article and other conditions specifically imposed by the regulations:

A. Historical markers, tablets and statues, memorial signs and plaques; names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze, stainless steel, or similar material; and emblems installed by government agencies, religious or nonprofit organizations: not exceeding four square feet.

B. Flags and insignia of any government, except when displayed in connection with commercial promotion.

C. On-premises directional signs for the convenience of the general public, identifying public parking areas, fire zones, entrances and exits and similar signs, as shown on an approved site development plan or installed pursuant to order of traffic control agencies and shall conform to the Manual of Uniform Traffic Control Devices, New York State Department of Transportation.

D. Nonilluminating warning, private drive, posted or no trespassing signs: not exceeding two square feet per face and not more than one sign per 100 feet of street frontage.

E. One on-premises sign, either freestanding or attached, in connection with any residential building in any zoning district, for approved home professional office or home occupation: not exceeding two square feet and set back at least 15 feet from the edge of pavement, but shall not be within the designated street line. Such sign may state name and vocation only.

F. Number and name plates identifying residents, mounted on house or mailbox: not exceeding one square foot in area.

G. Lawn signs identifying resident: not exceeding one square foot.

H. Private-owner merchandise sale sign for garage sale or auction: not exceeding four square feet on owner's property only for a period not exceeding seven days.

I. Temporary "for sale," "for rent," real estate sign concerning the premises upon which the sign is located. In a residential zone, one sign not exceeding 15 square feet in sign area, no more than nine square feet of sign area for a single sign face. In a nonresidential zone, one sign not exceeding 30 square feet in sign area; said sign must be set back at least 15 feet from edge of pavement, but shall not be within the designated street lines. All such signs shall be removed within three days after the sale, lease or rental of the premises.

J. Temporary window signs and posters placed on the interior side of the window and not exceeding a total area of 25 percent of the window surface for a period not exceed 30 days.

K. At gasoline service stations:

(1) Graphics integrated as part of gasoline pumps or attached price signs on gasoline pumps.
(2) Two auxiliary signs per station, each not exceeding two square feet.
(3) One portable sign per station, not exceeding 12 square feet and four feet in height while station is open for business.

L. One sign, not exceeding six square feet in sign area in residential districts or 16 square feet in sign area in the nonresidential districts, listing the architect, engineer, contractor and/or owner, on premises where construction, renovation, or repair is in progress. Said signs shall be removed upon occupancy of the structure or 30 days following issuance of a certificate of occupancy, whichever occurs first. Where the contractor's work does not involve a certificate of occupancy or reoccupancy, the sign shall be removed within 30 days. At or adjacent to premises in commercially zoned property owned, occupied or rented by a tax-exempt organization [as said term is defined by Internal Revenue Code Section 501(c)(3)], one portable sign may be maintained by such tax-exempt organization, per location, not to exceed 36 square feet in size.

§ 210-63. Prohibited signs.

The following signs are prohibited:

A. Signs illuminated by or containing flashing, intermittent, rotating or moving lights except to show time and temperature.

B. Exterior advertising signs and billboards.

C. Signs representing or depicting to any degree official traffic signs or signals.

D. Signs of a prurient nature or advertising business, commodities or service of a prurient nature or any unlawful business or undertaking.

E. Permanent signs made of cardboard, paper or similar nonpermanent material.

F. Signs mounted on parked vehicles or trailers or other similar mobile advertising media.

G. Signs attached to trees, utility poles, fences, traffic signs, street corner markers, or the like.

§ 210-64. Temporary signs.

A. Permit required.

(1) Any person desiring to post or display political or other temporary signs shall file an application for a temporary sign permit on forms prescribed by the Building Inspector (subject to the next sentence), and such application shall be accompanied by the required fee (if any), including security deposit, to assure removal in accordance with the Standard Schedule of Fees of the Village of Airmont.

Editor's Note: See Ch. 106, Fees and Deposits. This local law provided that it shall become effective retroactively to 9-1-2005, except that no violations of this section shall be issued by the Building Inspector and/or Code Enforcement Officer for any violations from that date to the date of passage of the local law.

Said form of permit application to be promulgated by the Building Inspector shall require only the name and address of the sign applicant, the purpose and general description of the content of the sign(s) (for sign identification purposes only) and the estimated date of commencement of the display of the sign(s) and removal date.

[Amended 1-23-2006 by L.L. No. 2-2006

Editor's Note: This local law provided that it shall become effective retroactively to 9-1-2005, except that no violations of this section shall be issued by the Building Inspector and/or Code Enforcement Officer for any violations from that date to the date of passage of the local law.]

(2) Political and other temporary signs posted or displayed within the Village of Airmont shall be in accordance with this section.

(3) Political and other temporary signs shall be granted permits in accordance with this section, provided that such signs are not attached to trees, utility poles, traffic signs, or street corner markers, and further provided that such signs are not placed in a position that will obstruct or impair vision of a roadway or traffic or in any manner create a hazard to the health and safety of the general public. Any such sign not in compliance with the foregoing shall subject both the sign applicant and the owner of the property on which such sign is located to penalties pursuant to § 210-68 of this article. Signs placed in violation of this article may be removed and discarded by the proper Village official if (a) no sign permit had been obtained for the placement of such sign anywhere in the Village of Airmont pursuant to the permit application procedure set forth in this article, (b) such sign is in violation of § 210-64B or C of this article or (c) such sign has been placed in a position that will obstruct or impair vision of a roadway or traffic or in any manner create a hazard to the health and safety of the general public. Except as set forth in the preceding sentence, signs placed in violation of this article shall not be removed by any Village official without the order of a court of competent jurisdiction.

[Amended 5-4-2004 by L.L. No. 1-2004; 1-23-2006 by L.L. No. 2-2006

Editor's Note: This local law provided that it shall become effective retroactively to 9-1-2005, except that no violations of this section shall be issued by the Building Inspector and/or Code Enforcement Officer for any violations from that date to

(4) Any licensed real estate broker or owner of a residential home may display a temporary "open house" sign on the property that is for sale for a period of no longer than six hours for each open house, consistent with the requirements of § 210-62I. Additionally, any licensed real estate broker and/or owner of a residential home for sale may display directional signs to the subject premises for sale, provided there are no more than six such directional signs for each open house and that such directional signs are displayed no longer than six hours for each open house. Such directional signs shall also be consistent with the requirements of § 210-62I, except that said directional signs need only be set back at least two feet from the edge of a paved road or the paved portion of a shoulder or existing sidewalk. Furthermore, no "open house" or directional sign to an open house shall have any attachment to the temporary signs, including, but not limited to, balloons, flyers or other items. Any licensed real estate broker may apply for, and maintain with the Building Inspector, an annual, unlimited permit to display "open house" signs and directional signs at various locations within the Village of Airmont consistent with this subsection upon deposit as security with the Building Inspector of $500 by check, which shall not be cashed by the Building Inspector except upon violation of this subsection. An owner of a residential home for sale that is for sale by owner shall deposit as security with the Building Inspector in order to obtain the permit covered by this section $100 by check, which shall not be cashed by the Building Inspector except upon violation of this subsection. The posting or displaying of any temporary "open house" signs and directional signs included in this section shall require the filing of an application for a temporary sign permit on a form prescribed by the Building Inspector pursuant to § 210-64A(1) of this article.

[Added 1-23-2006 by L.L. No. 2-2006

Editor's Note: This local law provided that it shall become effective retroactively to 9-1-2005, except that no violations of this section shall be issued by the Building Inspector and/or Code Enforcement Officer for any violations from that date to the date of passage of the local law.]

B. Penalties for offenses. [Added 1-23-2006 by L.L. No. 2-2006]

(1) Upon conviction of any requirement contained within this section, the Village Justice or any other court of competent jurisdiction may issue a monetary fine of not less than $50 and not more than $125 per offense. The amount of any fines issued hereunder is left to the sound discretion of the court within the confines set forth herein.

(2) Additionally, each sign that is found to be in violation of this section shall constitute a separate and distinct offense for which the penalties identified in Subsection B(1) of this section may be applied cumulatively by the court.

C. Disposition of fees. [Added 1-23-2006 by L.L. No. 2-2006]

(1) Whenever a fee for permit required under § 210-64 is deposited by the Village of Airmont Building Inspector and is held by the Village of Airmont, said fee shall be held as security for any fines issued by a court for violation of this section. In the event a fine issued by the court is less than the amount of the permit application fee, the difference shall be promptly returned by the Village to the applicant promptly after removal of all signs for which a permit has been applied for and the permit is returned by the applicant to the Village of Airmont Building Department.

(2) Whenever a fee is deposited with the Village of Airmont for a permit under this section, said fee shall be returned by the Village promptly after removal of all signs for which a permit has been applied for and the permit is returned by the applicant to the Village of Airmont Building Department.

D. Political signs.

(1) Political signs shall be removed within one week immediately following the nomination, primary, election or referendum to which it pertains.

(2) If such removal is not made within the specified time, the Village shall have such signs removed and the security deposit shall be forfeited to the Village to defray the cost of removal of such signs and for general Village purposes.

(3) No political sign subject to this chapter may be posted or displayed within the Village more than 45 days prior to the nomination, primary, election or referendum to which it pertains. For the purposes of this subsection, the term "political sign" shall mean any sign that otherwise complies with the dimensional requirements contained in this article and either endorses, recommends, supports, approves, criticizes, condemns, censures or otherwise gives an opinion to: a candidate for elected office; a referendum to be voted upon by a public election; a proposition appearing on a ballot; a political party; or any other matter that is subject to a primary, election or referendum, by general voting.
[Amended 7-23-2007 by L.L. No. 3-2007]

(4) In the event that a candidate for a primary election succeeds in said primary election, then and only then shall such candidate's signs be removed within one week immediately following the general election wherein said person is a candidate.
[Amended 5-4-2004 by L.L. No. 1-2004]

(5) No political sign may exceed 16 square feet in sign area in a commercial district, nor eight square feet in a residential district.

E. Other temporary signs.

(1) Signs erected for a relatively short period of time, which may include posters, announcements, banners and pennants and other similar objects. Sign shall be removed immediately following the cessation of the event or special sale or activity mentioned in the permit.

(2) If such sign is not removed within the specified time, the Village shall have such signs removed and the security deposit shall be forfeited to the Village to defray the cost of removal of such signs and for general Village purposes.

(3) Temporary signs located within a store advertising merchandise for sale in the premises where such temporary signs are displayed shall be exempt from the permit and security deposit provisions.

(4) Temporary signs shall not exceed 16 square feet of sign area in any commercial district and not more than eight square feet of sign area in any residential district.

(5) No temporary sign subject to this section may be posted or displayed for more than 30 days.