

SIGN LAW 101

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- I. DEFINE “SIGN”
 - A. Starting point: A visually communicative image on public display.
 - B. For regulation purposes:
 1. A sign is what the local law defines it to be;
 2. Exclusions from “sign” (stained glass windows, grave markers) are out of scope of the sign ordinance.

- II. WHY HAVE SIGN RULES?
 - A. Limit visual clutter
 - B. Prevent visual “shouting matches”
 - C. Esthetics: total signage plays a large role in the overall appearance of a city or county
 - D. Safety factors – driver distraction, pedestrian impediments

- III. FIRST AMENDMENT (1791)
 - A. Congress shall make no law respecting
[1-2] the establishment of religion, or prohibiting the free exercise thereof; or
[3-4] abridging the freedom of speech, or of the press; or
[5-6] the right of the people peaceably to assemble, and to petition the Government for redress of grievances.
 - B. Purpose: legal protection of UNPOPULAR speech – rooted in the lessons of European history
 - C. Every freedom of the First Amendment can be invoked by a message on a sign.
 - D. Even though the 1st Amendment says “**Congress** shall make no law . . .” the 14th makes the 1st applicable to actions of state and local governments. In effect, the 1st now reads “The **government** shall make no law . . .”

- IV. CATEGORIES OF SPEECH
 - A. Commercial speech – regular advertising; debate in the marketplace of goods and services; seeks customers and clients; lower level of First Amendment protection
 - B. Noncommercial speech – debate in the marketplace of ideas; mostly political views and religious messages; seeks adherents, supporters; maximum protection under the First Amendment; also called “classical” or “core” free speech

- V. CALIFORNIA CONSTITUTION, Art. 1, section. 2(a)
 - A. “Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge **liberty of speech or press.**”
 - B. As to signs, rights under the state constitution are usually interpreted as coterminous with federal rights; however, this principle is currently being litigated in a case against Los Angeles.

- VI. SPEECH THAT IS PROTECTED EVEN THOUGH HIGHLY OFFENSIVE TO MOST
- * Flag desecration
 - * Porn which does not meet the definition of “obscene”
 - * Erotic / nude dancing in enclosed places
 - * American Nazis parading swastikas in Jewish n’hood
 - * “God Hates Fags” demonstrators at military funerals
 - * Grotesque, shocking pics - abortion, war protests
 - * Racist, sexist comments
 - * All political, religious views (including atheism, blasphemy)
- VII. FOUNDATION CONCEPT: *MOSLEY (Police Dept. v. Mosley (U.S. Supreme 1972))*
- A. “The First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”
 - B. “[O]ur people are guaranteed the right to express any thought, free from government censorship. The essence of this forbidden censorship is content control.”
- VIII. UNPROTECTED CATEGORIES OF EXPRESSION
- A. Despite the absolutist language in the *Mosley* case, many categories of speech have no First Amendment protection. They include:
 - * Defamation (false statements that injure reputation)
 - * Obscenity, child pornography
 - * Fraud, deceit - lies intended to deceive
 - BUT: Stolen Valor Act (criminalizing false claims of military honors was too extreme)
 - * Perjury (lying under oath)
 - * Fighting words - incitement to violence or riot (“shouting fire in a crowded theater”)
 - * Blackmail, criminal conspiracies
 - * Threats against the life of the president or vice president
- IX. EXPRESSION FREEDOMS ARE NOT ABSOLUTE
- A. Expression can sometimes be limited, restricted, channeled
 - B. But . . . limits must be justified
 - C. Courts ask:
 - * Legitimacy, importance of the gov’l interest served
 - * Is the rule “narrowly tailored”?
 - * Does it leave open adequate alternatives for expression of the same message?
- X. POLITICAL SIGNS
- A. Usually defined as encouraging a certain vote in an upcoming election
 - B. When the local law bans political signs except for certain period before the election, such rules are always invalidated by courts. People must be allowed to express their political views at all times.
 - C. Size and height limits: usually approved by courts so long as the limits apply equally to all types of noncommercial speech.
 - D. Political / religious signs on residences cannot be banned (*Ladue v. Gilleo*, U.S. Supreme)
 1. A reasonable amount of display area must be available at all times.
 2. Optional: the amount of display space can be increased during the pre-election period; okay if the additional area is available to all varieties of noncommercial speech.

- XI. RESIDENTIAL AND YARD SIGNS
- A. Most courts: commercial advertising signs, including home-based occupations, can be banned in residential zones;
 - B. Reasonable limits on size, height, setback, illumination are usually approved;
 - C. Regulate flags? Okay to limit total area, height of poles.
- XII. BILLBOARDS
- A. Not just a large freestanding sign
 - B. Not just “offsite messages” (Where is “support our troops in Afghanistan” on-site?)
 - C. Key criterion: economic nature, general advertising for hire; display space is rented out to a variety of advertisers, usually anyone willing to pay; the sign is a separate business / profit center, not an accessory land use.
 - D. *Metromedia v. San Diego* (U.S. Supreme, 1981)
 1. Gov’t can ban billboards, even if it allows on-site signs
 2. Gov’t cannot favor commercial speech over noncommercial
 3. Gov’t cannot favor certain classes of noncommercial over others
 - a. One recent 9th Circuit decision (*Reed v. Gilbert II*) is contra to Rule 3 – petition now pending at U.S. Supreme
- XIII. MESSAGE SUBSTITUTION
- A. “A noncommercial message may be substituted for any commercial message or any other noncommercial message.”
 - B. One way street; does not authorize offsite commercial (billboards) in place of onsite commercial;
 - C. Discharges most claims of “favoring commercial speech” (*Metromedia* Rule 2);
 - D. Every sign ordinance should include “message substitution”.
- XIV. CONTENT RESTRICTIONS
- A. Restrictions on commercial messages are difficult but not impossible to justify.
 - B. Coyote Publications: Nevada could restrict advertising of brothels to counties where prostitution is legal;
 - C. *Lorillard Tobacco* (U.S. Supreme 2001): Massachusetts’ restrictions on tobacco advertising was unconstitutional – went too far (no tobacco advertising within 1,000 feet of schools, playgrounds)
- XV. AMORTIZATION – AFTER GRACE PERIOD, REMOVE NONCONFORMING USE
- A. California state law treats billboards and store signs as completely separate categories, each with its own rules.
 - B. Billboard amortization
 1. In general, a billboard that was legally installed cannot be amortized without compensation; either the gov’t must buy it or negotiate a relocation agreement (Business and Professions Code 5412)
 2. Narrow exceptions for billboards in residential (5412.1) and incorporated agricultural (5412.2) zoning districts in cities and city/counties (5412.2); a parallel provision (5412.3) applies to counties. However, a recoupment period is still required.

- C. Store sign amortization (B&P 5490 *et seq.*) (applies to permanent, on-site signs that were legally erected and have at least a 15 year expected useful life)
 - 1. Three step process: 1) adopt new ordinance that is more restrictive and sets up amortization process; 2) conduct inventory to determine which signs will be subject to amortization; 3) after completion of inventory, hold reconfirmation hearing (adopt the new ordinance again)
 - 2. Fifteen year grace period
 - 3. Individual signs can be abated before grace period has run, but compensation must be paid based on 15 year, straight-line depreciation schedule.

XVI. GOVERNMENT AS BILLBOARD LANDLORD

- A. Gov't owns land near freeway or highway with high traffic count
- B. Billboard company proposes new digital billboards on govt land
- C. Gov't gets rent
- D. As a lease contract term, undesirable commercial categories can be prohibited
- E. Sometimes: take down X number of old billboards
- F. Possible term: one gov't message in the 8 slide sequence
- G. Each deal is separately negotiated.

XVII. LITIGATING SIGN DISPUTES

- A. Most cases are filed in federal courts under the federal civil rights statute
- B. Money damages are possible
- C. Successful challengers can be awarded attorneys fees
- D. Key issues
 - 1. Is the rule based on message content?
 - 2. If YES, courts usually suspect censorship intent; standard of justification is high
 - 3. If NO, time / place / manner rules (size, height, setback, separation) are usually approved.
- E. Location distinctions (on-site vs. off-site) – content based regulation?
 - 1. Most courts say NO, on-site vs. off-site is a location criterion selected by the sign owner.

XVIII. SIGN REGULATOR'S MANTRA

- A. The Medium is NOT the message
- B. We regulate the medium, not the message
- C. Time, Place & Manner
- D. Gov't should not play art jury (i.e., rules about colors, fonts, coverage ratios)
 - 1. Except public art on gov't property ("political animals" case)

XIX. ONE SIZE FIT ALL?

- A. Sign rules can vary by location
- B. Different rules for different zoning districts are usually approved
- C. Urban and rural areas can have different sign rules
- D. Rules can also vary according to the use of land
- E. A Sign Overlay can state special rules that apply within the defined area; the overlay does not have to follow zoning district lines.

- XX. COMMON ERROR: GENERAL RULE WITH CONTENT BASED EXCEPTIONS
 - A. Exceptions based on non-communicative factors (event, location) – usually okay
 - 1. Example: digital display allowed only in main retail corridor – usually okay
 - B. Exceptions based on message
 - 1. Example: no neon, except beer, night clubs
 - 2. No portable signs, except real estate
 - 3. Content-based exceptions are legally risky.
 - 4. Bagel store case (*Ballen v. Redmond WA*, 9th Cir. 2006)
 - a. Sign walkers fell into definition of “portable sign”
 - b. Portable signs were banned; exceptions for politicals, real estate, construction
 - c. 9th Circuit: unconstitutional; atty’s fee award: \$165,000; ban on portables would be valid if not for content based exceptions.

- XXI. MOBILE BILLBOARDS / SIGN TRUCKS
 - A. Rules for sign trucks presumably apply to “auto wraps” used as general advertising
 - B. Most courts say gov’t can ban mobile billboards/ sign trucks on public streets
 - C. Public investment in roads is for transportation purposes, not advertising theater
 - D. Bans are okay even if gov’t allows vehicles with self-promotion advertising
 - E. Banning use of public parking spaces for vehicle signs: few cases, most say okay.

- XXII. ARTISTIC MURALS
 - A. Difficult definition drafting problem
 - B. When the artwork is thematically linked to the store’s business, how to determine if the mural is art or signage?

- XXIII. DIGITAL SIGNS
 - A. Also called “electronic signs” or “message centers,” or “dynamic signs” etc.
 - B. Complete bans have been upheld
 - C. Presumably, a general ban with location exception would be okay
 - D. Often controversial

- XXIV. REAL ESTATE FOR SALE (“REFS”) SIGNS
 - A. Onsite residential REFS signs cannot be completely banned (*Linmark*, U.S. Supreme, 1977)
 - B. California Civil Code 713
 - 1. Local gov’t cannot ban REFS on private property, onsite or offsite (with owner consent)
 - 2. City can set reasonable rules for dimensions, location, design
 - C. Gov’t has no legal duty to allow REFS on public property or Public Rights of Way
 - 1. But gov’t may elect such a policy; it could be time-limited
 - 2. If REFS signs are allowed on public property, “message substitution” requires equal display rights for all noncommercial messages
 - 3. Allowing REFS on public property can also create requests for other commercial signs

XXV. PRIVATE SIGNS ON GOV'T PROPERTY

- A. Traditional Public Forum (TPF) (exterior surfaces of public streets, sidewalks, parks, area around exterior of gov't admin buildings; light poles and utility poles are not TPF even when mounted in the sidewalk)
 - 1. In TPF areas, gov't cannot completely ban live, in-person picketing and protesting on noncommercial topics (politics, religion)
 - 2. Some courts allow bans on inanimate signs in TPF areas
 - a. *Sussli v. San Mateo CA*: City can ban all inanimate signs on city property
 - b. *U.S. v. Grace*: Live, in-person picketing and protesting cannot be banned from sidewalks, even those around U.S. Supreme Court building
 - c. Same rule applies to residential sidewalks
 - d. *Knights of Columbus v. Lexington MA*: City could require personal attendance at nativity display in city park

XXVI. GOVERNMENT SPEECH

- A. First Amendment DOES NOT APPLY; it exists only to protect citizens from gov't actions
- B. Gov't does not have to give itself permission to put its messages on its own properties
 - 1. When gov't expresses its own message, usually there is no legal duty to give private parties equal access, unless the gov't has opened a public forum
- C. Common examples:
 - * city welcome signs, neighborhood themes
 - * banners promoting city sponsored events
 - * traffic control and directional signs
- D. Public Art Projects – “political animals” program in Washington D.C.

XXVII. TWO CHAPTER SIGN ORDINANCE

- A. Regulatory chapter covers signs on private land
- B. Proprietary chapter controls private signs on gov't land
 - 1. Gives gov't more flexibility re: signs on its own land
 - 2. Categorical bans on commercial speech (i.e., no alco, tobacco, *etc.*)
 - 3. Street banners, public art programs
 - 4. Allows billboard bans on private land while leaving the door open for billboards on gov't land