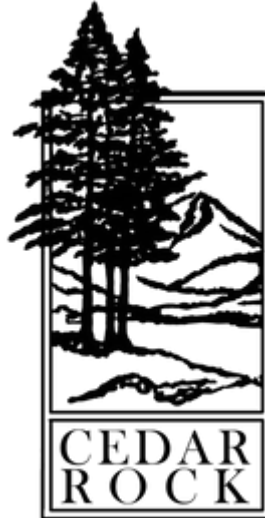


VILLAGE OF CEDAR ROCK
FINAL DRAFT
SIGNAGE PROFANITY POLICY



Village of Cedar Rock
2065 Cedar Rock Estate Drive
Lenoir NC, 28645

GENERAL:

This policy is intended to act as an independent addendum to The Village of Cedar Rock Zoning Ordinance, incorporated by reference under G.S. 160D-105(b)), particularly pertaining to the ordinance's signage policy. This policy addresses the use of language defined by federal case law and the Federal Communications Commission as profane, within Village limits.

PROVISIONS:

1. No sign, flag, or other piece of commercial or noncommercial advertising or communications shall display any language deemed as profane by the Federal Communications Commission, during the hours of 6 A.M. and 10 P.M., pursuant to 47 C.F.R. 73.3999(b), on any day of the week, within the incorporated limits of the Village of Cedar Rock.

DEFINITIONS:

1. The Village of Cedar Rock defines profane language as any and all language considered by the Federal Communications Commission to be profane. The Village will reference communication industry standards for the identification of individual language as profane.

ENFORCEMENT:

1. This policy shall be enforced in accordance with the Village of Cedar Rock Zoning Ordinance.

LEGAL FOUNDATION:

When speech is indiscriminately available to minors, there is governmental interest in protecting children from explicit and vulgar advertisement. In *Bad Frog Brewery, Inc. v. New York State Liquor Authority*, 134 F.3d 87, 98 (2nd Cir. 1998), restrictions on outdoor advertising were upheld due to this rationale.

Protection of minors may even rise to being a "compelling" governmental interest. *Sable Communications of California v. Federal Communications Comm'n*, 492 U.S. 115, 126 (1989). While profanity is protected speech, some limits on its use have been upheld. Speech that is protected in one context may not be protected in a different context.

Perhaps the most relevant exception for sign regulation purposes are statutes and cases that allow restrictions of speech to prevent exposure to children of harmful material. Federal statutes

prohibit broadcast of obscene, indecent, or profane language. 18 U.S.C. §1464. In *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978), decided after the *Cohen* and *Hess* cases, the Court upheld the rule prohibiting broadcast of “indecent” language aired in the afternoon when it would be accessible to children (broadcast of a George Carlin monologue featuring frequent use of the prohibited terms). The court noted that language that might be protected in one context, such as political speech, could be prohibited when made in a context readily accessible by children. FCC rules prohibit broadcast of obscene material (as it has no First Amendment protection) and prohibit broadcast of indecent and profane language between 6:00 am and 10 pm. 47 C.F.R. 73.3999(b). In many respects an exterior sign readily visible to children is analogous to such a public broadcast and is visible to children at those hours, especially if placed in a residential area.

Further, while invalidating an ordinance that prohibited showing any nudity at a drive-in theater that might be visible from a public area, the Court noted selective restrictions on speech could be upheld where “the degree of captivity makes it impractical for the unwilling viewer . . . to avoid exposure.” *Ernoznik v. City of Jacksonville*, 422 U.S. 205, 209 (1975).

Based on that “captive viewer” rationale, the Court in *Frisby v. Schultz*, 487 U.S. 474 (1988), upheld a content neutral prohibition of picketing individual residences as a narrowly tailored restriction on speech to prevent intrusion on residential privacy while allowing ample alternative channels available for communication. A yard sign visible to neighbors in their home presents much of the same “captive viewer” concerns.

Based upon federal case law and the characterization of Cedar Rock as a residential area, the Village believes there is compelling legal justification to enact a prohibition on profane language, for both commercial and noncommercial signage, between the hours of 6 A.M. and 10 P.M.