

Regulating On-premise Signage

Signs are among the myriad elements of the built environment that a planning department deals with on a daily basis.

Like other elements of the built environment, signs have impacts on both public safety and community appearance and thus require careful treatment and appropriate regulation.

Sign regulation is one of the more vexing tasks that a local government addresses on a routine basis. As a form of speech, signs are protected by the First Amendment. In practice this means a sign ordinance cannot regulate sign content (e.g., the message displayed on a sign). Moreover, for retail and service businesses signs are a key means of attracting customers and staying profitable. The challenge for local governments, then, is to balance these considerations against the cumulative impacts on traffic safety and community appearance, were every business to install the largest, most conspicuous signs available.

THE POLICY BASIS

The sign ordinance is a tool, like a zoning ordinance, to implement broader community planning policies related to public safety and community aesthetics. Sign ordinances support both practical public safety interests and broader policies governing the appearance of commercial areas.

The local government police power authorizes cities and counties to use regulations to protect the public's health, safety, and general welfare. Recognizing that signs have the potential to distract drivers and thus pose a potential traffic safety risk, the regulation of signs is considered a valid use of police power. Courts also recognize that visual clutter—that is, too many signs or signs that cause glare or are too bright for their surroundings—can have negative impacts on residents' general welfare and quality of life.

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The policy basis of the sign ordinance may be established in the comprehensive plan or in subarea or district plans. These plans express what the community desires in terms of the types, scale, and appearance of signs in various districts or areas. Historic commercial districts almost all have narrowly tailored regulations intended to ensure that signage is compatible with historic architecture and overall building patterns. More commonly, plans say very little about signs; rather, the statements of purpose and intent contained in the sign ordinance itself guide administrative and decision making on sign applications.

MASTER SIGNAGE PLANS

Master sign plans are a common component of sign ordinances. In most communities that have adopted them, they have helped simplify the permitting process. Under such provisions, major commercial properties must submit a master sign plan that indicates the type, construction, location, and height of each proposed sign on the site. Approval of the master sign plan is required before issuance of the first sign permit for the property. Permits for master sign plans may be issued administratively, or the decision may be referred to a design review board. Shopping centers, office parks, and other multitenant buildings are typical candidates for master sign plans.

ASSOCIATED LEGAL ISSUES

The content neutrality doctrine mandates that local governments not regulate signs according to the message they display, nor may the regulations dictate what such messages can and cannot say. This may not seem like much of a problem until you consider that to enforce many common sign ordinance provisions—real estate signs, election signs, identification signs, time and temperature, on-premise versus off-premise, among others—a regulator must read the sign to know which standards to apply.

When a sign regulation is contested on the grounds that it infringes content neutrality, the issues that courts pay careful attention to include: 1) whether the regulation was as narrowly tailored as possible to serve the stated interest of the public and 2) whether the regulations inadvertently give preferential treatment to commercial signs over noncommercial messages.

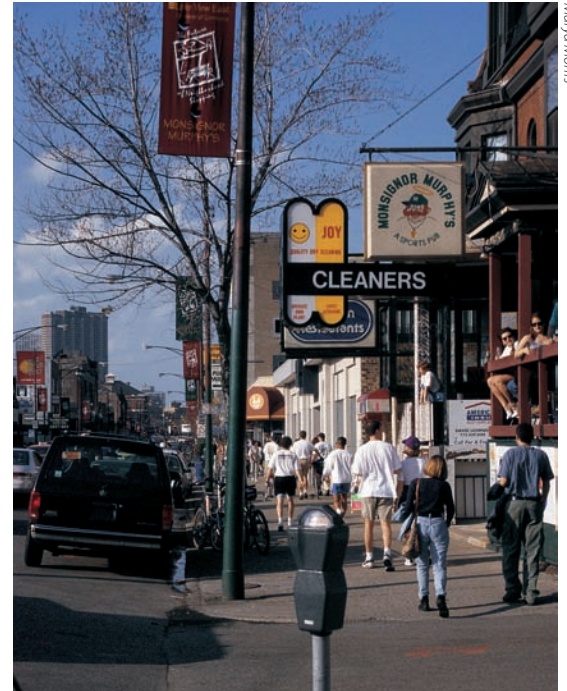
Courts have affirmed the "time, place, and manner" regulatory doctrine. Accordingly, local governments may control the type of signs permitted or prohibited, where and how a sign may be attached to a building or erected on a site, its overall size and height, the materials it is made of, and the method of illumination. Sign regulations may also dictate the duration in which certain sign types, including temporary signs, may be displayed.

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10 PRINCIPLES OF GOOD SIGN REGULATIONS

The following guiding principles can help ensure your sign ordinance is effective and defensible:

1. A sign ordinance must be “content neutral,” meaning the ordinance cannot dictate what the message on a sign says or does not say.
2. A sign ordinance may legally regulate the size, height, location, illumination, building materials, and any other physical attributes of a sign face and structure. These are called “time, place, and manner” regulations.
3. A sign ordinance must describe the purpose and intent of the regulations and, where appropriate, should refer to comprehensive plan policies that it is implementing.
4. Accurate definitions of each sign type, preferably including illustrations, will help eliminate subjective interpretations of the ordinance, making it easier to understand and administer. Examples of common sign types include portable signs, awning signs, window signs, and banner signs.
5. The fewer number of sign types that are listed as exempt from the ordinance, the stronger and fairer the ordinance will be.
6. Special standards for signs in certain districts (for example, historic downtowns and entertainment districts) that go beyond basic regulations should be included in the ordinance if needed.
7. The planning director should be assigned responsibility for reviewing and approving sign permit applications, with any appeals going to the zoning board of adjustment. A high volume of appeals is often an indication that a sign ordinance is out of step with businesses’ needs and should be revised.
8. A sign ordinance should contain a Substitution Clause, which is a statement indicating that any sign permitted under the ordinance may display a noncommercial message. This statement prevents inadvertent preferential treatment of commercial speech over noncommercial speech.
9. A sign ordinance should contain a Severability Clause that would allow any section that is found to be unlawful or unconstitutional to be removed from the ordinance without risk of invalidating the entire ordinance.
10. Business representatives should be included as stakeholders when the sign ordinance is revised.



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Communities can vary widely in the nature of businesses, and sign regulations need to recognize the local commercial climate.



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Design guidelines for signs should promote creativity, not uniformity. They are inherently flexible in order to reflect the specific attributes of context.

This PAS QuickNotes was prepared by Marya Morris, AICP, a planning consultant in Chicago.

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