**Regulating Signs: An Introduction**

When are signs eyesores “blockin’ out the scenery,” ¹ and when are they important assets to businesses, institutions, and the general public that help us find our way and contribute to the character of the community? Signs can contribute to the positive identity of a place, but they can also create visual clutter that detracts from the visual character of a place and distract drivers’ attention from the road.

From a business standpoint, visual clutter can diminish the value and effectiveness of the signs themselves as they get lost in the “signscape.” This may necessitate frequent and increased investment in signage. Communities can establish rules of the game that make signs effective tools of communication while improving the character of a place.

The regulation of signs is one of the most challenging areas of land use regulation. Because signs communicate information, the regulation of signs has been treated by the courts as the regulation of speech. For this reason, this summary takes a conservative approach and generally advocates that signs should be regulated based upon their physical properties, not the use with which the signs are associated or the messages being conveyed.

This document is to serve as an introduction to why a community might want to regulate signs and issues to be aware of when considering sign regulation. Case law concerning the regulation of signs seems to be in a constant state of evolution, revolving primarily around the issue of...
limiting speech. As with the development of any laws, governments are encouraged to consult with legal counsel familiar with land use law when drafting ordinances. The wholesale adoption of model ordinances, especially those dealing with signs, is not recommended.

As will be noted, involving the community and stakeholders in the creation of signage regulations may reduce the potential for conflict, including legal challenges.

An even playing field

Regulating signs can benefit the community as a whole by reducing visual clutter, improving the overall impression of the place, and helping travelers make more sense of the road ahead. For businesses, regulation can establish an even playing field that results in more effective, longer term investments in signage because everyone plays by the same rules.

What can be regulated?

Generally speaking, the regulation of signs – or a sign ordinance – should not cross the line between the regulation of a sign’s physical characteristics and its content. The courts have generally held that the regulation of a sign’s context – how it relates to its surrounding environment in terms of safety and aesthetics – does not cross the constitutional line of regulating freedom of speech. Regulation of sign content – what is being communicated and the language used to convey the message - may cross that line. While the regulation of commercial speech (that advertising a product or service) has, in some cases, enjoyed less protection in the courts than noncommercial speech (points of view such as religion or politics), the conservative approach suggests that the regulation of physical characteristics of signs is the most effective and defensible method of accomplishing sign ordinance objectives.

Ordinances can also regulate sign aesthetics (e.g., colors, materials, structure, etc.), but this is best done within the context of a plan that makes a case for the importance of the appearance of the community and how signs contribute to appearance. A plan that identifies scenery – or aesthetic resources – as being important to the well-being of a community in terms of commerce generated or quality of life can provide the basis for the regulation of aesthetics by an ordinance.

Ordinances that attempt to regulate content may not stand up to legal challenges. Ordinances should not restrict the expression of specific viewpoints. Furthermore, ordinances that apply different regulations to different uses (i.e. commercial, institutional/religious, etc.) may be viewed as regulating on the basis of type of speech. Say, for example, a city’s sign regulations treat signs for churches differently than signs for businesses within the same district or along the same street. Because signs can be considered to be a type of speech, the variation in requirements based upon use may be found to restrict speech because the regulations vary depending upon the type of message being communicated (institutional/religious versus commercial). Sign regulations should instead focus on the type of sign without reference to

Regulate the “how,” not the “what.”

Sign regulations should focus on the time, place, and manner of signs, regardless of their content. The regulated aspects of signs may include the following:

- **Size:** What are the maximum and minimum allowable sign dimensions, including height?
- **Number:** How many signs may any given entity have?
- **Location:** Where may signs be located on a property? Under what specific conditions may off-premise signs be allowed?
- **Illumination:** How may signs be lit (internal, external, down-lit, up-lit, etc.)?
- **When:** Are temporary signs allowed and if so, under what specific conditions? Under what conditions must nonconforming signs (signs legally erected prior to the laws that are presently in effect) be brought into conformity with the present regulations?
use. For example, within a specific area, all freestanding signs would be regulated the same without regard to use. Similarly, all building-mounted signs would be regulated the same without regard to use.

Legal scholar Daniel R. Mandelker provides a good example of the regulation of the “how” versus the “what.” A community may want to restrict digital time and temperature signs within a historic district while encouraging the use of analog clocks (traditional clocks with hour and minute hands). The real concern is not the fact that time and temperatures are being provided as part of a sign. The concern is that the digital sign is not consistent with the aesthetic of the historical district. Therefore, the ordinance should regulate signs that have changeable copy, as that is the quality of the sign that is of concern. In so doing, the community would regulate not only time and temperature signs but all other changeable copy signs that would similarly conflict with the aesthetic of the district. The ordinance would define what constitutes “changeable copy” and where these types of signs are and are not allowed.

The above image demonstrates the extreme measures taken by businesses to compete for visual space. One sign is slightly higher, another slightly lower; one to the left, one to the right. This demonstrates the importance of regulating the size, number, and location of signs. Sign ordinances can eliminate the competition between businesses.
A signage plan, or the appearance and signage component of another broader plan (such as a comprehensive plan, transportation plan, or historic preservation plan), can provide the defensible basis for sign regulations. Planning for sign regulation policies is similar to the development of any other type of plan. The plan should establish goals and objectives related to the safety and character of a community. Stakeholders and the general public should be involved in the development of the plan. The American Planning Association offers the following advice in its guidance for context-sensitive signage:

“Ideally the planning and design policies that affect signage should result from a planning process that:

- Assesses the overall visual character of the community and then sets goals
- Involves citizens to determine their concerns and preferences in balancing economic, social, and cultural values
- Engages those most directly affected businesses and sign manufacturers in deciding what is acceptable
- Promotes the positive contribution signs can make to creating a sense of place in a district and in a community and
- Aims to ensure that whatever regulation results will allow commercial districts to function efficiently and effectively.”

This participatory approach can reduce potential conflict and facilitate understanding of the basis for and intent of sign regulations and how the rules are to be applied.

The above image is an example of a monument sign. This type of sign eliminates the height competition between businesses. Monument signs eliminate visual clutter and provide a safer environment for drivers. The city also regulated the materials used to construct the sign in this image.

A commercial corridor where signage has not been controlled or regulated. Important signage such as hospital and visitors’ information signs are lost in the visual chaos of the corridor.
Sign regulations should reflect the context in which the signs exist: the existing, and desired, human and natural landscape. For example, the placement, scale, and appearance of signage in a historic downtown district should be treated differently than signage within a commercial strip along a highway. Different contexts present distinct safety and character concerns for the general public and owners of signs as well.

An ordinance can identify and define different context areas and apply specific regulations accordingly. For a detailed overview of developing context-sensitive sign design regulations, consult Context-Sensitive Signage Design produced by the American Planning Association Advisory Service. This bulletin can be found at www.planning.org/research/signs/.

Once sign regulations are in place, the control of new signs is relatively straightforward. What about signs that existed legally prior to the enactment of the new signage requirements?

While some signs may be landmarks and positively contribute to the identity of a community, others may detract from the character of a place. The ordinance should precisely define what constitutes a nonconforming sign – one that legally exists but does not comply with current standards – and establish the specific conditions by which these signs must be brought into compliance.

Regulations can require signs that are structurally altered, moved, relocated, or replaced to be brought into compliance with current standards. Exemptions should be made for signs that are damaged or destroyed for reasons beyond the control of their owner.
Signs that have been “abandoned” for a specified period of time may also be required to be brought into compliance. What constitutes an abandoned sign should be specifically defined by the ordinance.

Generally speaking, a change in ownership should not trigger mandatory sign compliance. If, however, the change in ownership necessitates the structural alteration (e.g., the name of the business being advertised changes), removal, or other substantial physical change to the sign beyond simple maintenance, then compliance may be required. In this case it is the structural change to the sign that triggers compliance – not ownership.

The conditions under which a “landmark” sign should be preserved must be well-defined by the ordinance. Often these signs will be nonconforming, and a special exception should be made for their preservation. The plan that provides the basis for the regulations should include examples of these signs, explain how these signs contribute to the surrounding context, and describe specific characteristics (e.g., design, historic significance) that make these signs unique.4 The rules governing signs to be preserved may be contained within the sign ordinance or within the rules governing preservation generally.

Temporary Signs

Most jurisdictions want to allow signs for special events such as elections, yard sales, and public performances. Businesses also have an interest in advertising special events such as sales or openings. As with permanent signs, it is the time, place, and manner of temporary signs that should be regulated (i.e., the “how”). The regulations should clearly define the conditions associated with temporary signs including what constitutes a temporary sign, when signs may be erected and taken down, the number of signs allowed, and the physical characteristics of the signs themselves. The administration and enforcement of temporary sign provisions can be particularly resource-intensive. Regulations should respond to the real problem.

For example, if the problem is the proliferation of temporary signs in the public right-of-way, then the government should investigate the power it already possesses to control what can be located within its right-of-way. If the issue is A-frame “sandwich” signs in front of businesses, then the sign ordinance could address these specific types of signs (again, the type of sign rather than what is being communicated), including: the number allowed, their location and size, how they are to be anchored, when they may be put up, and when they must be taken down.
Political or campaign signs are a very common type of temporary sign. These signs are a great example of regulating the length of time signs may be displayed, for example, stating that campaign material must be removed within 7 days of the election.

A-frame or sandwich board signs are commonly used to promote restaurants and events. These signs can add to the charming character of a downtown area but can create circulation issues when they are located within the public right-of-way.

Service stations are a common location for temporary marketing material including signs and banners. This type of temporary sign definitely adds to the visual clutter of an area, especially since service stations are generally found in prominent locations such as intersections and corner lots.

Event banners are very useful for advertising important festivals or activities. However, the banners should be promptly removed following the event.
Government Signage

Governments have a role in managing and maintaining public signs. While signs at entrances to communities and in front of civic buildings may come immediately to mind, every day street, traffic, and parking signs also contribute to the overall character of a community. Governments should develop a signage plan and sign standards for themselves. This plan should include maintenance standards. Part of this process may include a sign audit. You may be surprised how many signs are redundant, outdated, or aged or damaged to the point that they are no longer useful. These signs should be removed.

By establishing and following standards for public signs, governments demonstrate that they are equal partners in improving and protecting community character.

Resources

The American Planning Association offers a number of bulletins and publications on its Web site. State and regional land use planning support services are also a source of good information, as are university land use planning and law programs. The following is a sampling of such resources.

**American Planning Association**
- General [www.planning.org](http://www.planning.org)
- Planning Advisory Service [www.planning.org/pas](http://www.planning.org/pas)
- “Best Practices in First Amendment Land Use Regulation” [www.planning.org/pel/commentary/open/jun09.htm](http://www.planning.org/pel/commentary/open/jun09.htm)
- “Context Sensitive Signage Design” [www.planning.org/research/signs/](http://www.planning.org/research/signs/)

**League of Minnesota Cities:** No, it is not Mississippi, but they provide straight-forward resources on an easily searchable site.
  - Search “signs” for analysis and example ordinances.

**Government Signage**

Signs for civic and other organizations must be monitored closely as well. Multiple signs clustered at a single location can quickly create a cluttered mass of signage.

**Government buildings should lead by example with signage that fits within the scale and context of the surrounding area whether a historic district or a commercial corridor.**

1 “Signs” by Five Man Electrical Band on Good-Byes & Butterflies, 1970.