KTJ
KLEIN, THORPE & JENKINS, LTD.

20 N. Wacker Drive, Ste 1660
Chicago, Illinois 60606-2903
T 312 984 6400 F 312 984 6444

DD 312 984 6420

15010 S. Ravinia Avenue, Ste 10
Orland Park, Illinois 60462-5353
T 708 349 3888 F 708 349 1506

www.ktjlaw.com

MEMORANDUM

TO: Mayor and City Council
City of Park Ridge

FROM: Everette M. Hill, Jr.

DATE: December 2, 2013

RE: Signs

In reviewing the suggested changes to the sign code, it appears that the most difficult issue may be the treatment of electronic message boards (EMBs). I'll be at the meeting on Tuesday to try answer any questions that might arise with respect to these EMBs. However, I'm sending this to you in the hope of providing a few principles upon which to base your thinking, comments, questions and ultimate decisions.

I think that it is important to note, first of all, that the issue of sign regulation is one of the most vexing to come before the U.S. Supreme Court. You have previously heard me refer to the 1981 case of *Metromedia vs. San Diego*. This was an "off premise" advertising case that is cited in virtually every case brought to challenge local sign regulation. This case engendered five separate opinions from the nine person Supreme Court. Then Chief Justice Rehnquist called the various decisions a Tower of Babel. Very little has been accomplished since to decipher the babble.

However, I think the most important principle to bear in mind in trying to construct a fair and defensible sign code is the principle of "content neutrality". The principle of content neutrality should be the polestar in your consideration of EMB regulation. A content-neutral regulation is a restriction that applies to a sign regardless of the content of the message of the sign. A regulation that says a sign may be only 10 sq, ft. in area is content neutral. On the other hand, a regulation that permits a sign in front of a business that says "Enter Here", but prohibits one that says "One Billion Served" is not content neutral.

One of the issues considered by P&Z when they reviewed and discussed the work of the Task Force was whether EMBs could be prohibited everywhere except on the property of governmental entities. In other words, the City, the Park District and the public schools could put their messages on EMBs, but private entities could not. I cautioned against this approach as it is subject to attack on the basis that it is not content neutral. This is because it affords the content of governmental information greater status than the content of private entity information. However, as more than

one of you has pointed out to me, most municipalities allow directional signs in places where signs with other kinds of content are prohibited. Most municipalities have community events content signs where "off premise advertising" content is prohibited. You have pointed out that these types of signs violate the principle of content neutrality, but are seen everywhere.

A second principle to keep in mind is that most "time, place and manner" restrictions are valid so long as the restrictions serve a "legitimate governmental interest". Traffic safety, light pollution and aesthetics have all been held to be legitimate governmental interests when reasonably applied. For this reason, setback requirements, size restrictions, brightness restrictions and even timing restrictions have generally been upheld (so long as they are content neutral).

Some have suggested that EMBs be permitted, but limited to arterial streets and two acre parcels. Each of these two restrictions appears to be content neutral. Therefore, if the Council decides to move in this direction, it must consider whether a legitimate governmental interest is served by these restrictions. Stated another way, what is the governmental interest to be served by saying that an EMB is appropriate on an arterial roadway as opposed to a local street? Likewise, what is the governmental interest that is served by saying that a lot that is 2 acres in size is entitled to an EMB, but a ½ acre lot is not? If we cannot articulate legitimate, affirmative reasons to make these distinctions, the restrictions won't withstand judicial scrutiny.

With respect to EMBs, I would say that a total prohibition on such signs may be easier to defend than a regulation which favors government speech over private speech. Obviously, a total ban is the ultimate content neutral regulation. However, a 1994 U.S. Supreme Court case struck down a local regulation that prohibited all "lawn signs" in residential neighborhoods. On the other hand, a total ban on pole signs was found by the 9th Circuit Court of Appeals to be permissible.

It should also be noted that while content neutrality is the guiding principle in sign regulation, the courts have given municipalities some leeway in navigating these waters. But in cases where a restriction has been held as valid even though it has not passed the content neutrality test, the court has applied what it calls the "strict scrutiny" test. The restriction must be shown to serve a "compelling" governmental interest and do so in the "least restrictive manner" possible. This is in contradistinction to the less stringent test of "legitimate" governmental interest when analyzing the time, place and manner restrictions.

I know that this is all quite confusing. I will answer any questions which are put to me at Tuesday's meeting in the most straightforward manner possible. I will give you my opinion on what I believe will withstand challenge. I'm not giving you this information to hedge my bets and I have pretty high degree of confidence in my

knowledge of this area of the law. But it is a tough area and we are going to be criticized no matter where we come down on some of these issues.