



October 24, 2024

Armada Village Council
Armada Village Office
74274 Burk Street, P.O. Box 903
Armada, Michigan 48005

Sent via U.S. Mail and Electronic Mail (clerk@villageofarmada.org)

Dear Armada Village Council:

On September 23, FIRE wrote to inform you of the unconstitutionality of Armada's current and proposed sign ordinances.¹ That evening, the Council approved the proposed changes.²

FIRE has not heard back from Armada, suggesting the Council either has no intention of bringing its ordinance into constitutional conformity or incorrectly believe its rules pass constitutional muster. However, as explained in FIRE's initial letter, Armada's ordinance requires changes to bring it into compliance with the First Amendment.

Sign restrictions must be narrowly tailored to serve a significant government interest while leaving open ample alternative channels for communication.³ Armada's limits on the display period, number, and area and height of temporary signs all fail that requirement. By keeping these provisions in place, the Council needlessly invites litigation. FIRE strongly urges the Village Council to reconsider them. Our offer to assist Armada, free of charge, in remedying these defects remains open.

We respectfully request a substantive response no later than November 7, 2024.

Sincerely,

M. Brennen VanderVeen, Esq.
Program Officer, Public Advocacy

¹ Enclosed.

² NEMCTV6, *VILLAGE OF ARMADA COUNCIL MEETING (09-23-2024)*, at 27:48, YouTube, <https://www.youtube.com/watch?v=oOT4i6mSUM0>.

³ *Cleveland Area Bd. of Realtors v. City of Euclid*, 88 F.3d 382, 388 (6th Cir. 1996).



September 23, 2024

Armada Village Council
Armada Village Office
74274 Burk Street, P.O. Box 903
Armada, Michigan 48005

Sent via U.S. Mail and Electronic Mail (clerk@villageofarmada.org)

Dear Armada Village Council:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech, is concerned by Armada's current¹ and proposed² sign ordinances, each of which infringes residents' First Amendment rights, particularly as to the limits they place on the display period, number, and area and height of temporary signs. Although the Supreme Court has recognized limited municipal authority to regulate signage in cases such as *Reed v. Town of Gilbert*,³ sign restrictions must still be narrowly tailored to serve a significant government interest while leaving open ample alternative channels for communication.⁴ As Armada's current and proposed sign ordinances fail both those tests, it must amend its sign ordinance to comply with constitutional standards, and FIRE would be happy to assist the Village in doing so (at no cost).

Display period

Both Armada's current and proposed sign ordinances restrict temporary signs to display for no more than 45 days per calendar year—effectively, a wholesale ban for *over 85% of the year*—which can hardly be described as narrowly tailored or as leaving open ample alternative channels for communication. As held by the U.S. Court of Appeals for the Sixth Circuit, whose decisions bind Armada, a wholesale ban on lawn signs “is, simply, not sufficiently narrowly tailored to withstand constitutional scrutiny” and is arguably not “‘tailored’ at all.”⁵ While the Sixth Circuit had before it a total ban rather than one that allowed signs for 45 days, the U.S.

¹ ARMADA, MI., *Sign Ordinance*, Section 13.11 (Temporary Signs), [https://cms5.revize.com/revize/villageofarmada/departments/planning_commisson_dda/docs/Sign%20Ordinance%20\(2\).pdf](https://cms5.revize.com/revize/villageofarmada/departments/planning_commisson_dda/docs/Sign%20Ordinance%20(2).pdf).

² Enclosed.

³ 576 U.S. 155 (2015).

⁴ *Cleveland Area Bd. of Realtors v. City of Euclid*, 88 F.3d 382, 388 (6th Cir. 1996).

⁵ *Id.*

District Court for the Eastern District of Michigan, whose decisions also bind Armada, has indicated that a 45-day limit similarly fails under the First Amendment.⁶

Armada's ban also cannot be said to leave open ample alternative means of communication. Yard signs are an important and, for many, irreplaceable means of expressing opinions. As the Supreme Court has explained, signs lack any real substitute, especially in a residential context:

Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute. Even for the affluent, the added costs in money or time of taking out a newspaper advertisement, handing out leaflets on the street, or standing in front of one's house with a hand-held sign may make the difference between participating and not participating in some public debate. Furthermore, a person who puts up a sign at her residence often intends to reach *neighbors*, an audience that could not be reached nearly as well by other means.⁷

Speech from one's own home has special value and protection:

Displaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means. Precisely because of their location, such signs provide information about the identity of the "speaker." As an early and eminent student of rhetoric observed, the identity of the speaker is an important component of many attempts to persuade.⁸

The Supreme Court's recognition of residential signs' importance led one court to conclude that extended durational bans on such signs are unconstitutional and "inconsistent with the 'venerable' status that the Supreme Court has accorded to individual speech emanating from an individual's private residence."⁹ In short, the First Amendment requires Armada to allow its residents to express themselves on their own property for more than 45 days a year.

Numerical restriction

Armada currently restricts residents to one temporary sign for every 50 feet of street frontage (with one additional "bonus sign" when a property is actively marketed for sale or rental). Its proposed ordinance maintains the "bonus sign" rule but would change the general numerical restriction to a flat three per parcel. As with the display period, these restrictions satisfy neither narrow tailoring nor the preservation of ample alternative means of communication.

⁶ *Dimas v. City of Warren*, 939 F.Supp. 554, 557 (E.D. Mich. 1996) ("In addition, it has not been shown that this particular time period of forty-five days, even if evenhandedly applied to all temporary signs, reasonably and adequately provides for the exercise of First Amendment rights.") (cleaned up).

⁷ *City of Ladue v. Gilleo*, 512 U.S. 43, 57 (1994) (internal citations omitted).

⁸ *Id.* at 56–58 (internal citations omitted).

⁹ *Curry v. Prince George's Cnty.*, 33 F. Supp. 2d 447, 454–55 (D. Md. 1999).

Notably, in the Sixth Circuit decision previously mentioned, which struck down an outright ban on lawn signs, the court favorably cited a Fourth Circuit case that invalidated a two-sign-per-parcel restriction under an analysis that is accordingly useful here.¹⁰

The Fourth Circuit noted the significant burden on speech a two-sign limit imposes, observing that communication by signs “is virtually pure speech,”¹¹ and that the restriction prevented residents “from expressing support for more than two candidates when there are numerous contested elections.”¹²

In holding the limit not narrowly tailored to advance the government’s asserted aesthetic and traffic-safety interests, the court, rather than trying to identify some supposedly ideal number of signs, “questioned” the need to limit the number of signs on private property at all—especially given the Supreme Court’s observation that private property owners’ own aesthetic concerns will “keep the posting of signs on their property within reasonable bounds.”¹³

And in holding the two-sign limit failed to provide sufficient alternatives for political speech, the Fourth Circuit rejected as too time-intensive or expensive proposed government alternatives like giving speeches in public places, distributing flyers, door-to-door and public canvassing, and appearing at citizen group meetings.¹⁴ The court noted this “laundry list” of alternatives failed to recognize how the two-sign limit infringed homeowners’ rights, leaving no “viable alternative to the homeowner *on his property*.”¹⁵ Armada’s three-sign limit, while marginally more permissive, suffers all of these same constitutionally fatal flaws.

Area and height restrictions

Armada also fails narrow tailoring in restricting signs to a maximum area of six square feet and height of three feet off the ground, even assuming it has significant interests in aesthetics or traffic safety. The Village’s parsimony in this regard becomes evident through comparison with size limits in its related rules, which allow not only flagpoles but also ground signs accessory to non-residential uses that can range from twenty-four square feet and a six-foot height to thirty-six square feet and a ten-foot height.¹⁶ It is unclear what significant government interests require temporary signs—even in non-residential areas—to be so much smaller and shorter. To the extent Armada is concerned about issues like traffic safety, it can regulate the

¹⁰ *Cleveland Area Bd. of Realtors*, 88 F.3d at 388 (discussing *Arlington Cnty. Republican Comm. v. Arlington Cnty.*, 983 F.2d 587 (4th Cir. 1993)).

¹¹ *Arlington Cnty.*, 983 F.2d at 593 (quoting *Baldwin v. Redwood*, 540 F.2d 1360, 1366 (9th Cir. 1976)).

¹² *Id.* at 594. Further, the court noted, “if two voters living within the same household support opposing candidates, the two-sign limit significantly restricts their ability to express support through sign posting.” *Id.*

¹³ *Id.* (quoting *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 811 (1984)).

¹⁴ *Id.* at 594–95.

¹⁵ *Id.* at 595.

¹⁶ *Sign Ordinance*, *supra* note 1, Section 13.06 (Ground Signs for Non-Residential Uses — Permit Required). The larger size requires a ten-foot setback, while the smaller requires only six feet. *Id.*

ills it seeks to remedy directly, such as by banning signs that obstruct drivers' vision, which would "narrowly tailor" its rules to the problem it seeks to solve.¹⁷

Conclusion

FIRE calls on Armada to amend its sign rules to comply with the First Amendment and would be happy to work with the Village—free of charge—to achieve this constitutionally required goal.

We respectfully request a substantive response to this letter no later than October 7, 2024.

Sincerely,



M. Brennen VanderVeen, Esq.
Program Officer, Public Advocacy

Encl.

¹⁷ That Armada allows residents to apply for a permit to display larger temporary signs does not make the restriction constitutional. The Village still cannot show how requiring advance government permission to put up, for example, a 3-by-3-foot sign is narrowly tailored to serving any government interest. The permit procedure also states decisions on permit applications will not be "based on the applicant's reason for a request, but rather to focus on the impact of the signs on the community." That vague criterion effectively gives Armada unfettered discretion to decide when to grant a permit, which the First Amendment does not allow. See *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130–31 (1992) ("a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license must contain narrow, objective, and definite standards to guide the licensing authority") (cleaned up).

Section 27. Subsection 13.05 B. of Article 13 of the Zoning Ordinance shall be amended to read as follows:

Section 13.05 Building-Mounted Signs for Non-Residential Uses – Permit Required

B. Window signs. Temporary or permanent window signs shall be limited to the street level façade, except when second floor is occupied commercially. The total sign area of all window signs shall not exceed ~~ten (10%)~~ thirty percent (30%) of the total surface area of the level of façade windows under consideration.

Section 28. Subsection 13.11 A. of Article 13 of the Zoning Ordinance shall be amended to read as follows:

Section 13.11 Temporary Signs.

A. Display of Temporary Signs without a Permit. Temporary signs are allowed without a permit in all districts, subject to the following:

1. Display period. Temporary signs may be displayed for a maximum of 45 days per calendar year.
2. Number of permitted signs. ~~One (1)~~ Three (3) temporary signs ~~is~~ are permitted ~~for every 50 feet of street frontage, or fraction thereof per parcel.~~
- a. Bonus sign. On any property actively marketed for sale or rental, one additional temporary sign is permitted per street frontage.
3. Maximum sign area and height. The maximum height of temporary signs shall not exceed three (3) feet in height and the sign area for each sign may not exceed six (6) square feet.

Section 29. Section 17.01 of Article 17 of the Zoning Ordinance shall be amended to read as follows:

ARTICLE 17

SPECIAL APPROVAL USES

Section 17.01 Purpose.

Special approval uses serve an area, interest or purpose that ~~extends~~ has impact beyond the borders of the Village, create particular problems of control in relation to adjoining uses or districts, have detrimental effects upon public health, safety or welfare, or possess other unique characteristics that prevent such uses from being permitted as principal uses in a particular zoning district.