

Sign Ordinance Update

Background/Legal Framework for Sign Regulation

Sign regulations are the most complex type of zoning regulation due to the scope and scale of legal issues associated with the regulation of signs. This handout is intended to provide an overview of the legal framework associated with sign regulation and a summary of the primary legal issues.

Overview of Legal Issues Associated with Sign Regulation

There are several primary legal concerns the sign code should satisfy. Sign codes should be content neutral and serve a clearly articulated and substantial governmental interest; they should not discriminate based on the message of the sign. Regulations should be limited strictly to time, place, and manner considerations. Further, regulations should provide alternative options for effective communication of sign messages. In other words, regulations should not preclude all means of communicating any one type of message. Signs also function as a form of property and source of value for landowners; hence, jurisdictions should be sensitive to regulatory takings issues where regulations affect the value of a sign. Through the imposition of universal, content-neutral regulations that do not discriminate against certain messages, jurisdictions can avoid creating problems that might require financial compensation. Lastly, to ensure that sign codes provide adequate due process for every sign applicant, each code should establish appropriate review, appeal, and exception processes.

Summary of 3 Primary Legal Issues Associated with Sign Regulation

1. **First Amendment.** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
 - a. Signs are a form of speech.
 - b. Signs are a unique form of speech that take up space and can disrupt land uses, therefore, it is within the scope of government to regulate.
 - c. Freedom of speech does allow for limitations or regulations of signs. Governments can prohibit certain forms of speech, including obscenity and defamation.
 - d. Governments can establish time, place, and manner restrictions for signs if they are content neutral, serve a substantial governmental interest, and allow for alternative channels of communicating a message.

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- e. Governments can designate public forums for the open exchange of free speech on public property, subject to time, place, and manner restrictions.
2. **Fifth Amendment.** No person shall...be deprived of life, liberty, or property, without due process of law...nor shall private property be taken for public use, without just compensation.
- a. Government can try to avoid takings by crafting content-neutral regulations that do not result in an absence of economically viable uses of property.
 - b. Sign codes should contain appropriate review and appeal processes to ensure due process for every applicant.
 - c. Exceptions should be provided to ensure that physical handicaps presented by a particular piece of land do not preclude an applicant from equal treatment under the regulations.
3. **Regulation of Signs.** All signs are subject to Constitutional protection. In *Virginia Pharmacy Board v. Virginia Consumer Council*, the US Supreme Court distinguished between commercial and non-commercial; finding commercial still has some, but more limited, protection under the Constitutional free speech, equal protection, and due process principles.

Non-commercial signs enjoy greater protections. For example, political and election signs cannot be prohibited on private property, but governments can establish reasonable limits on the duration, size, and number of political signs that may be displayed, provided that these regulations are part of a comprehensive program to address aesthetic issues or other articulated governmental interests.

Commercial signs can be, and are, more regulated. When regulating signs, as discussed above, governments generally can regulate the time, place, and manner that the message is displayed without reference to the content of the speech. Regulation also must generally serve a substantial government interest and directly advance that interest, be narrowly constructed, and not limit alternative channels for communication of the information.