

# Content Neutral Sign Regulations

## VALUE ADDED

*Well-written, content-neutral sign regulations can be a boost to economic development and an enhancement to community character.*



### What constitutes a sign?

The variety of sign types is immense, and because of this, one will often find that the definitions section within a sign ordinance is one of the longest components of the law. Signs range from political advertisements, proprietor and development signs and flags to gateway and jurisdictional indicators and statements of free expression. Some communities choose to regulate “noncopy” signs that do not contain advertising copy, such as murals.

Freedom of Speech, protected by the First Amendment to the Constitution, plays a critical role in the legality of sign regulations. While local regulations can regulate the time, place, and manner of signs, the standards must be content neutral; otherwise, they will be considered an infringement of the First Amendment and determined illegal upon presentation in court. A well written sign ordinance should first and foremost preserve Freedom of Speech. Once legality is established, sign regulations should protect both commercial and non-commercial speech and provide a positive balance between facilitating economic development, promoting safety, and preserving community character.

## Preserving Freedom of Speech

Communities can restrict signs but not because of their content. Alleged “content-based” regulation of speech puts the “burden of proof” on government. This means a government must justify content regulation with strong evidence for why content is being controlled. Such defenses are rarely successful in court.

In 1996, *Union City Board of Zoning Appeals v. Justice Outdoor Displays, Inc.*, a defining case in Georgia zoning law, found that the City’s sign ordinance violated free speech because it restricted sign content based on whether the sign is “on or off premise.” A good rule of thumb is that if one has to read a sign to determine if it is allowed, the regulation is likely unconstitutional.

Courts have also ruled that communities cannot prohibit any resident from posting a sign on his or her property, but regulating the number, size and placement of such signs is usually upheld.

## Defensibility of Sign Regulations

Sign regulations must be based on valid public purposes and community goals such as public safety, community aesthetic standards, and economic development. Sign regulations should include a “Purpose” section that explicitly names the public purposes and expresses the intent of the regulations. The following standards will improve their defensibility in court:

- Intent to further a valid public purpose;
- Content neutrality;

- Restrictions based on time, placement and manner of sign display;
- Fair treatment of commercial and non-commercial speech; and
- Proper treatment of legal, non-conforming signs

### **Protecting Community Character**

Courts historically support sign ordinances that regulate aesthetics, including number, location and size; however, the aesthetic controls must be grounded in documented community character. Scenic preservation or conservation areas may call for stricter sign regulations in order to preserve the historic character or scenic vista. Sign regulations may provide for unique design criteria in distinct areas of the community. For example, a walkable downtown may call for pedestrian level signs, whereas major highways might allow for larger signs that would better accommodate drivers.

### **Balancing Economic Development and Aesthetics**

Promoting economic development and tourism are often reasons that communities regulate sign height, location, size, and design. Visibility will be a top concern to businesses, whereas the aesthetic impacts of excessive signs could dampen tourism.

### **Administration of Sign Ordinances**

Permitting & Signage Inventories – Many communities require owners to obtain permits and place stickers on permitted signs. This supports code enforcement and helps track legal versus illegal signs.

Signage Plan – Many communities require large, multi-tenant developments to prepare a signage master plan. This practice promotes the fair distribution and unified appearance of signage.

Overlay Districts – An overlay district is a popular tool for customizing sign regulations for specific areas of a community as a means to reinforce a desired design character.

### **Trends**

Sign regulations have to stay current with new technology, business trends, and court interpretations of local, state, and federal laws that have an ongoing influence on the sign industry.

### Billboards

Billboard legislation continues to change. State legislation in Georgia prohibits amortization of billboards and requires cash compensation for billboard removal, making it difficult to reduce the number of billboards. A recent state law now allows advertisers to cut trees that block their billboards.

### Digital or “Dynamic” Signs

Digital signs can convey changing or moving imagery controlled electronically; however, a recent study found that drivers take their eyes off the road for two seconds or longer twice as often when passing digital billboards, compared to traditional billboards.<sup>1</sup> Some communities have passed ordinances that limit the size, brightness, and frequency at which a digital message changes or bans them outright. Digital billboards can change advertising messages six times per minute and thereby generate far more revenues than conventional billboards. The City of Valdosta requires that applicants for a new digital billboard remove four conventional billboards in exchange for each new digital sign face.

### Context-Sensitive Signage

Communities that want to encourage walkable places adjust their signage requirements to replace tall pole signs with smaller signs along the sidewalk oriented to the eye levels of pedestrians. Examples are canopy signs, suspended signs, wall signs and window signs. Allowing distinctive wayfinding signage is also popular in business districts as a way to promote more business from sidewalk traffic as well as from passing drivers.

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<sup>1</sup> Wachtel, Jerry. March 2011. Digital Billboards, Distracted Drivers. Remember Burma-Shave? Large electronic signs distract drivers in new ways. *Planning Magazine*.