Signage Matters
CaliforniaSignAssociation
CSA Government Affairs Update

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In many ways, all CSA members are our grass roots network of ambassadors throughout the state.

Call Jeff Aran, CSA Government Affairs Director or Connie Seitz, CSA Executive Director to participate.

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LEGALITY OF MORATORIUMS

By Jeff Aran, CSA Government Affairs Director

State law allows 45-day moratoriums ("interim ordinances") on permit approvals when there is an immediate threat to public health, safety or welfare. Often abused by cities and counties which seem to make very loose findings, a moratorium can be extended for two years. Although an interim ordinance may prohibit development of land uses that conflict with a general or specific plan or pending zoning ordinance, the interim ordinance cannot prohibit the processing of development applications. In other words, the city still must process your application.

WELFARE STATE

What constitutes an immediate threat to public health, safety or welfare is a debate applicants often miss out on, because the issues frequently arise on short notice. Even though a city might give notice of a hearing, by the time we learn about the interim ordinance it's been adopted. Rarely, however, would or should a sign application trigger an immediate threat to public health, safety or welfare. Yet the public welfare standard is very broad, and aesthetics, as the sign industry well knows, is often the justification for such "interim" bans on new pole signs, EMC's and readerboards. With the increase of digital displays, we are seeing moratoria popping up throughout the state; usually, they are extended while planning departments "study" the situation.

In order to adopt an "interim ordinance," the public entity must make certain findings. First, there must be an "immediate threat." If the existing ordinance allows them or doesn't prohibit them, it's hard to imagine any circumstance where the mere application for an EMC (or any other sign type proposed to be restricted) could possibly constitute an "immediate threat." There simply is nothing about a pending sign application that makes it a threat of any kind.

What often happens is that an applicant is discouraged from submitting by a planner because the sign in question is "not appropriate." Then next we hear of an interim ordinance banning them or requiring the planning department to further "study" and report to the city council within 45 days. After that time, while your application languishes, the PD returns to the council and requests that the ban be made permanent.

GOVERNMENT CODE SECTION 65858 IN PERTINENT PART PROVIDES:

(a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for

Continued on page 2

one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

...

(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.

SO, WHAT'S A "CURRENT AND IMMEDIATE THREAT"?

The factual basis for what constitutes the urgency giving rise to the interim ordinance must be recited in the ordinance, and if those facts may reasonably be held to constitute an exigency the courts will not generally interfere nor determine their truth. "Urgency ordinances, by their nature, are enacted in light of an urgency that does not allow for the more formal notice and hearing requirements for regular ordinances to be met. Urgency ordinances contemplate a situation where action must be taken immediately to preserve the public peace, health or safety..." *See 216 Sutter Bay Associates v. Sutter County.*

In *Crown Motors v. City of Redding,* a 1991 case (pre-LED), the court held: "Concerning whether erection of one more electronic reader boards in Redding justified the urgency provision, we defer to legislative wisdom. Having already determined the city council could regulate aesthetics under the rubric of public health, we cannot profitably consider the minutiae of degree in the subjective realm of aesthetics. The city council, as the elected representative legislature of Redding, determined Crown Motors's reader board would be aesthetically displeasing and harmful to the public health. This is a subjective determination the city council may make based on its power to declare the aesthetic will of Redding. The courts have no such power. Thus, we sustain the city council's determination the threatened erection of one more electronic reader boards justified the urgency provision."

Generally, mere application for a lawful use authorized by the existing municipal code should not constitute a current and immediate threat. Although cities and counties are apt at making the "urgency" argument, the courts have held that if the city or county nonetheless targets the code specifically to frustrate a particular applicant's plans, the applicant should be entitled to the permit (so long as not inconsistent with an existing land use plan adopted by the jurisdiction). Otherwise, government could always cure denial of a permit by merely changing an ordinance prior to judicial review. However, the courts have also held that a zoning ordinance may be applied retroactively if reasonably necessary to protect public health and safety.

KEY TO SUCCESS

The key to overcoming—and to surviving—signage moratoria is to BE INVOLVED. Your success and your customer's success requires active participation with local government, not just when there's a crisis, but throughout the year. Get to know your local elected and planning officials. Start educating them (and your customers) on the value of signage. Teach them about aesthetics and sign design. Show them the possibilities. Just as you would sell a job to a customer, share with elected officials the economic upside and design flexibility that you, as a creative sign artisan, bring to the table.

CSA is a unified voice of professionals dedicated to the evolving needs of the California signage and visual communications industry. That's our Vision statement. Now, let's carry that message to the communities we serve.

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