



April 22, 2025

City of Franklin Board of Mayor and Aldermen
109 3rd Avenue South
Franklin, TN 37064

Sent via U.S. Mail and Electronic Mail (CityofFranklin@franklintn.gov)

Dear City of Franklin Mayor and Aldermen:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, is concerned by a Franklin zoning ordinance’s restrictions on temporary signs and flags. The First Amendment protects expression on private property, including through flags and signs. When the government regulates signs based on their content, it must narrowly tailor any restrictions to achieve a compelling government interest.¹ Even when such a regulation does not operate based on the content of signs or flags, it must serve a significant government interest and leave ample alternative channels of communication.² Franklin’s restrictions on temporary signs and flags fail these constitutional standards, and accordingly, Franklin must amend its zoning ordinance.

Franklin’s Regulation of Temporary Signs Based on Content Violates the First Amendment

Franklin defines a temporary sign as a “sign intended for temporary use other than temporary construction site signs and campaign signs.”³ Temporary construction site signs fall under a different provision of Franklin’s zoning ordinance,⁴ while campaign signs are listed as regulated by state statute.⁵ How Franklin regulates any given temporary sign thus depends on its subject matter. The Supreme Court has held that ordinances regulating signs based on their subject matter are inherently content-discriminatory.⁶ Such restrictions must pass strict

¹ *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015).

² *See Cleveland Area Bd. of Realtors v. City of Euclid*, 88 F.3d 382, 388 (6th Cir. 1996).

³ FRANKLIN, TENN., 2025 FRANKLIN ZONING ORDINANCE, ch. 15.18 (2025), <https://web.franklintn.gov/flippingbook/FranklinZoningOrdinance/266/>.

⁴ FRANKLIN, TENN., 2025 FRANKLIN ZONING ORDINANCE, ch. 15.17 (2025), <https://web.franklintn.gov/flippingbook/FranklinZoningOrdinance/266/>.

⁵ FRANKLIN, TENN., 2025 FRANKLIN ZONING ORDINANCE, ch. 15.18 (2025), <https://web.franklintn.gov/flippingbook/FranklinZoningOrdinance/266/> (“Campaign signs are regulated by T.C.A. § 2-7-143”).

⁶ *Reed*, 576 U.S. at 164.

scrutiny, under which they “are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”⁷

The application of strict scrutiny does not hinge on the government lacking benign intent.⁸ Nor does it matter if a local government’s content discrimination arises from trying to follow state law. What matters is whether a restriction is content-based. Because Franklin’s ordinance is content-based, it must satisfy strict scrutiny.

But even setting aside Franklin’s different treatment of temporary construction site signs, any restriction applying to temporary signs other than campaign signs cannot be described as *narrowly* tailored. For example, there is no harm posed by a “This is Trump country” sign that isn’t also posed by a “Vote for Trump” campaign sign, and vice versa. Singling out one but not the other for restriction is purely arbitrary and certainly not narrowly tailored to addressing any problem. Further, even if Franklin had some non-arbitrary reason to distinguish the two, it must be *compelling*, but neither traffic safety nor aesthetics qualify, as “a municipality’s interests in traffic safety and aesthetics . . . have never been held to be compelling.”⁹

Franklin’s restrictions on temporary signs therefore fail strict scrutiny and violate the First Amendment. Moreover, even if treated as content-neutral, the numerical and durational limits still violate the First Amendment, for reasons explained below.

Franklin’s Numerical Limits on Temporary Signs and Flags Violate the First Amendment

Franklin restricts residents to two temporary signs¹⁰ and three flags per lot.¹¹ These numerical restrictions violate the First Amendment as not narrowly tailored to serve significant government interests while leaving open ample alternative channels of communication.

The U.S. Court of Appeals for the Sixth Circuit, the decisions of which bind Franklin, has favorably cited a Fourth Circuit case that invalidated a similar ordinance limiting temporary signs to two per property.¹² In *Arlington County*, the Fourth Circuit began its analysis by holding numerical limits affect speech rather than conduct because “[c]ommunication by signs

⁷ *Id.* at 163, 171.

⁸ *Id.* at 164–65. (“On its face, the Sign Code is a content-based regulation of speech. We thus have no need to consider the government’s purposes for enacting the Code to determine whether it is subject to strict scrutiny.”).

⁹ *McFadden v. City of Bridgeport*, 422 F. Supp. 2d 659, 674 (N.D. W. Va. 2006) (quoting *Whitton v. City of Gladstone*, 54 F.3d 1400, 1408 (8th Cir. 1995); citing *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1268 (11th Cir. 2005)); see also *Curry v. Prince George’s Cnty.*, 33 F. Supp. 2d 447, 452 (D. Md. 1999) (“Again, while recognizing aesthetics and traffic safety to be ‘significant government interests,’ none of these courts found those interests sufficiently compelling to the applicable strict scrutiny test.”).

¹⁰ FRANKLIN, TENN., 2025 FRANKLIN ZONING ORDINANCE, ch. 15.18 (2025), <https://web.franklintn.gov/flippingbook/FranklinZoningOrdinance/266/>.

¹¹ FRANKLIN, TENN., 2025 FRANKLIN ZONING ORDINANCE, ch. 15.9 (2025), <https://web.franklintn.gov/flippingbook/FranklinZoningOrdinance/258/>.

¹² *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)).

and posters is virtually pure speech.”¹³ The court then assumed (without deciding) that the restriction at issue was content-neutral, so it needed to be narrowly tailored and leave open ample alternative means of communication.¹⁴ The limit failed both these requirements.

It lacked narrow tailoring because the county failed to demonstrate a necessity for limiting the number of signs.¹⁵ The court “question[ed] whether the County needs to limit the number of signs on private property to protect aesthetics,” noting the Supreme Court’s observation that “private property owners’ esthetic concerns will keep the posting of signs on their property within reasonable bounds.”¹⁶

Regarding sufficient alternative means of communication, the court rejected as too time-intensive or expensive the government’s proposed alternatives like giving speeches in public places, distributing flyers, door-to-door and public canvassing, and appearing at citizen group meetings.¹⁷ This “laundry list” of alternatives failed to recognize how a two-sign limit infringed homeowners’ rights, leaving no “viable alternative to the homeowner *on his property*.”¹⁸

Franklin’s numerical limits suffer the same constitutional flaws. Its sign restriction is basically identical, and there is no meaningful difference between restricting flags and restricting signs. Further, the court’s holding turned on the character of the restriction, not the specific numerical limit. As such, absent evidence showing that restricting the number of signs and flags is necessary and narrowly tailored to solving an actual problem, Franklin’s ordinance is unlikely to pass constitutional muster even under content-neutral standards.

Franklin’s Durational Limit on Temporary Signs Similarly Violates the First Amendment

Franklin’s zoning ordinance says the duration for temporary public signs is “[n]ot to exceed three months out of every 12-month period.”¹⁹ It is unclear whether this means residents may display each individual sign for only up to three months, or whether residents may display temporary signs only within a cumulative three-month period. In either case, the ordinance is unconstitutional.

If the ordinance limits individual signs to three months but otherwise allows new signs, it is not narrowly tailored. There is no conceivable argument that requiring a resident to take down

¹³ *Arlington Cnty.*, 983 F.2d at 593 (quoting *Baldwin v. Redwood*, 540 F.2d 1360, 1366 (9th Cir. 1976)).

¹⁴ *Id.* at 593–94.

¹⁵ *Id.* at 594.

¹⁶ *Id.* (quoting *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 811 (1984)). The Fourth Circuit also observed that, during the time the preliminary injunction entered below was in force, the government “could not show any specific aesthetic or traffic problems” that arose. *Id.*

¹⁷ *Id.* at 594–95.

¹⁸ *Id.* at 595 (emphasis in the original).

¹⁹ FRANKLIN, TENN., 2025 FRANKLIN ZONING ORDINANCE, ch. 15.18 (2025), <https://web.franklintn.gov/flippingbook/FranklinZoningOrdinance/266/>.

a sign while also allowing him to put up a similar or even identical sign advances aesthetics, traffic safety, or any other government interest, let alone in a narrowly tailored manner.

If the ordinance only allows temporary signs within a cumulative three-month period, it also fails narrow tailoring. The Sixth Circuit invalidated an outright sign ban, holding it “is, simply, not sufficiently narrowly tailored to withstand constitutional scrutiny” and is arguably not “‘tailored’ at all.”²⁰ While Franklin’s limit is not an outright ban, limiting homeowners’ speech to three months essentially functions as an outright ban for three-quarters of the year, which is far more restrictive than necessary to serve any significant government interest.

Franklin also does not leave open ample alternative means of communication. Temporary 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.²¹

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.”²²

Conclusion

To be First Amendment-compliant, Franklin must amend its zoning ordinance. FIRE is happy to work with Franklin—free of charge—to achieve this constitutionally required goal.

We respectfully request a substantive response to this letter no later than May 6, 2025.

Sincerely,



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

²⁰ *Cleveland Area Bd. of Realtors*, 88 F.3d at 388 (6th Cir. 1996).

²¹ *City of Ladue v. Gilleo*, 512 U.S. 43, 57 (1994) (internal citations omitted).

²² *Curry v. Prince George’s Cnty.*, 33 F. Supp. 2d 447, 454–55 (D. Md. 1999).