

RECOMMENDATIONS TO ACCOMPANY MIDDLEBURY
SIGN ORDINANCE

In order to provide guidance and assistance to the area residents and businesses of the Town of Middlebury in protecting and promoting the spirit and quality of the Town of Middlebury, the following suggestions concerning appropriate signage are offered by the concerned citizens who worked on the Middlebury Sign Ordinance and which suggestions are endorsed by the Board of Trustees of the Town of Middlebury.

1. Externally illuminated signs are preferred because the character of the illumination produces less brightness and glare. This lighting will compliment rather than compete with decorative street-lighting fixtures.

2. While internally illuminated signs are permitted, it is recommended that light letters or figures on a dark background be used in order to reduce overall brightness and glare.

3. It is recommended that lettering on signs be "serif" style for any letter greater than six (6) inches in height.

ORDINANCE NO. 250-E

**AN ORDINANCE AMENDING THE TOWN OF
MIDDLEBURY SIGN ORDINANCE**

WHEREAS, Indiana Code Sections 36-1-3-1 et. seq. permit any town in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its municipal or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, the Town Council of the Town of Middlebury is the Town legislative body and is by law authorized to adopt ordinances and resolutions for the performance of functions in the Town of Middlebury;

WHEREAS, the Town Council of the Town of Middlebury finds it reasonable and appropriate and determines it to be in the public interest of the Town of Middlebury to amend the Town of Middlebury Sign Ordinance;

WHEREAS, pursuant to the authority vested by Indiana Code Sections 36-1-3-1 et. seq. and Indiana Code Sections 36-5-2-1 et. seq., the Town Council of the Town of Middlebury does hereby amend the Town of Middlebury Sign Ordinance in accordance with the provisions hereinafter stated;

NOW, THEREFORE, BE IT ORDAINED, ORDERED, AND RESOLVED by the Town Council of the Town of Middlebury, Indiana, as follows:

1. Section XI(H) of the Town of Middlebury Sign Ordinance is hereby amended to read as follows:

Attest:

Town Clerk, Town of
Middlebury, Indiana

Published by me according to law this ____ day of _____,
19____.

Town Clerk, Town of Middlebury,
Indiana

ORDINANCE NO. 250-D

AN ORDINANCE AMENDING THE TOWN OF
MIDDLEBURY SIGN ORDINANCE

WHEREAS, Indiana Code Sections 36-1-3-1 et. seq. permit any town in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its municipal or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, the Town Council of the Town of Middlebury is the Town legislative body and is by law authorized to adopt ordinances and resolutions for the performance of functions in the Town of Middlebury;

WHEREAS, the Town Council of the Town of Middlebury finds it reasonable and appropriate and determines it to be in the public interest of the Town of Middlebury to amend the Town of Middlebury Sign Ordinance;

WHEREAS, pursuant to the authority vested by Indiana Code Sections 36-1-3-1 et. seq. and Indiana Code Sections 36-5-2-1 et. seq., the Town Council of the Town of Middlebury does hereby amend the Town of Middlebury Sign Ordinance in accordance with the provisions hereinafter stated;

NOW, THEREFORE, BE IT ORDAINED, ORDERED, AND RESOLVED by the Town Council of the Town of Middlebury, Indiana, as follows:

1. Section V of the Town of Middlebury Sign Ordinance is hereby amended to read as follows:

SECTION V. PORTABLE SIGNS.

No person, group, firm, company, corporation, or other organization shall erect or display a portable sign in the Town of Middlebury for more than twenty-eight (28) days in any calendar year; nor shall any person, firm, group, company, corporation, or other organization erect or display more than one (1) portable sign in the Town of Middlebury at any one time. Furthermore, no person, group, firm, company, corporation, or other organization shall erect or display a portable sign in the Town of Middlebury for more than fourteen (14) consecutive days nor exceed four (4) usages per calendar year and a minimum of thirty (30) days shall be required between each usage. Any person, firm, group, company, corporation, or other organization desiring to erect or display a portable sign in the Town of Middlebury shall file a written notice with the Town of Middlebury at least ten (10) days prior to the date or dates when the sign shall be erected or displayed and stating the date or dates when the sign shall be erected or displayed and the name, address and telephone number of the person, group, firm, company, corporation, or other organization that is responsible for the portable sign. The notice shall be signed by an authorized person for the person, group, firm, company, corporation, or other organization that is responsible for the portable sign. If a portable sign is not removed on the date indicated on the notice, the Town of Middlebury may remove the portable sign at the expense of the person, group, firm, company, corporation, or other

organization that is responsible for the portable sign and impound the portable sign at a charge of Ten Dollars (\$10.00) per day.

2. Section VII of the Town of Middlebury Sign Ordinance is hereby amended to read as follows:

SECTION VII. NON-CONFORMING SIGNS.

Any sign existing and in place in the Town of Middlebury as of December 14, 1988 and which does not comply with the requirements of this Ordinance shall constitute a "non-conforming sign." The use of a non-conforming sign may be continued so long as it remains otherwise legal and conforms to the following requirements:

A. No non-conforming sign shall be enlarged, expanded, or extended so as to occupy a larger or different area than that area occupied as of December 14, 1988.

B. No non-conforming sign shall be moved in whole or in part to any location other than that location occupied as of December 14, 1988.

C. If a non-conforming sign is damaged or destroyed by fire, explosion, wind storm, traffic accident, or other casualty to an extent of seventy-five percent (75%) or more of the replacement cost at the time of such damage or destruction, the damage or destruction shall eliminate the non-conforming status of the sign which shall thereafter be required to comply with the requirements of this Ordinance.

D. If a non-conforming sign is removed for a continuous period of thirty (30) days, the non-conforming status of

the sign shall be eliminated and the sign shall thereafter be required to comply with the requirements of this Ordinance.

E. If a non-conforming sign is replaced, such replacement shall eliminate its non-conforming status and the sign shall thereafter be required to comply with the requirements of this Ordinance.

F. If a non-conforming sign ceases to be used for any reason for a continuous period of six (6) months, the non-conforming status of the sign shall be eliminated and the sign shall thereafter be required to comply with the requirements of this Ordinance.

G. Non-conforming signs which are portable must be removed or made to conform to the provisions of this Ordinance on or before December 15, 1989.

H. Normal day-to-day maintenance and repair of non-conforming signs shall be permitted.

3. Section VIII(H) of the Town of Middlebury Sign Ordinance is hereby amended to read as follows:

SECTION VIII. VARIANCES.

H. Fees. An application for variance shall be accompanied by a fee in the amount of Ten Dollars (\$10.00). All fees shall be paid in cash or by check payable to the Town of Middlebury.

4. Ordinance Number 250-A of the Town of Middlebury which previously amended Section V of the Town of Middlebury Sign Ordinance is hereby repealed.

5. Ordinance Number 250-C of the Town of Middlebury which previously amended Section VII of the Town of Middlebury Sign Ordinance is hereby repealed.

6. All other terms and provisions of the Town of Middlebury Sign Ordinance and all prior unrepealed amendments thereto shall remain in effect and unchanged.

7. This Ordinance shall take effect immediately upon publication in accordance with the requirements of law.

ORDAINED AND ADOPTED this 5th day of July, 1994.

TOWN COUNCIL OF THE TOWN OF
MIDDLEBURY, INDIANA

By Greg Raymond
Greg Raymond, President

By Richard D. Hochstetler
Richard D. Hochstetler

By Charles Mather
Charles Mather

By Thurmond Albert
Thurmond Albert

By Donald Anderson
Donald Anderson

Attest:

Dolores Weaver
Dolores Weaver, Clerk-Treasurer
of Town of Middlebury, Indiana

EXAMINED AND APPROVED THIS 5th DAY OF July, 1994.

Greg Raymond
Greg Raymond, President
Town Council of Town of
Middlebury, Indiana

ORDINANCE NO. 250-B

AN ORDINANCE AMENDING THE TOWN OF MIDDLEBURY SIGN ORDINANCE

WHEREAS Indiana Code Sections 36-1-3-1 et. seq. permit any town in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its municipal or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or preempted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS the Town Council of the Town of Middlebury, Indiana adopted the Town of Middlebury Sign Ordinance (Ordinance No. 250-A) on September 4, 2001;

WHEREAS the Town Council of the Town of Middlebury, Indiana desires to amend the Town of Middlebury Sign Ordinance in accordance with the terms and provisions of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED, ORDERED, AND RESOLVED by the Town Council of the Town of Middlebury, Indiana as follows:

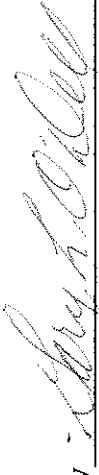
1. Signage Review Board. Section X of the Town of Middlebury Sign Ordinance is hereby replaced and superseded by the following provisions:

SECTION X. SIGNAGE REVIEW BOARD. There is hereby created and established a Signage Review Board which shall consist of three (3) members including one (1) business representative, one (1) Town of Middlebury representative, and one (1) citizen representative. All members of the Signage Review Board shall be appointed by the Town Council and shall serve at its pleasure. The Signage Review Board shall meet, as necessary, to review sign permit referrals and recommend action to the Middlebury Town Manager and to review variance requests and recommend action to the Town Council.

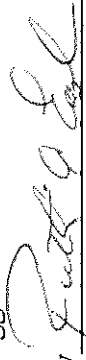
2. Amendatory Effect. This Ordinance shall take effect immediately upon adoption and shall be applicable to the initial members of the Signage Review Board appointed after September 4, 2001 and subsequent appointees to the Signage Review Board. Except as provided herein, all other terms and provisions of the Town of Middlebury Sign Ordinance (Ordinance No. 250-A) shall remain unchanged and in full force and effect.

ORDAINED AND ADOPTED this 5th day of November, 2001.

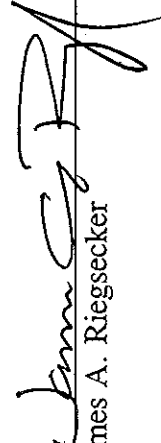
TOWN COUNCIL OF THE TOWN OF
MIDDLEBURY, INDIANA

By 
Gary L. O'Dell, President

By 
Gregg Fore

By 
Ruth A. Eash

By 
James L. Miller

By 
James A. Riegsecker

Attest:


Sally A. Nusbaum, Clerk-Treasurer
Town of Middlebury

ORDINANCE NO. 250-A

TOWN OF MIDDLEBURY SIGN ORDINANCE

WHEREAS Indiana Code Sections 36-1-3-1 et. seq. permit any town in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its municipal or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or preempted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS there is a significant relationship between the standards used in displaying signs and the aesthetics, public safety, value, and economic stability of the surrounding area;

WHEREAS the reasonable display of signs is necessary as a public service and necessary to the conduct of competitive commerce and industry;

WHEREAS there is a spirit and quality about the Town of Middlebury, Indiana, that is best described as rural, turn of the century, which is reflected in the setting of the Town and the original architecture of Main Street in the business district;

WHEREAS it is very important that this spirit and quality about the Town of Middlebury, Indiana be maintained;

WHEREAS reasonable and appropriate regulations establishing minimum standards for the display of signs with respect to size, location, design, style, and lighting can and should enhance the spirit and quality about the Town of Middlebury, Indiana;

WHEREAS the Town Council of the Town of Middlebury finds that it is in the public interest of the Town of Middlebury to maintain and continue an ordinance establishing standards for signs in the Town of Middlebury;

WHEREAS in consideration of public safety, aesthetics, economic stability, and the value of property, the Town Council of the Town of Middlebury finds that it is in the public interest of the Town of Middlebury to maintain and continue a sign ordinance;

WHEREAS pursuant to the authority vested by Indiana Code Sections 36-1-3-1 et. seq. and Indiana Code Sections 36-5-2-1 et. seq., the Town Council of the Town of Middlebury,

Indiana desires to maintain and continue an ordinance establishing standards for signs in the Town of Middlebury, Indiana in accordance with the provisions hereinafter stated;

NOW, THEREFORE, BE IT ORDAINED, ORDERED, AND RESOLVED by the Town Council of the Town of Middlebury, Indiana, as follows:

SECTION I. TITLE.

This Town of Middlebury Ordinance may be referred to as the "Town of Middlebury Sign Ordinance."

SECTION II. DEFINITIONS.

- A. Building Frontage. "Building frontage" shall refer to a building on real estate that immediately abuts and borders on a public right-of-way and shall mean the boundary line or lines of the building which face or lie along a public right-of-way.
- B. Lot Frontage. "Lot frontage" shall refer to a tract of real estate that immediately abuts and borders on a public right-of-way and shall mean the boundary line or lines of the tract which face or lie along a public right-of-way.
- C. Sign. A "sign" shall mean any device, display, or structure readily visible from public property or public right-of-way and used primarily for visual communication for the purpose of, or having the result of, bringing the subject thereof to the attention of a person, group of persons, or the public generally. A sign includes, but is not limited to, any and all reading matter, letters, numerals, pictorial representations, emblems, trademarks, flags, banners, streamers, pennants, inscriptions, and patterns whether affixed to a building, painted, or otherwise depicted on a building, or separate from any building. The term "sign" shall also include "window signs."
- D. Surface Area. The "surface area" of a sign shall include all of the display area of the sign. Frames and structural members shall not be included in the computation of surface area. Both sides of a two-sided sign shall be counted as the display area of a sign.
- E. Window Sign. A "window sign" shall mean:
- (i) Any sign affixed to or in contact with an exterior window; or
 - (ii) Any interior sign within twelve (12) inches of an exterior window.

F. Portable Sign. A "portable sign" shall mean any sign designed or constructed to be easily moved from one location to another, including signs mounted upon or designed to be mounted on a trailer, wheeled carriage, or other non-motorized mobile structure. A portable sign which has its trailer and/or wheels removed shall still be considered a portable sign.

SECTION III. SPECIFICATIONS FOR SIGNS.

The following specifications for signs shall apply in the Town of Middlebury, Indiana:

A. Projection.

- (i) Parallel Signs. All exterior signs attached to buildings and which are parallel or substantially parallel to the wall of the building shall extend no more than eighteen (18) inches horizontally from the wall of the building. No message may be contained on any portion of the sign supports.
- (ii) Non-Parallel Signs. All exterior signs attached to buildings and which are not parallel or substantially parallel to the wall of the building shall project no more than forty-two (42) inches horizontally from the wall of the building. Notwithstanding the foregoing limitation, exterior signs attached to buildings and which are not parallel or substantially parallel to the wall of the building shall not be subject to the forty-two (42) inch limitation so long as the sign is thirty-five (35) feet or more from the centerline of a public right-of-way. No message may be contained on any portion of a sign supports of a non-parallel sign.

- (iii) All Signs. Signs shall not project across property lines and shall not project more than thirty-six (36) inches into a public right-of-way. Such signs may be subject to the control, regulation, and jurisdiction of other authorities.

B. Clearance. All exterior signs attached to the wall of a building must provide a minimum of seven (7) feet, six (6) inches clearance above grade.

C. Height. No sign shall extend above the height of the building to which it is attached.

D. Size Limitation for Signs Attached to Buildings. Subject to the provisions of this Ordinance, signs may be attached to buildings in accordance with the following limitations:

- (i) For buildings having building frontages of fifty (50) feet or less, the surface area of all exterior signs attached to the building shall not exceed two (2) square feet per lineal foot of building frontage or seventy-five (75) square feet, whichever is less, for each frontage on a public right-of-way; provided, however, that the surface area of all such signs shall not exceed, in the aggregate, seventy-five (75) square feet on any single building.

- (ii) For buildings having building frontages in excess of fifty (50) feet, the surface area of all exterior signs attached to the building shall not exceed one and one-half (1 1/2) square feet per lineal foot of building frontage or one hundred twenty-five (125) square feet, whichever is less, for each frontage on a public right-of-way; provided, however, that the surface area of all such signs shall not exceed, in the aggregate, one hundred twenty-five (125) square feet on any single building.

The total amount of all signage available for a building shall be allocated among the persons or firms occupying the building in proportion to the total square footage of floor space that the person or firm occupies in proportion to the total square footage of floor space in the entire building.

E. Limitations for Signs Not Attached to Buildings.

Subject to the provisions of this Ordinance, signs which are not attached to a building shall be permitted in addition to the signs permitted under Section III(D) above in accordance with the following limitations:

- (i) Signs not attached to a building shall be located a minimum of ten (10) feet from any building or other structure on the property.
- (ii) Signs not attached to a building shall be located a minimum of ten (10) feet from the curb line of all public streets, highways, and alleys.
- (iii) Signs located within ten (10) feet of the curb line of any intersection shall be less than thirty (30) inches high or shall provide a minimum of ten (10) feet clearance above grade. In determining clearance, the frames and structural members of the sign shall not be considered.
- (iv) The surface area of signs which are not attached to a building shall be limited in accordance with the following:

- (a) For each lineal foot of lot frontage, a tract of real estate shall have three-fourths (3/4) of a square foot of permissible signage area.
- (b) The maximum surface area of any sign which is not attached to a building shall be two hundred fifty (250) square feet.
- (c) The total amount of signage available for a tract of real estate shall be allocated among the persons or firms occupying the real estate in accordance with the percentage of the real estate that the person or firm occupies.
- (v) Signs not attached to a building shall have a minimum area of landscape treatment encircling the base at least equal in square footage to one-half (1/2) the surface area of the sign. All such signs existing and in place upon the effective date of this Ordinance are exempt from this requirement.

F. Window Signs. Subject to the provisions of this Ordinance, permanent window signs shall be permitted in accordance with the following limitations:

- (i) No window sign shall occupy more than thirty-five percent (35%) of the total area of the window in which the sign is located.
- (ii) Window signs shall consist of letters or numerals on the window surface not more than six (6) inches high in any color except "fluorescent" or "neon" colors.
- (iii) The surface area of window signs shall not be included in the overall computation of allowable signage as determined by the provisions of Sections III(D) and (E) above.

G. Letters on Signs. Except as provided otherwise in this Ordinance, lettering and numerals on signs shall not exceed eighteen (18) inches in height, lettering and a sign is located more than one hundred eighty (180) feet from the centerline of all public highways, lettering and numerals may be but shall not exceed twenty-four (24) inches in height.

H. Moving Parts. No sign or any part of a sign which is visible from public property or a public right-of-way shall move or create the illusion of movement in any manner. This provision shall not be interpreted to include hour and minute hands of a clock.

I. Illumination. Any illuminated sign or lighting devices visible from public property or a public right-of-way shall employ only lights of constant intensity, shall not be illuminated by or contain flashing, intermittent, rotating, or moving lights, or lights creating the illusion of movement.

J. Intensity of Light. No sign shall be illuminated with such intensity as to adversely affect the use and enjoyment of nearby public or private property.

K. Awnings. Awnings in compliance with the Building Code and Zoning Ordinance in force for the Town of Middlebury shall be permitted. If the awning is used as a sign, only the surface area of the awning shall be counted as part of the total surface area allowed for the building under Section III(D) above.

L. Painted Wall Signs. Signs painted or applied directly on the surface of an exterior wall of a building are prohibited.

SECTION IV. EXEMPT SIGNS.

A. Municipal, County, and State-Owned Signs. Traffic control signals and signs, street signs, flags, emblems, memorials, plaques, and other signs designed and intended for the safety and convenience of the public may be located as authorized by the appropriate municipal, County, and State officials with the jurisdiction therefor.

B. Directional and Information Signs. Signs not exceeding six (6) square feet in surface area displayed strictly for the direction, safety, or convenience of the public, including signs which identify restrooms, parking area entrances or exits, freight entrances, addresses, or similar signs are exempt from the provisions of Section III(D) and (E) of this Ordinance.

C. Street Numbers. Street numbers are exempt from the provisions of Section III(D) of this Ordinance but shall not exceed six (6) inches in height.

SECTION V. PORTABLE SIGNS.

No person, group, firm, company, corporation, or other organization shall erect or display a portable sign in the Town of Middlebury for more than twenty-eight (28) days in any calendar year; nor shall any person, firm, group, company, corporation, or other organization erect or

display more than one (1) portable sign in the Town of Middlebury at any one time. Furthermore, no person, group, firm, company, corporation, or other organization shall erect or display a portable sign in the Town of Middlebury for more than fourteen (14) consecutive days nor exceed four (4) usages per calendar year and a minimum of thirty (30) days shall be required between each usage. Any person, firm, group, company, corporation, or other organization desiring to erect or display a portable sign in the Town of Middlebury shall file a written notice with the Town of Middlebury at least ten (10) days prior to the date or dates when the sign shall be erected or displayed and stating the date or dates when the sign shall be erected or displayed and the name, address and telephone number of the person, group, firm, company, corporation, or other organization that is responsible for the portable sign. The notice shall be signed by an authorized person for the person, group, firm, company, corporation, or other organization that is responsible for the portable sign. If a portable sign is not removed on the date indicated on the notice, the Town of Middlebury may remove the portable sign at the expense of the person, group, firm, company, corporation, or other organization that is responsible for the portable sign and impound the portable sign at a charge of Ten Dollars (\$10.00) per day.

SECTION VI. MAINTENANCE OF SIGNS.

A. Construction and Installation. All signs shall be constructed and installed according to the provisions of State and local building and electrical codes.

B. Maintenance. All signs shall be maintained in a neat and attractive condition by their owners. Frames and structural supports shall be kept treated or painted to prevent rust, deterioration, rotting, and corrosion.

C. Dangerous or Unlawful Signs. When any sign becomes insecure, in danger of falling, or otherwise unsafe, or if any sign shall be unlawfully installed, erected, or maintained in violation of any of the provisions of this Ordinance, the owner thereof or person or firm maintaining the sign shall upon written notice by the Town of Middlebury make such sign conform to the provisions of this Ordinance or remove it within ten (10) working days.

D. Misleading Signs. Any sign which advertises a business, product, or service which is no longer being conducted, sold, or provided from the premises where the sign is located or which refers to an event or occasion that has already occurred shall be taken down and removed by the owner, agent, or person having beneficial use of the property upon which the sign is located within twenty (20) working days after written notice from the Town of Middlebury.

E. Legal Remedies. Upon the failure of any person or firm to comply with the terms and provisions of a written notice served upon them under the provisions of Sections VI(C) and (D) above, the Town of Middlebury shall be entitled to file an action in the Circuit or Superior Courts of the County of Elkhart in order to obtain an order directing the person or firm to comply with the requirements of this Ordinance or authorizing the Town of Middlebury to remove or cause the offending sign to conform to the requirements of this Ordinance and assessing the costs and expenses thereof to the responsible person or firm.

SECTION VII. NON-CONFORMING SIGNS.

Any sign existing and in place in the Town of Middlebury as of December 14, 1988 and which does not comply with the requirements of this Ordinance shall constitute a "non-conforming sign." The use of a non-conforming sign may be continued so long as it remains otherwise legal and conforms to the following requirements:

- A. No non-conforming sign shall be enlarged, expanded, or extended so as to occupy a larger or different area than that area occupied as of December 14, 1988.
- B. No non-conforming sign shall be moved in whole or in part to any location other than that location occupied as of December 14, 1988.
- C. If a non-conforming sign is damaged or destroyed by fire, explosion, wind storm, traffic accident, or other casualty to an extent of seventy-five percent (75%) or more of the replacement cost at the time of such damage or destruction, the damage or destruction shall eliminate the non-conforming status of the sign which shall thereafter be required to comply with the requirements of this Ordinance.

D. If a non-conforming sign is removed for a continuous period of thirty (30) days, the non-conforming status of the sign shall be eliminated and the sign shall thereafter be required to comply with the requirements of this Ordinance.

E. If a non-conforming sign is replaced, such replacement shall eliminate its non-conforming status and the sign shall thereafter be required to comply with the requirements of this Ordinance.

F. If a non-conforming sign ceases to be used for any reason for a continuous period of six (6) months, the non-conforming status of the sign shall be eliminated and the sign shall thereafter be required to comply with the requirements of this Ordinance.

G. Non-conforming signs which are portable must be removed or made to conform to the provisions of this Ordinance on or before December 15, 1989.

H. Normal day-to-day maintenance and repair of non-conforming signs shall be permitted.

SECTION VIII. VARIANCES.

A. The Town Council of the Town of Middlebury may grant variances under this Ordinance provided the Town Council makes a finding of fact based upon the standards hereinafter prescribed that the application of the strict letter of this Ordinance will create practical difficulties or particular hardships for the owners or long-term lessees of buildings and/or land under the jurisdiction of this Ordinance.

B. Application for Variance. Applications for variances may be filed by any person having an ownership or leasehold interest in any real estate in the area under the jurisdiction of this Ordinance. The application for variance shall be filed with the Town Clerk who shall forward a copy of the application to the Town Council and the Signage Review Board. The application shall be submitted a minimum of twenty-one (21) days prior to the regularly scheduled Town Council meeting in order to be included on the agenda. The applicant shall submit such number of copies of the application as the Town Council may prescribe from time to

time. The application shall be in such form and contain such information as the Town Council may prescribe from time to time but shall in all instances contain the following:

- (i) The name and address of the applicant and the owner of the property in question;
- (ii) A legal description and street address of the property in question;
- (iii) A concise written statement explaining the nature of the variance being sought and justification for the variance in accordance with the standards set forth in Section VIII(E) and (F) below; and
- (iv) Photographs and/or scale drawings as may be appropriate.

C. Notice and Hearing. The Town Council shall hold a public hearing following proper public notice for each variance request as part of its regular public meeting schedule. Following the hearing, the Town Council shall transmit to the Town Clerk and Signage Review Board a written report giving its findings.

D. Variance Standards for Existing Signs. With respect to existing signs, a variance from the amortization regulations of this Ordinance shall not be granted unless evidence is presented and the Town Council finds that:

- (i) Because of the age, cost, or unique characteristics of the sign(s) in question, the strict enforcement of the amortization regulations as set forth in this Ordinance would impose an undue hardship on the applicant;
- (ii) The proposed variance would not merely serve as a convenience to the applicant but will alleviate some demonstrable hardship not generally applicable to other properties in the area under the jurisdiction of this Ordinance;
- (iii) The waiver of amortization requirements or an extension in the period of amortization would not have a detrimental affect on the Town of Middlebury, Indiana; and
- (iv) The proposed variance is in harmony with the spirit and intent of this Ordinance.

E. Variance Standards for New Signs. With respect to the erection of new signs, a variance from the regulations set forth in this Ordinance shall not be granted unless evidence is presented and the Town Council finds that:

- (i) The proposed variance will not be materially detrimental to the Town of Middlebury, Indiana or other nearby property;
- (ii) The property in question will suffer some demonstrable and irreversible hardship if made to conform to the strict letter of this Ordinance;
- (iii) The alleged hardship has not been created by anyone presently having a proprietary or leasehold interest in the property; and
- (iv) The proposed variance is in harmony with the spirit and intent of this Ordinance.

F. Action by Town Council. After receiving the report of the Signage Review Board and following the hearing as required above, the Town Council may grant the proposed variance, may deny the proposed variance, or may refer the proposed variance back to the Signage Review Board for further consideration.

G. Fees. An application for variance shall be accompanied by a fee in the amount of Ten Dollars (\$10.00). All fees shall be paid in cash or by check payable to the Town of Middlebury.

H. Administrative Remedies. It is specifically provided that the failure to apply for and seek a variance from the requirements of this Ordinance under this Section shall work as a bar to challenging this Ordinance or its requirements in Court.

SECTION IX. PERMITS, APPLICATION, ENFORCEMENT AND PENALTIES.

A. Permit Requirements. No person, group, firm, company, corporation, or other organization shall erect, construct, or display a non-portable sign in the Town of Middlebury not being displayed at the time this Ordinance Amendment is adopted without a permit from the Town of Middlebury. Furthermore, no person, group, firm, company, corporation, or other organization shall replace an existing non-portable sign in the Town of Middlebury after this

Ordinance Amendment is adopted without a permit. Obtaining a construction, building, or other permit from any federal, state, or local governmental agency shall not obviate or eliminate the necessity of obtaining a sign permit required by this Section of the Town of Middlebury Sign Ordinance.

B. Application Procedure. The application for a sign permit shall be filed with the Town Clerk who shall forward the application to the Middlebury Town Manager. The application shall contain such information as the Town Council and the Middlebury Town Manager may prescribe from time to time, but shall in all instances contain the following:

- (i) The name and address of the applicant and the owner of the property in question;
- (ii) A legal description and street address of the property in question;
- (iii) A concise written statement indicating how the sign complies with this Ordinance; and
- (iv) Photographs and/or scale drawings as may be appropriate.

C. Fees. An application for a permit under this Section shall be accompanied by a fee in the amount of Twenty-five Dollars (\$25.00).

D. No Notice or Hearing. No notice or hearing is required for the issuance by the Middlebury Town Manager of a sign permit issued in compliance with this Section. The Middlebury Town Manager may grant sign permits provided he determines that the application demonstrates that the sign will be in compliance with this Town of Middlebury Sign Ordinance. The Middlebury Town Manager may refer the application to the Signage Review Board for its review and recommendation. Following review of the application and any investigation or referral deemed appropriate, the Middlebury Town Manager shall transmit to the Town Clerk a written report giving his determination and approving the permit application as submitted, denying the permit application as submitted, or approving the permit application subject to certain stated terms, conditions, provisions, or changes.

E. Appeals. Any person, group, firm, company, corporation, or other organization adversely affected by a decision of the Middlebury Town Manager with respect to a sign permit application may present an appeal to the Town Council of the Town of Middlebury. The appeal shall be filed with the Town Clerk who shall forward a copy of the appeal to the Town Council and to the Middlebury Town Manager. The appeal shall be submitted a minimum of twenty-one (21) days prior to the regularly scheduled Town Council meeting in order to be included on the agenda. The appellant shall submit such number of copies of the appeal as the Town Council may prescribe from time to time. The appeal shall be in such form and contain such information as the Town Council may prescribe from time to time, but shall in all instances contain the following:

- (i) A copy of the sign permit application;
- (ii) A copy of the written report of the Middlebury Town Manager; and
- (iii) A concise written statement explaining the nature of the appeal, identifying the issues involved, and presenting the position of the appellant and any alleged error made by the Middlebury Town Manager.

The Town Council shall hold a public hearing following proper public notice for each appeal as part of its regular public meeting schedule. Following the hearing, the Town Council shall transmit to the Town Clerk and the Middlebury Town Manager a written report giving its findings and affirming, modifying, or reversing the decision of the Middlebury Town Manager.

F. Administrative Remedies. It is specifically provided that the failure to apply for and seek a permit under this Section as well as the failure to appeal any adverse decision of the Middlebury Town Manager to the Town Council under this Section shall work as a bar in challenging this Ordinance or its requirements in court.

SECTION X. SIGNAGE REVIEW BOARD. There is hereby created and established a Signage Review Board which shall consist of three (3) members including one (1) business representative, one (1) Town of Middlebury representative, and one (1) citizen representative. All members shall be residents of the area under the jurisdiction of this Ordinance and shall be appointed by the Town Council of the Town of Middlebury. With respect to the

initial members of the Signage Review Board after the adoption of this Ordinance, the first appointee shall serve a one (1) year term, the second appointee shall serve a two (2) year term, and the third appointee shall serve a three (3) year term. Subsequent appointees shall serve three (3) year terms unless appointed to complete an already existing term in which case the appointee shall only serve out the remainder of that term. The Signage Review Board shall meet, as necessary, to review sign permit referrals and recommend action to the Middlebury Town Manager and to review variance requests and recommend action to the Town Council of the Town of Middlebury.

SECTION XI. ENFORCEMENT AND PENALTIES. Ordinance violations shall be enforced under proceedings brought pursuant to Indiana Code §34-28-5 et seq., as amended, in a manner similar to that of infractions with complaint and summons described in Indiana Code §9-30-3-6, as amended, issued by the Middlebury Police Department or other police agency. Any person who is found to have violated any provision of this Ordinance shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00) for each separate offense. Each day's failure to comply with any provision of this Ordinance shall constitute a separate offense.

SECTION XII. OVERLAPPING REGULATIONS.

The Elkhart County Zoning Ordinance, including the provisions thereof pertaining to signs, remains valid and in full force and effect in the Town of Middlebury. Where the requirements imposed by any provision of this Ordinance differ from the requirements imposed by the Elkhart County Zoning Ordinance or any other local ordinance, law, resolution, rule, or regulation, the most restrictive provision shall apply.

SECTION XIII. SEVERABILITY.

The provisions of this Ordinance are hereby declared to be severable. If any provision contained in this Ordinance shall be declared to be invalid or void for any reason, such declaration shall not affect the remaining portions of this Ordinance which shall remain in full force and effect.

SECTION XIV. EFFECTIVE DATE.

This Ordinance shall take effect immediately following publication in accordance with the requirements of law and shall replace and supercede Ordinance Number 250 of the Town of Middlebury, Indiana.

ORDAINED AND ADOPTED this 4th day of September, 2001.

TOWN COUNCIL OF THE TOWN OF
MIDDLEBURY, INDIANA

By 
Gary L. O'Dell, President

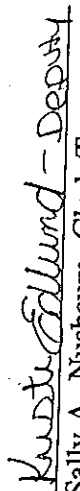
By 
Gregg Fore

By 
Ruth A. Eash

By 
James L. Miller

By 
James A. Riegsecker

Attest:


Sally A. Nusbaum, Clerk-Treasurer
Town of Middlebury

RECOMMENDATIONS TO ACCOMPANY MIDDLEBURY SIGN ORDINANCE

In order to provide guidance and assistance to the area residents and businesses of the Town of Middlebury in protecting and promoting the spirit and quality of the Town of Middlebury, the following suggestions concerning appropriate signage are offered by the concerned citizens who worked on the Middlebury Sign Ordinance and which suggestions are endorsed by the Town Council of the Town of Middlebury.

1. Externally illuminated signs are preferred because the character of the illumination produces less brightness and glare. This lighting will compliment rather than compete with decorative street-lighting fixtures.
2. While internally illuminated signs are permitted, it is recommended that light letters or figures on a dark background be used in order to reduce overall brightness and glare.
3. It is recommended that lettering on signs be "serif" style for any letter greater than six (6) inches in height.

ORDINANCE NO. 250

AN ORDINANCE ESTABLISHING STANDARDS
FOR SIGNS IN MIDDLEBURY

WHEREAS, Indiana Code Sections 36-1-3-1 et. seq. permit any town in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its municipal or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or as not expressly granted by any other law to another governmental entity;

WHEREAS, there is a significant relationship between the standards used in displaying signs and the aesthetics, public safety, value, and economic stability of the surrounding area;

WHEREAS, the reasonable display of signs is necessary as a public service and necessary to the conduct of competitive commerce and industry;

WHEREAS, there is a spirit and quality about the Town of Middlebury, Indiana, that is best described as rural, turn of the century, which is reflected in the setting of the Town and the original architecture of Main Street in the business district;

WHEREAS, it is very important that this spirit and quality about the Town of Middlebury, Indiana be maintained;

WHEREAS, reasonable and appropriate regulations establishing minimum standards for the display of signs with respect to size, location, design, style, and lighting can and should enhance the spirit and quality about the Town of Middlebury, Indiana;

WHEREAS, the Board of Trustees of the Town of Middlebury find that it is in the public interest of the Town of Middlebury to establish and create an ordinance establishing standards for signs in the Town of Middlebury;

WHEREAS, in consideration of public safety, aesthetics, economic stability, and the value of property, the Board of Trustees of the Town of Middlebury find that it is in the public interest of the Town of Middlebury to establish and create a sign ordinance;

WHEREAS, pursuant to the authority vested by Indiana Code Sections 36-1-3-1 et. seq. and Indiana Code Sections 36-5-2-1 et. seq., the Board of Trustees of the Town of Middlebury, Indiana desire to establish and create an ordinance establishing standards for signs in the Town of Middlebury, Indiana subject to the provisions hereinafter stated;

NOW, THEREFORE, BE IT ORDAINED, ORDERED, AND RESOLVED by the Board of Trustees of the Town of Middlebury, Indiana, as follows:

SECTION I. TITLE.

This Town of Middlebury Ordinance may be referred to as the "Town of Middlebury Sign Ordinance."

SECTION II. DEFINITIONS.

A. Building Frontage. "Building frontage" shall refer to a building on real estate that immediately abuts and borders on a public right-of-way and shall mean the boundary line or lines of the building which face or lie along a public right-of-way.

B. Lot Frontage. "Lot frontage" shall refer to a tract of real estate that immediately abuts and borders on a public right-of-way and shall mean the boundary line or lines of the tract which face or lie along a public right-of-way.

C. Sign. A "sign" shall mean any device, display, or structure readily visible from public property or public right-of-way and used primarily for visual communication for the purpose of, or having the result of, bringing the subject thereof to the attention of a person, group of persons, or the public generally. A sign includes, but is not limited to, any and all reading matter, letters, numerals, pictorial

representations, emblems, trademarks, flags, banners, streamers, pennants, inscriptions, and patterns whether affixed to a building, painted, or otherwise depicted on a building, or separate from any building. The term "sign" shall also include "window signs."

D. Surface Area. The "surface area" of a sign shall include all of the display area of the sign. Frames and structural members shall not be included in the computation of surface area. Both sides of a two-sided sign shall be counted as the display area of a sign.

E. Window Sign. A "window sign" shall mean:

- (i) Any sign affixed to or in contact with an exterior window; or
- (ii) Any interior sign within twelve (12) inches of an exterior window.

F. Portable Sign. A "portable sign" shall mean any sign designed or constructed to be easily moved from one location to another, including signs mounted upon or designed to be mounted on a trailer, wheeled carriage, or other non-motorized mobile structure. A portable sign which has its trailer and/or wheels removed shall still be considered a portable sign.

SECTION III. SPECIFICATIONS FOR SIGNS.

The following specifications for signs shall apply in the Town of Middlebury, Indiana:

A. Projection.

(i) Parallel Signs: All exterior signs attached to buildings and which are parallel or substantially parallel to the wall of the building shall extend no more than eighteen (18) inches horizontally from the wall of the building. No message may be contained on any portion of the sign supports.

(ii) Non-Parallel Signs: All exterior signs attached to buildings and which are not parallel or substantially parallel to the wall of the building shall project no more than forty-two (42) inches horizontally from the wall of the building. Notwithstanding the foregoing limitation, exterior signs attached to buildings and which are not parallel or substantially parallel to the wall of the building shall not be subject to the forty-two (42) inch limitation so long as the sign is thirty-five (35)

feet or more from the centerline of a public right-of-way. No message may be contained on any portion of the sign supports of a non-parallel sign.

(iii) All Signs: Signs shall not project across property lines and shall not project more than thirty-six (36) inches into a public right-of-way. Such signs may be subject to the control, regulation, and jurisdiction of other authorities.

B. Clearance. All exterior signs attached to the wall of a building must provide a minimum of seven (7) feet, six (6) inches clearance above grade.

C. Height. No sign shall extend above the height of the building to which it is attached.

D. Size Limitations for Signs Attached to Buildings. Subject to the provisions of this Ordinance, signs may be attached to buildings in accordance with the following limitations:

(i) For buildings having building frontages of fifty (50) feet or less, the surface area of all exterior signs attached to the building shall not exceed two (2) square feet per lineal foot of building frontage or seventy-five (75) square feet, whichever is less, for each frontage on a public right-of-way; provided, however, that the surface area of all such signs shall not exceed, in the aggregate, seventy-five (75) square feet on any single building.

(ii) For buildings having building frontages in excess of fifty (50) feet, the surface area of all exterior signs attached to the building shall not exceed one and one-half (1-1/2) square feet per lineal foot of building frontage or one hundred twenty-five (125) square feet, whichever is less, for each frontage on a public right-of-way; provided, however, that the surface area of all such signs shall not exceed, in the aggregate, one hundred twenty-five (125) square feet on any single building.

The total amount of all signage available for a building shall be allocated among the persons or firms occupying the building in proportion to the total square footage of floor space that the person or firm occupies in proportion to the total square footage of floor space in the entire building.

E. Limitations for Signs Not Attached to Buildings. Subject to the provisions of this Ordinance, signs which are not attached to a building shall be permitted in addition to the signs permitted under Section III(D) above in accordance with the following limitations:

(i) Signs not attached to a building shall be located a minimum of ten (10) feet from any building or other structure on the property.

(ii) Signs not attached to a building shall be located a minimum of ten (10) feet from the curb line of all public streets, highways, and alleys.

(iii) Signs located within ten (10) feet of the curb line of any intersection shall be less than thirty (30) inches high or shall provide a minimum of ten (10) feet clearance above grade. In determining clearance, the frames and structural members of the sign shall not be considered.

(iv) The surface area of signs which are not attached to a building shall be limited in accordance with the following:

(a) For each lineal foot of lot frontage, a tract of real estate shall have three-fourths ($3/4$) of a square foot of permissible signage area.

(b) The maximum surface area of any sign which is not attached to a building shall be two hundred fifty (250) square feet.

(c) The total amount of signage available for a tract of real estate shall be allocated among the persons or firms occupying the real estate in accordance with the percentage of the real estate that the person or firm occupies.

(v) Signs not attached to a building shall have a minimum area of landscape treatment encircling the base at least equal in square footage to one-half ($1/2$) the surface area of the sign. All such signs existing and in place upon the effective date of this Ordinance are exempt from this requirement.

F. Window Signs. Subject to the provisions of this Ordinance, permanent window signs shall be permitted in accordance with the following limitations:

(i) No window sign shall occupy more than thirty-five percent (35%) of the total area of the window in which the sign is located.

(ii) Window signs shall consist of letters or numerals on the window surface not more than six (6) inches high in any color except "fluorescent" or "neon" colors.

(iii) The surface area of window signs shall not be included in the overall computation of allowable signage as determined by the provisions of Sections III(D) and (E) above.

G. Letters on Signs. Except as provided otherwise in this Ordinance, lettering and numerals on signs shall not

exceed eighteen (18) inches in height, provided, however, that where a sign is located more than one hundred eighty (180) feet from the centerline of all public highways, lettering and numerals may be but shall not exceed twenty-four (24) inches in height.

H. Moving Parts. No sign or any part of a sign which is visible from public property or a public right-of-way shall move or create the illusion of movement in any manner. This provision shall not be interpreted to include hour and minute hands of a clock.

I. Illumination. Any illuminated sign or lighting devices visible from public property or a public right-of-way shall employ only lights of constant intensity, shall not be illuminated by or contain flashing, intermittent, rotating, or moving lights, or lights creating the illusion of movement.

J. Intensity of Light. No sign shall be illuminated with such intensity as to adversely affect the use and enjoyment of nearby public or private property.

K. Awnings. Awnings in compliance with the Building Code and Zoning Ordinance in force for the Town of Middlebury shall be permitted. If the awning is used as a sign, only the surface area of the awning shall be counted as part of the total surface area allowed for the building under Section III(D) above.

L. Painted Wall Signs. Signs painted or applied directly on the surface of an exterior wall of a building are prohibited.

SECTION IV. EXEMPT SIGNS.

A. Municipal County, and State-Owned Signs. Traffic control signals and signs, street signs, flags, emblems, memorials, plaques, and other signs designed and intended for the safety and convenience of the public may be located as authorized by the appropriate municipal, County, and State officials with the jurisdiction therefor.

B. Directional and Information Signs. Signs not exceeding six (6) square feet in surface area displayed strictly for the direction, safety, or convenience of the public, including signs which identify restrooms, parking area entrances or exits, freight entrances, addresses, or similar signs are exempt from the provisions of Section III(D) and (E) of this Ordinance.

C. Street Numbers. Street numbers are exempt from the provisions of Section III(D) of this Ordinance but shall not exceed six (6) inches in height.

SECTION V. PORTABLE SIGNS.

No person, group, firm, company, corporation, or other organization shall erect or display a portable sign in the Town of Middlebury for more than seven (7) days in any calendar year; nor shall any person, group, firm, company, corporation, or other organization erect or display more than one (1) portable sign in the Town of Middlebury at any one time. Any person, group, firm, company, corporation, or other organization desiring to erect or display a portable sign in the Town of Middlebury shall file a written notice with the Town of Middlebury at least ten (10) days prior to the date or dates when the sign shall be erected or displayed and stating the name, address, and telephone number of the person, group, firm, company, corporation, or other organization that is responsible for the portable sign.

SECTION VI. MAINTENANCE OF SIGNS.

A. Construction and Installation. All signs shall be constructed and installed according to the provisions of State and local building and electrical codes.

B. Maintenance. All signs shall be maintained in a neat and attractive condition by their owners. Frames and structural supports shall be kept treated or painted to prevent rust, deterioration, rotting, and corrosion.

C. Dangerous or Unlawful Signs. When any sign becomes insecure, in danger of falling, or otherwise unsafe,

or if any sign shall be unlawfully installed, erected, or maintained in violation of any of the provisions of this Ordinance, the owner thereof or person or firm maintaining the sign shall upon written notice by the Town of Middlebury make such sign conform to the provisions of this Ordinance or remove it within ten (10) working days.

D. Misleading Signs. Any sign which advertises a business or product which is no longer being conducted or sold from the premises to which the sign relates or which refers to an event or occasion that has already occurred shall be taken down and removed by the owner, agent, or person having beneficial use of the property upon which the sign is located within twenty (20) working days after written notice from the Town of Middlebury.

E. Legal Remedies. Upon the failure of any person or firm to comply with the terms and provisions of a written notice served upon them under the provisions of Sections VI(C) and (D) above, the Town of Middlebury shall be entitled to file an action in the Circuit or Superior Courts of the County of Elkhart in order to obtain an order directing the person or firm to comply with the requirements of this Ordinance or authorizing the Town of Middlebury to remove or cause the offending sign to conform to the requirements of this Ordinance and assessing the costs and expenses thereof to the responsible person or firm.

SECTION VII. AMORTIZATION OF EXISTING SIGNS.

All signs existing and in place upon the effective date of this Ordinance are exempt from the requirements of this Ordinance for a period of five (5) years from the effective date of this Ordinance or until such time as they are replaced, substantially altered, or repaired, whichever first occurs; provided, however, that those signs listed below must be removed or made to conform to the provisions of this Ordinance within twelve (12) months from the effective date of this Ordinance:

- (i) Window signs;
- (ii) Painted wall signs; and
- (iii) Portable signs.

SECTION VIII. VARIANCES.

A. Authorization. The Board of Trustees of the Town of Middlebury may grant variances under this Ordinance provided the Board makes a finding of fact based upon the standards hereinafter prescribed that the application of the strict letter of this Ordinance will create practical difficulties or particular hardships for the owners or long-term lessors of buildings and/or land under the jurisdiction of this Ordinance.

B. Signage Review Board. There is hereby created and established a Signage Review Board which shall consist of five (5) members including a business person and a representative of the Middlebury Community Design Project Committee. All members shall be residents of the area under the jurisdiction of this Ordinance and shall be appointed by the Board of Trustees of the Town of Middlebury. With respect to the initial members of the Signage Review Board, the first appointee shall serve a one (1) year term, the second and third appointees shall serve two (2) year terms, and the fourth and fifth appointees shall serve three (3) year terms. Subsequent appointees shall serve three (3) year terms unless appointed to complete an already existing term in which case the appointee shall only serve out the remainder of that term. The Signage Review Board shall meet, as necessary, to review variance requests and recommend action to the Board of Trustees of the Town of Middlebury.

C. Application for Variance. Applications for variances may be filed by any person having an ownership or leasehold interest in any real estate in the area under the jurisdiction of this Ordinance. The application for variance shall be filed with the Town Clerk who shall forward a copy of the application to the Board of Trustees and the Signage Review Board. The application shall be submitted a minimum

of twenty-one (21) days prior to the regularly scheduled Town Board meeting in order to be included on the agenda. The applicant shall submit such number of copies of the application as the Board of Trustees may prescribe from time to time. The application shall be in such form and contain such information as the Board of Trustees may prescribe from time to time, but shall in all instances contain the following:

- (i) The name and address of the applicant and the owner of the property in question;
- (ii) A legal description and street address of the property in question;
- (iii) A concise written statement explaining the nature of the variance being sought and justification for the variance in accordance with the standards set forth in Section VIII(E) and (F) below; and
- (iv) Photographs and/or scale drawings as may be appropriate.

D. Notice and Hearing. The Board of Trustees shall hold a public hearing following proper public notice for each variance request as part of their regular public meeting schedule. Following the hearing, the Board of Trustees shall transmit to the Town Clerk and Signage Review Board a written report giving its findings.

E. Variance Standards for Existing Signs. With respect to existing signs, a variance from the amortization regulations of this Ordinance shall not be granted unless evidence is presented and the Board of Trustees makes a finding:

- (i) Because of the age, cost, or unique characteristics of the sign(s) in question, the strict enforcement of the amortization regulations as set forth in this Ordinance would impose an undue hardship on the applicant;
- (ii) The proposed variance would not merely serve as a convenience to the applicant but will alleviate some demonstrable hardship not generally applicable to other properties in the area under the jurisdiction of this Ordinance;
- (iii) The waiver of amortization requirements or an extension in the period of amortization would not have a detrimental affect on the Town of Middlebury, Indiana; and
- (iv) The proposed variance is in harmony with the spirit and intent of this Ordinance.

F. Variance Standards for New Signs. With respect to the erection of new signs, a variance from the regulations set forth in this Ordinance shall not be granted unless evidence is presented and the Board of Trustees finds that:

(i) The proposed variance will not be materially detrimental to the Town of Middlebury, Indiana or other nearby property;

(ii) The property in question will suffer some demonstrable and irreversible hardship if made to conform to the strict letter of this Ordinance;

(iii) The alleged hardship has not been created by anyone presently having a proprietary or leasehold interest in the property; and

(iv) The proposed variance is in harmony with the spirit and intent of this Ordinance.

G. Action by Board of Trustees. After receiving the report of the Signage Review Board and following the hearing as required above, the Board of Trustees may grant the proposed variance, may deny the proposed variance, or may refer the proposed variance back to the Signage Review Board for further consideration.

H. Fees. An application for variance shall be accompanied by a fee in the amount of Fifty Dollars (\$50.00). All fees shall be paid in cash or by check payable to the Town of Middlebury.

I. Administrative Remedies. It is specifically provided that the failure to apply for and seek a variance from the requirements of this Ordinance under this Section shall work as a bar to challenging this Ordinance or its requirements in a Court.

SECTION IX. OVERLAPPING REGULATIONS.

The Elkhart County Zoning Ordinance, including the provisions thereof pertaining to signs, remains valid and in full force and effect in the Town of Middlebury. Where the requirements imposed by any provision of this Ordinance differ from the requirements imposed by the Elkhart County Zoning Ordinance or any other local ordinance, law, resolution,

rule, or regulation, the most restrictive provision shall apply.

SECTION X. SEVERABILITY.

The provisions of this Ordinance are hereby declared to be severable. If any provision contained in this Ordinance shall be declared to be invalid or void for any reason, such declaration shall not affect the remaining portions of this Ordinance which shall remain in full force and effect.

SECTION XI. ENFORCEMENT AND PENALTIES.

This Ordinance shall be enforced by the Board of Trustees of the Town of Middlebury or its authorized agent. Any person who is found to have violated any provision of this Ordinance shall be punished by a fine of not less than Twenty-Five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00) for each separate offense. Each day's failure to comply with any provision of this Ordinance shall constitute a separate offense.

SECTION XII. EFFECTIVE DATE.

This Ordinance shall take effect following publication in accordance with the requirements of law.

Adopted this ---- day of -----, 19----
pursuant to a roll call vote as follows:

AYES:

NAYS:

Approved by me this ---- day of -----,
19-----.

President, Board of Trustees
of the Town of Middlebury, Indiana