

MEMORANDUM

TO: Mayor and City Council
City of Park Ridge

FROM: Everette M. Hill, Jr.

DATE: February 8, 2013

RE: Sign Amortization

As part of the Sign Task Force's draft of the new Sign Ordinance, they recommended that all non-conforming signs within the City be "amortized" out of existence over a period of two years. Knowing that this is an area of the law that is fraught with constitutional pitfalls, the City Council asked that I provide a memo with respect to an amortization schedule.

After reviewing research that had been produced in our office for other municipalities and reviewing the most recent cases, I have concluded that the amortization schedule should be increased to 4 years.

There has yet to be a case which definitively sets forth rules for municipalities to follow with respect to amortization schedules for non-conforming signs. In 2006, an Illinois appellate court decision out of the Second Appellate District (*Oakbrook Terrace v Suburban Bank and Trust Company*, 364 Ill. App. 3d 506) attempted to do so by categorically stating that non-conforming signs may be eliminated by amortization only pursuant to Illinois Eminent Domain law. This meant that a municipality could eliminate a sign only upon the payment of just compensation. The decision went on to say that home rule municipalities could not establish their own rules in this regard. While this decision was a blow to home rule authority, it at least set a rule for dealing with sign amortization. However, in 2010, the First Appellate District (we are in the First Appellate District) specifically refused to follow the *Oakbrook Terrace* decision and declared it to be bad law with respect to home rule municipalities. This latter decision put amortization schedules back into play.

It is clear, under Illinois law, that an amortization schedule based on the value of the sign; i.e., the greater the value, the longer the period of amortization, is enforceable. Unfortunately, in applying such a schedule on a case by case basis, we would have to have some idea of each sign's value. This eventually involves formulas that take into account original cost, depreciation and overall value of the business. I'm not sure that would be a practical approach.

It is my belief that a 24 month amortization period is sufficiently short so as to invite attack by a business owner or group of business owners. Additionally, I have spoken to one member of the Task Force who reported that the two year period was a recommendation to the Council, "not an absolute", so long as some reasonable period was adopted. I believe that Mr. Testin had the same impression.

I believe that a four year period would be acceptable to our Task Force. I also believe, that if coupled with notices to our businesses which have non-conforming signs (perhaps with reminders going out on an annual basis over the next four years) that a four year amortization period is defensible.