THE ELIMINATION OF NONCONFORMING SIGNS

A community considering the adoption of a sign ordinance or sign provisions within a zoning ordinance is inevitably faced with the problem of pre-existing signs that do not meet the requirements of the ordinance. Most ordinances contain provisions requiring the removal of these nonconforming signs if they have been abandoned, destroyed, or substantially damaged. Early in the history of the zoning movement it was thought that provisions of this kind, along with requirements restricting the expansion or alteration of nonconforming uses, would eventually eliminate all nonconformities. It was not long, however, before it became obvious that, despite these requirements, nonconforming uses were not going to disappear. Nonconforming uses did, and still do, exhibit a remarkable staying power, in part because they have a high earning capacity as a result of their locational monopoly which has been created and protected by law. Because the traditional methods of elimination have not been satisfactory, more and more communities have been using amortization provisions as a means of getting rid of nonconforming signs.

The purpose of this report is to examine the present development of the amortization concept as it relates to signs. In addition to a discussion of the theory of amortization, the report will examine the results of a questionnaire recently completed by 366 PAS subscribers. The questionnaire was designed to find out how many jurisdictions have sign elimination requirements and how successful their elimination programs are. The report will also discuss the possible impact of the new federal legislation regulating outdoor advertising along the federal-aid highway system. This report has been written to supplement previous Planning Advisory Service Reports dealing with signs: No. 28, Signs and Billboards, No. 103, Outdoor Advertising, and No. 138, Sign Regulation in the Central Business District.

The Amortization Concept

The constitutional protection afforded the owner of a nonconforming use exists only in order to permit the continuation of the use to the extent necessary to protect the investment of the owner.1 Thus, when a nonconforming use has been

1This and subsequent references will be found at the end of the report.

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abandoned under circumstances permitting the inference that the use is not considered by its owner to have value, there is no longer a need to protect his investment. Similarly, when a nonconforming use has been destroyed or substantially damaged, the owner's investment has been destroyed and therefore needs no further protection. This line of reasoning is also at the base of the amortization concept. Instead of waiting until there is no longer an investment to protect (either because it has been abandoned or destroyed) the owner of the use is given a period of time in which he is expected to amortize or recoup his investment.

The rationale of the doctrine of amortization was summarized in City of Los Angeles v. Gage, a case which is cited frequently by proponents of amortization. In essence there is no distinction between requiring the discontinuance of a nonconforming use within a reasonable period and provisions which deny the right to add to or extend buildings devoted to an existing nonconforming use, which deny the right to resume use after a period of nonuse, which deny the right to extend or enlarge an existing nonconforming use — all of which have been held to be valid exercises of the police power. . . .

The distinction between an ordinance restricting future uses and one requiring the termination of present uses within a reasonable period of time is merely one of degree, and constitutionality depends on the relative importance to be given to the public gain and to the private loss. Zoning as it affects every piece of property is to some extent retroactive in that it applies to property already owned at the time of the effective date of the ordinance. The elimination of existing uses within a reasonable time does not amount to a taking of property nor does it necessarily restrict the use of property so that it cannot be used for any reasonable purpose. Use of a reasonable amortization scheme provides an equitable means of reconciliation of the conflicting interests in satisfaction of due process requirements. As a method of eliminating existing nonconforming uses it allows the owner of the nonconforming use, by affording an opportunity to make new plans, at least partially to offset any loss he might suffer. The loss he suffers, if any, is spread out over a period of years, and he enjoys a monopolistic position by virtue of the zoning ordinance as long as he remains. If the amortization period is reasonable the loss to the owner may be small when compared to the benefit to the public. . . .

The Los Angeles v. Gage decision refers to elimination requirements in zoning ordinances. It should be pointed out, however, that sign ordinances often contain similar elimination provisions. Sign ordinances usually pertain to controls that apply throughout a community and are designed primarily as safety measures. The "amortization" sections of sign ordinances are concerned more with the sign as a structure than as a use. Thus, the model sign ordinance of the National Institute of Municipal Law Officers (NIMLO) requires that nonconforming signs "shall be removed, or altered, or replaced so as to conform with the provisions" of this ordinance within two years. The NIMLO commentary on this part of the ordinance states: "This section is inserted to cover instances where it is found that the continued maintenance of existing nonconforming signs endangers the public safety and welfare." This is in contrast to the zoning
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ordinance, where the focus of attention is on removing signs that are incompatible with surrounding land uses. Under the terms of a zoning ordinance, a sign may be incompatible because it is too high, in which case the option is available to reduce its size rather than to eliminate it completely. It may be, however, that the sign is incompatible simply because it is a sign (regardless of its size). In this case, removal of the incompatibility requires complete removal of the sign.

Enabling Legislation

To enact amortization provisions, either in a sign or zoning ordinance, a community must have an explicit or implied grant of power to do so from the state. In 1963 the zoning enabling statutes of the 50 states and Puerto Rico were examined to determine to what extent they would allow or impede local government from adopting amortization provisions. This examination disclosed that the statutes fall into four general categories:

1. Statutes granting to the local municipality the general power to enact zoning ordinances, without reference to the power of a municipality to terminate nonconforming uses, structures, or buildings.

2. Statutes granting the local municipality the power to direct the involuntary termination of nonconforming uses only.

3. Statutes expressly prohibiting the municipality from enacting ordinances requiring the involuntary termination of nonconforming uses, structures, or buildings.

4. Recognition of nonconforming uses, structures, or buildings, and permitting them to continue indefinitely.

A substantial majority of the statutes fall into the first category. Most of the statutes in this group were modeled after the Standard State Zoning Enabling Act drafted in 1923. With zoning advocates largely on the defensive at that time, it would be difficult to imagine the drafting of a model enabling act that explicitly approved the adoption of the amortization theory.

The absence of express statutory authority for amortization provisions need not be considered a denial of such power. Courts in several states have treated amortization as a corollary to the general grant of power to control land use, height, and bulk. In practice, many disputes concerning amortization still center on constitutionality rather than on the question of statutory authority. The statutory question should receive more attention if the constitutionality of amortization becomes firmly established.

Current Practice

Planning Advisory Service recently sent a questionnaire on the elimination of nonconforming signs to all PAS subscribers in an effort to obtain firsthand information concerning the content of ordinance provisions and the successes and failures of administering these provisions. Completed questionnaires were
<table>
<thead>
<tr>
<th>Ordinance or Ordinances Used In Sign Regulation</th>
<th>Cities</th>
<th>Counties and Combined</th>
<th>All Jurisdictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zoning</td>
<td>45</td>
<td>53</td>
<td>98</td>
</tr>
<tr>
<td>Zoning and Sign</td>
<td>51</td>
<td>6</td>
<td>57</td>
</tr>
<tr>
<td>Zoning and Building Code</td>
<td>67</td>
<td>24</td>
<td>91</td>
</tr>
<tr>
<td>Zoning, Sign, and Building Code</td>
<td>35</td>
<td>7</td>
<td>42</td>
</tr>
<tr>
<td>Sign</td>
<td>18</td>
<td>0</td>
<td>18</td>
</tr>
<tr>
<td>Other Combinations of Ordinances or No Control</td>
<td>35</td>
<td>25</td>
<td>60</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>251</strong></td>
<td><strong>115</strong></td>
<td><strong>366</strong></td>
</tr>
</tbody>
</table>

Returned by 251 city agencies and 115 county or combined city-county agencies. The questionnaire clearly revealed that sign regulations, of one kind or another, are a major concern of local governments. All of the 251 city agencies responding to the questionnaire indicated that signs were being regulated under one or more ordinances. Of the 115 county or combined agencies, only 19 indicated that they either had no authority to regulate signs or elected not to do so in cases where the authority was available. Table 1 indicates the frequency with which different ordinances are used to regulate signs.

In response to the question, "Does any local ordinance require the removal of one or more kinds of lawful, nonconforming signs?", 78 of the city agencies and 39 of the county or combined agencies replied affirmatively. This means that 117 out of 366, or about one-third of the jurisdictions responding, have provisions for the eventual involuntary elimination of nonconforming signs. The one-third figure is not necessarily representative of national practice because, in the first place, the questionnaire was limited to PAS subscribers, who may or may not constitute a representative sample of all local governments. In addition, it can probably be argued that jurisdictions that have elimination provisions would be more likely to return the questionnaire than would jurisdictions that have no elimination requirements. If this is the case, the one-third figure overstates the degree to which elimination provisions are being used. On the other hand, no fewer than 20 of the respondents indicated that, although they did not presently use the amortization technique, they are in the process of drafting or plan to draft sign regulations that do contain elimination provisions. Regardless of the qualifications that must be placed on the results of the questionnaire, it is fairly evident that a substantial number of communities have adopted amortization requirements.
The Contents of Amortization Provisions

There is considerable variety in the content of local ordinances containing amortization provisions. This variety reflects, in part, an uncertainty as to the proper use of the amortization concept. There is not yet enough experience with amortization to know fully its potentialities or its limitations. Communities, fearful of a legal confrontation and buffeted by pressure groups, have developed a wide range of devices to satisfy various constituents and protect themselves from a legal battle. With more experience local communities will begin to develop a feeling for the most effective use of amortization, and the courts will begin to respond to some of the questions that are as yet unanswered. At the present time, despite the relatively long career of the idea of amortization, use of the concept is usually cautious and experimental.

In theory, a community decides what is to be eliminated and when it is to be eliminated by balancing the public benefits to be gained by elimination against the private losses. In practice, the public benefit side of the question is often short-changed, and the issue is cast in terms of the private loss. This is due to the fact that it is easier to "understand" and possibly quantify the private loss. The public benefit is more abstract and is almost impossible to measure in dollars and cents. Also, the emphasis on the private loss is, in many instances, the result of the stance taken by the sign lobbyists. It is to their advantage to keep the debate focused on how much they stand to lose and to characterize the public gain as illusory. This focus on the private loss is reflected in the content of most ordinances. They are usually, though not always, cast in terms of the value of the structure. Rarely does the language of an ordinance explicitly call for a weighing of this private loss against the public gain to be derived from the elimination of the nonconforming sign.

The courts, in deciding whether the application of an amortization clause is valid, will usually make some attempt to weigh the social benefit against the private loss. However, regardless of the magnitude of the public gain, the courts can be expected to rule that immediate termination or an unreasonably short amortization period constitutes a deprivation of property rights. If a sign is objectionable enough to require immediate removal, the community should rely on the law of nuisance. If the sign does not constitute a nuisance, immediate removal cannot be compelled without compensation.

Amortization Period

The key problem for a community is to determine a reasonable amortization period. There is, of course, no easy solution to this problem; no simple formula can deal with the complexities of determining the "correct" period of amortization. Because of these complexities, the lack of experience with amortization, and political pressures, most communities have been extremely liberal in determining amortization periods.

For the 117 jurisdictions reporting amortization provisions for signs, the periods ranged from three months to 15 years. The most common amortization periods were three and five years, which is identical with the favored periods reported in the 1957 PAS sign report. Table 2 illustrates the range in amortization periods.
Table 2
RANGE OF AMORTIZATION PERIOD BY TYPE OF AGENCY

<table>
<thead>
<tr>
<th>Length of Amortization Period, in Years</th>
<th>Cities</th>
<th>Counties and Combined</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1</td>
<td>3</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>1</td>
<td>6</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>2</td>
<td>6</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>3</td>
<td>22</td>
<td>6</td>
<td>28</td>
</tr>
<tr>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>5</td>
<td>23</td>
<td>16</td>
<td>39</td>
</tr>
<tr>
<td>6 - 10</td>
<td>6</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>11 - 15</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

The purpose of the amortization period is to give the owner of a nonconforming use a period of time to recoup some (but not necessarily all) of his investment in the use. (The courts have also stated that one of the functions of the amortization period is to give the owner time to make plans for the relocation and re-establishment of the use in a new location. In the case of signs this is a minor consideration and certainly doesn't require a three- or five-year period.) The amortization period is not an estimate of the remaining useful (physical) life of the property. At the end of the period it is possible, and in most cases probable, that the property will have a capacity to generate economic gain or that it will be of value to the owner. The period is designed to give the owner time to get back all or a substantial part of what he has put into the use.

In theory the concept is fairly simple, but its application is difficult. One of the more obvious problems is that the amortization period applies to a group of differing signs rather than to an individual sign. However, even if the period were calculated separately for each sign, the job would not be easy. How long, for example, should the amortization period be for a $100 off-site sign erected by a motel owner the day before the ordinance is passed? Assuming that the community wishes to ensure that the motel owner recovers his entire investment in the sign, how long will it take for the sign to generate $100 of additional profit for the motel?* If we assume that the sign brings in one additional customer a week and the profit on each customer is $2.50, then the

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*Some commentators on the "amortization" principle have raised serious conceptual questions about whether anything is actually being amortized. See, for example, "The Cost of Amortizing Non-conforming Uses," Vol. 26. University of Chicago Law Review. (1959) p. 442. Accordingly, there is room (Cont'd)
sign will have paid for itself in 40 weeks. If the motel owner is required to take his sign down at the end of a year, he will have recovered his investment in the sign. Naturally, the owner will not be pleased with the thought of losing the potential future profit of $2.50 a week. He has constructed the sign not in order to "break even," but in order to make a profit. Nevertheless, the purpose of the amortization period is to protect investment, not to prevent losses of future income.

A community will not, of course, have all the information that was supplied in the example given. In the first place, it will rarely know how much any particular sign costs. In the second place, it may not know how long the sign was in existence before enactment of the ordinance. Finally, it will almost certainly not know how much profit a sign generates for the owner of the product or service that is being advertised.

It is only necessary to alter some of the variables in the motel sign example to see how rapidly the problems multiply. What if the sign were 20 years old at the time the ordinance was passed? Would the community assume that the sign had long since paid for itself and give the owner two weeks to remove it, or would they amortize the present replacement value of the sign? What if the sign advertised a product that was sold nationally and was one of thousands of similar signs? Would the amortization period be different if the sign structure was owned by a sign company and the space was leased by the motel owner?

The list of complicating factors is indeed long. Any amortization period a community selects is only a rough approximation of what, in theory, it "should" be. Regardless of the complications, however, there is little justification for granting a long grace period to any group of signs. Except for the most elaborate and specialized advertising displays, the costs of constructing and erecting a sign are relatively small. Not only are the initial costs small, but also most signs can be easily and inexpensively relocated. Thus the investment in the structure itself may not be lost at all if the sign can be used in a new location. If it is a specially designed sign that cannot be relocated this must be considered, but the fact remains that the original investment is not likely to be substantial. Also, it may not be necessary for all of the investment to be returned. The court in the Gage case required only a resonsable time period, one in which "all or substantially all" of the investment could be returned. Some loss to the nonconforming user may be permissible.

The value of the property upon which a sign is located will ordinarily have no bearing on the determination of an amortization period. Sign owners may argue that some poor land owner (usually a farmer) will lose several hundred dollars in potential income if amortization provisions are enacted. Local officials may be sympathetic with the plight of the farmer, but they should remember that in acquiring his land he has not made an investment that can be recouped only by leasing space to a sign company. He may still use his land for agricultural purposes or for other purposes permitted by the zoning ordinance.

for doubt that the purpose of the amortization period in this instance is to ensure that the motel owner gets $100 of additional profit as the result of his nonconforming sign. The example is used here only to illustrate the difficulty of applying the amortization principle, a difficulty that exists even when the principle is interpreted in its most elementary form and when the facts are oversimplified.
Rigidity of Amortization Provisions

Perhaps the major difficulty with the amortization concept as it is presently being used is its lack of flexibility. In most instances a community simply adopts provisions that call for the elimination of all nonconforming signs. There is no point, however, in eliminating a use just because it would not be permitted as a new use. Some nonconforming uses are more objectionable than others (e.g., those in residential areas), and a community should determine what benefit elimination produces before it blankets the community with elimination requirements. In most jurisdictions, it would appear that a "selective" application of the requirements is needed. This would require a complete survey of the location, number, and type of nonconformities before an ordinance is passed. On the basis of this survey the community could decide exactly what should be eliminated. It may well be that a community does not have enough resources (political, financial, or administrative) to eliminate all of the nonconforming signs. This does not mean that a community would eliminate only those signs that are easiest to get rid of (because they are inexpensive or because there is little opposition to removal). It means that the community will judiciously weigh the costs of elimination against the benefits.

Some observers believe that until the rigid character of the ordinances is eliminated, the amortization theory will not progress beyond its present stage of partial development. It has been suggested that the goal is to develop a system whereby each case is handled separately in accordance with general standards. Although we are a long way away from this practice, the examples of amortization provisions which follow illustrate that the movement toward more discriminating use of the power to amortize is already underway.

SELECTED AMORTIZATION PROVISIONS

At the present time the most frequently used type of amortization provision requires the elimination of all nonconforming signs in all areas of the city within one specified time period. The Stockton, California, ordinance is typical in this respect.

All presently existing nonconforming signs, billboards, and commercial advertising structures may continue to be used for a period of five (5) years from July 1, 1964. No structural alterations may thereafter be made, and the said nonconforming signs, billboards, and commercial advertising structures shall be brought into conformity by removal or relocation before July 1, 1969. /The same amortization period is provided for signs which become nonconforming as a result of a zoning change or through annexation./

There are obvious advantages to this approach. It covers all situations at one point in time and obviates the need for any case-by-case balancing of the public interest against private losses. The five-year period is generous enough so that it is unlikely that the ordinance would be found "unreasonable." Administratively, the work burden comes at one point, and this may be preferable to stringing the enforcement problem out over a period of years. Barring any un-
usual circumstances this kind of provision may be effective, particularly in smaller jurisdictions. It is, however, rigid with respect to what is eliminated. It assumes that all signs are equally objectionable and that no sign has a value that could not be amortized within five years. While variances are available to reduce rigidity, it seems unreasonable to place any more reliance than necessary on this often abused power.

Walnut Creek, California, has a similar provision (with a three-year amortization period) but with the additional requirement that:

Any nonconforming sign, the value of which is less than fifty ($50) dollars shall be removed or altered to comply with the provisions of this ordinance not later than one (1) year subsequent to the effective date of this ordinance.

Ordinances of this type reflect, quite clearly, the emphasis on private loss. Placing dollar limits on the value of signs to be amortized helps to ensure the reasonableness of the ordinance. This tactic, however, does not permit consideration of the fact that it may be of greater public benefit to have the signs with valuations greater than $50 removed sooner than those with a value of less than $50.

A section of the Charlotte, North Carolina, ordinance requires that:

Nonconforming signs made of paper, cloth or other non-durable material or freestanding signs that are not affixed to a building or the ground shall be removed within six months from the effective date of this Ordinance.

This approach is similar to placing dollar limits on the value of the signs to be removed. Instead of dollar limits the ordinance describes types of signs that are known to be inexpensive. Again, this appears to be a self-limitation on the part of the community that is hard to justify. It might be argued that the low value signs are being removed because they are the most objectionable, but it is more likely that they are being eliminated because they are the most easily removed. Although it may be argued that any removal program is a stepping stone to more ambitious programs, it appears, at times, that removal of these inexpensive signs proves to be a substitute for a bigger program rather than a stepping stone toward one.

An ordinance being considered for adoption in Ann Arbor, Michigan, is more detailed than most. It provides for the elimination within three months of all "nonconforming temporary signs, banners, pennants, string lights and A-frame signs." Within six months after passage of the ordinance "all nonconforming signs displaying flashing or intermittent lights, and moving or rotating signs shall conform to /their/ ordinance." The remaining signs are required to conform to the ordinance according to the following schedule: one year for signs more than 15 years of age; two years for signs more than 10 years of age; three years for signs more than five years of age; five years for all remaining signs.

It is unlikely that the process of weighing the public gain against the private loss is materially advanced by information on the age of signs. The objectionableness of a sign (or the degree of its incompatibility with its sur-
roundings) is determined by its type and location far more than by its age. However, more than any theoretical objections to the use of age in establishing amortization periods, the lack of reliable records will operate against such a practice. It is highly unlikely that any community could accurately establish the age of all the signs within its boundaries -- unless, of course, the community has had a sign licensing requirement in effect for the past 15 or more years.

An effort to introduce a degree of flexibility into an otherwise rigid elimination requirement is evident in the Pleasant Hill, California, ordinance. All signs are given a two-year period in which they must be removed or modified to conform to the ordinance. A three-year extension may be granted by the planning commission (whose decision may be appealed to the city council) upon application by the sign owner. The commission is charged to "hear arguments for and against the grant of an extension," and is specifically directed to consider the interests of the sign owner:

(a) The economic hardship upon the sign owner and land owner, taking into consideration the investment cost, the revenue derived and the estimated life of the sign and the condition of the sign.

(b) The interest and status of the sign owner or user on the property and any immediate changes in the use of the property.

The billboard ordinance of Anaheim, California, (which does not apply to on-site business signs) contains an amortization schedule that distinguishes between billboards that do not meet site development standards and those that are improperly located.

Billboards with an appraised value of less than $200. 1 year for removal.

Billboards which do not meet site development standards (height, setbacks, lighting, etc.). 3 years in which to make the necessary modifications.

Billboards sited at locations other than those provided for. 5 years for removal.

Thus, a sign that is too high and improperly located would have to be lowered within three years and removed two years later.

The recently adopted San Francisco sign ordinance is a good example of how a community uses the power to amortize selectively. The ordinance does not call for the elimination of all nonconforming signs within the city but, instead, establishes termination dates for selected categories of signs in certain parts of the city. The following is a list of the signs that are to be eliminated:

<table>
<thead>
<tr>
<th>Type or Location of Sign</th>
<th>Period of Removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>General advertising signs in</td>
<td>Five years.</td>
</tr>
<tr>
<td>residential districts.</td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Time Period</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>Within special civic center sign district.</td>
<td>Depending upon location, either one or five years. No removal required along certain specified streets.</td>
</tr>
<tr>
<td>Within Candlestick Park special sign district.</td>
<td>Five years.</td>
</tr>
<tr>
<td>Near non-landscaped freeways.</td>
<td>Ten years. No removal required along certain freeways.</td>
</tr>
<tr>
<td>Near landscaped freeways.</td>
<td>Three years.</td>
</tr>
<tr>
<td>Near certain scenic streets.</td>
<td>Five years.</td>
</tr>
<tr>
<td>Near rapid transit lines.</td>
<td>Five years.</td>
</tr>
<tr>
<td>Wind signs.</td>
<td>One year.</td>
</tr>
<tr>
<td>Miscellaneous service station signs in residential districts.</td>
<td>One year.</td>
</tr>
</tbody>
</table>

Undoubtedly, the Smithtown, New York, ordinance has achieved the ultimate in flexibility. Any nonconforming use may be subject to compulsory termination "when it is found detrimental to the conservation of the value of surrounding land and improvements, or to future development of surrounding lands, and therefore is tending to deteriorate or blight the neighborhood." The determination is at the discretion of the Town Board. The Board, after it has established that it is in the public interest to remove a particular nonconforming use, is then responsible for establishing a reasonable amortization period.

In ordering the compulsory termination of a nonconforming use, the Town Board will establish a definite and reasonable amortization period during which the nonconforming use may continue while the investment value decrement resulting from termination is amortized. Determination of the amount to be amortized shall be based on the value and condition of the land and improvements for the nonconforming use less their value and condition for a conforming use, and such other reasonable costs as the termination may cause. The rate of amortization shall be in accordance with reasonable economic practice.

The initial focus of attention here is on the benefit to the community. Only after it has been shown that the community will benefit from removal is the loss side of the problem considered.

The problem inherent in an approach such as this is that the owner of a nonconforming use has very little protection against arbitrary action on the part of city officials. At a minimum the ordinance should contain standards to determine when a nonconforming use is tending to "deteriorate or blight the neighborhood." Nonetheless, this is an excellent example of the direction in which a number of communities are moving.
The existence of a local ordinance which requires the removal of signs after an elapsed period of time is, of course, not a guarantee that any signs will actually be removed. Judging from the results of the "administration" section of the PAS questionnaire it may in fact be harder to launch an effective enforcement program than it is to get elimination provisions drafted and adopted. The information below is based on the responses from the 117 communities which indicated that they had elimination provisions.

<table>
<thead>
<tr>
<th>Action Taken</th>
<th>Cities</th>
<th>Counties and Combined</th>
<th>All Jurisdictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES: One or more signs have been removed in response to the elimination requirements.</td>
<td>32</td>
<td>15</td>
<td>47</td>
</tr>
<tr>
<td>NO: Elimination provisions have not been used to remove any signs.</td>
<td>21</td>
<td>11</td>
<td>32</td>
</tr>
<tr>
<td>No answer, or the amortization period has not yet expired</td>
<td>25</td>
<td>13</td>
<td>38</td>
</tr>
</tbody>
</table>

Forty-seven of the 366 agencies returning questionnaires have actually removed a sign. Several of the 47 jurisdictions have removed only a few signs and have indicated that there is a significant number still to be removed.

When asked to explain why the elimination provisions went unenforced or were only partially enforced, the respondents gave one or both of the following reasons: (1) lack of staff time and (2) lack of support from local officials. The following comments are typical explanations given for the lack of enforcement.

Lack of sufficient personnel to follow up and enforce regulations.

Shortage of manpower, numerous board of adjustment variances over the years, and lack of firm city policy.

Political scene bows to pressure of billboard industry.

Policy is now to ignore these prior violations but prohibit future violations.

Council has decided that the ordinance not be enforced until completion of study relative to signs.

There is little argument that the administration of a sign elimination program is a time-consuming process. Most cities are cluttered with hundreds of signs and the task of maintaining records of ownership, location, and cause of non-conformity would consume many man-hours.

A possible solution to this problem is to require the owners of nonconforming signs to register them with the enforcement officer. This would presumably
provide local officials with a complete record of the nonconformities, thus facilitating a complete and comprehensive enforcement program. If initial registration were coupled with a requirement that a report be filed each year on the status of the nonconformity, the enforcement task would be simplified even further. There is, however, a danger in using such requirements to compensate for an inadequate enforcement process. In the first place, it is unlikely that most sign owners know whether or not their signs are nonconforming, and it is unrealistic to expect all of them to know. Consequently, many of the signs would not be registered, regardless of the penalty that was attached to non-registration. In addition, a registration requirement yields the needed information only after the ordinance has been adopted, and it has already been suggested that the adoption of amortization provisions should be preceded by a complete survey. Registration requirements can be of some help, but they should not be relied upon as a substitute for a community's enforcement responsibilities. Each community will have to develop a system for identifying nonconformities and notifying owners concerning termination requirements.

Fortunately, it appears that some of the enforcement work can be done with the assistance of part-time and unskilled or semi-skilled help. In smaller communities with uniform periods of amortization, the work load would be concentrated during two periods: (1) at the time the ordinance is adopted and (2) when the amortization period has expired. This concentration of work load immediately suggests the use of temporary help. Conducting a sign survey may be an ideal type of summer employment for a group of high school students. In larger cities it may be a suitable task for Job Corps personnel. This practice will, however, be much less attractive to the community that adopts complex provisions. These provisions will require continuous supervision by highly skilled administrators.

The lack of support from local officials is perhaps more serious than lack of staff time. In fact, an inadequate budget and staff may simply reflect the fact that amortization is not viewed favorably by elected officials. Councilmen who will actively support a program that regulates the future use of property may be reluctant to support a program that requires property owners to terminate an existing use without compensation. The court's determination in Los Angeles v. Gage that the difference is one of degree will be of small comfort to a mayor or councilman facing re-election. An elected official pushing for enforcement of the ordinance will be faced with intense opposition from some quarters, and this opposition will often outweigh any continuing support from citizens' groups that supported the adoption of the ordinance.

A community that adopts elimination provisions should realize that it has the responsibility to enforce them, regardless of the time it takes or the "popularity" of the program. Although the law itself may have a certain moral value and could result in some voluntary compliance, it is more reasonable to assume that the law will be effective only if actively enforced.

While non-enforcement is probably all too common, there is evidence that some jurisdictions are actively engaged in the enforcement of their elimination provisions. An official of a California county in which over 500 nonconforming signs have been removed during the past few years gave the following explanation for the success of their program: "We attribute compliance to realistic and intensive enforcement effort and two civil abatement suits..." [which are still pending on appeal].
Other communities could no doubt be as successful if they recognized that elimination depends on "intensive enforcement" and may very well require a legal confrontation.

SIGNS ALONG EXPRESSWAYS

In most respects the regulation of signs (including the elimination of nonconforming signs) along expressways is not different from the regulation of signs in any other section of the city. However, because several states and the federal government have entered into this area of sign control, this topic requires special consideration.

The principle of expressway sign control was first accepted in 1951 by the City of Los Angeles in an amendment to the city zoning ordinance. The ordinance prohibited the erection, construction, relocation, or maintenance of any outdoor advertising structure:

If such structure, sign or statuary is designed to have or has the advertising thereon maintained primarily to be viewed from a main traveled roadway of a freeway; or

If such structure, sign or statuary, because of its location, nature or type, constitutes or tends to constitute a hazard to the safe and efficient operation of vehicles upon a freeway, or creates a condition which endangers the safety of persons or property thereon.

In the Los Angeles ordinance, and in almost all of the many ordinances that have followed the Los Angeles lead, signs that do not conform to the regulations are given a grace period of a few months to a few years before they must be removed.

In 1958, Congress authorized federal participation in the control of outdoor advertising in areas adjacent to the 41,000-mile national system of Interstate and Defense Highways. The authorization was predicated upon the promotion of the safety, convenience, and enjoyment of public travel; the free flow of interstate commerce; and the protection of the public investment in the Interstate system. The essence of the law was a prohibition against advertising structures within 660 feet of the highway right-of-way. The law was, however, not self-executing. Each state was free to decide whether or not it would adopt the recommended national standards. If a state chose to adopt the standards, it could meet the federal requirements in one of two ways. One approach was for the state to use its powers of eminent domain and purchase the advertising rights along the right-of-way. If this approach was used the acquisition of the advertising rights could be considered a part of the cost of highway construction, and 90 per cent of such costs would therefore be paid for by the federal government. The second approach was for the state to use its police powers to establish the necessary controls. In this case the state's federal aid highway funds would be increased by one-half of one per cent. Of those states that did elect to adopt the national standards, most preferred the latter approach.5
By 1965 several states had elected to participate in the program. Although the standards were primarily applicable to new highway locations where there were no signs, most states did encounter the problem of pre-existing signs that did not conform to the requirements. Several methods were used to eliminate these nonconforming signs. In some cases the approach was to classify them as public nuisances and provide for their immediate removal by legislation. In other instances the amortization procedure was adopted. After a specified grace period had elapsed, the signs had to be removed. In a few states, the powers of eminent domain were used. The existing signs were eliminated by purchase, and the police power was used prospectively to prohibit new signs.

In 1965 the federal law relating to signs along expressways was revised. The revision contains some changes of major consequence, including penalties against states that do not adopt the national standards. Where the 1958 law provided for a bonus for participating states, the 1965 revision calls for a ten percent reduction in federal aid highway funds for states that do not comply with the standards. In addition, the scope of the 1965 law has been enlarged to include signs along the primary federal aid highway system as well as along the Interstate system.

One section in the revised act, however, will almost certainly create problems for local communities intent on eliminating nonconforming signs through the use of police powers. Under the terms of the revised law, it can be argued that the states are no longer free to select their own means of eliminating nonconforming signs, for the act specifies that nonconforming signs shall be given a five-year amortization period.

Any sign, display, or device lawfully in existence along the Interstate system or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

Not only will the signs be given a five-year grace period, but "just compensation" must be paid upon their removal. And, the compensation is to be paid to the owner of the property upon which the sign is displayed as well as to the sign owner.

Just compensation shall be paid upon the removal of nonconforming signs. The Federal share of such compensation shall be 75 percent. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.
The law has only recently been enacted, so it is too early to be sure of the interpretation of the provisions cited. It may be that a third section of the law effectively protects the rights of states (and local governments) to adopt stricter requirements. The act provides that:

Nothing in this section shall prohibit a state from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

This could be interpreted to mean that the states are free to eliminate nonconforming signs in any manner they deem appropriate. Thus, the states could continue to have them removed immediately as nuisances, have them removed after providing an appropriate amortization period, or remove them immediately through purchase. However, the reference to "standards" could be interpreted to mean that the states are free only to impose stricter limitations with respect to the size or location of permitted signs. (e.g., to prohibit signs within 1,000 feet of the right-of-way instead of only 660 feet).

It will be some time before it is known whether the states will be free to eliminate nonconforming signs according to methods of their own choosing or whether they must use this curious and unprecedented blend of amortization and compensation. Regardless of the final decision, the mere existence of the federal requirements could create problems for local officials who have adopted or are considering the adoption of amortization provisions. Opponents of sign controls will undoubtedly approach local communities with one or both of the following arguments.

Since the Federal Government requires compensation (to the sign owner and the property owner) you must also provide compensation for any signs that you remove.

Since the Federal Government considers five years a fair period of amortization, you must provide five years as a minimum.

In other words the federal law could produce a climate of opinion that is contradictory to the slow but increasing acceptance of the amortization principle. The law will almost certainly produce confusion and in some cases will halt or impede sign removal programs under present local requirements.

Local officials should, however, continue to view the police power as an acceptable basis for sign regulation and nonconforming sign elimination. Although the courts are divided on the legality of amortization, there is substantial authority upholding it. Decisions of the highest courts in four states have approved state statutes requiring removal of signs along highways.\(^6\) Other decisions have upheld local regulations requiring sign elimination without compensation.\(^7\) It would indeed be unfortunate if a federal requirement, adopted no doubt as part of the political price of a national beautification effort, is used as a means of combatting the only practical sign removal method available to many local governments.
REFERENCES


APPENDIX

EXTRACTS FROM DECISIONS UPholding THE USE OF THE POLICE POWER TO ELIMINATE NONCONFORMING SIGNS

"The distinction between an ordinance that restricts future uses and one that requires existing uses to stop after a reasonable time, is not a difference in kind but one of degree and, in each case, constitutionality depends on overall reasonableness, on the importance of the public gain in relation to the private loss. . . .

"There is no difference in kind, either, between limitations that prevent the adding to or extension of a nonconfirming use, or provisions that the right to the use is lost if abandoned or if the structure devoted to the use is destroyed, or the denial of a right to substitute a new use for the old, all of which are common if not universal in zoning laws and all of which are established as constitutional and valid, on the one hand, and a requirement, on the other, that an existing nonconformance must cease after a reasonable time. The significance and effect of difference in degree in any given case depends on circumstances, environment and length of the period allowed for amortization.

"We think that in requiring billboards to leave residential areas after a tolerance period of five years, the City Council has not overstepped the line that divides the reasonable and constitutional from the arbitrary and invalid. Billboards are not nuisances per se -- indeed, Ordinance 711 provides, as did predecessor ordinances, that a billboard may be erected in commercial and industrial zones as a matter of right, unless it is determined as a fact that it '... would menace the public health, safety or morals'."

Grant v. Mayor and City Council of Baltimore, 129 A.2d 363 (Md. 1957).

In considering whether a proposed statute prohibiting billboards adjacent to a highway bears a real and substantial relation to the public welfare, the General Assembly may properly give weight not only to its effect in promoting public safety but also to its effect in promoting the comfort, convenience and peace of mind to those who use the highway, by removing annoying instrusions upon that use.

Each of these signs was in existence before enactment of these statutes. However, there is no evidence disclosing what loss /the company/. . . will suffer if compelled to remove them. There is nothing to indicate that they ever became fixtures so as to be a part of the real estate. They can apparently be used in other locations where their use will be lawful. /citation/ There is nothing to indicate what expense would be involved in moving them to such locations. There is not even any evidence tending to prove what, if any, dollar loss /the company/. . . will suffer if these statutes are enforced against these seven signs.
The reason given for decisions protecting the continuation of nonconforming uses is that, except for its location in a particular zone, the nonconforming use would be lawful and not a nuisance. However, the statutes involved in the instant case make the use of land for billboard purposes within 660 feet of an interstate highway unlawful and a nuisance. Unlike in the zoning cases, their continued use for such purposes will not merely be a lawful use that does not conform with a zoning restriction but a use that is unlawful and a nuisance either in or out of any zoning district. . . .

Furthermore, as hereinbefore pointed out, the use prohibited by these statutes is in substance and effect a use of the public highway for advertising purposes. To hold that such a nonconforming use should be protected would in effect lead to the absurd result of recognizing such use, before its statutory prohibition, as creating a vested private property interest in the highway.


The Act does not affect or impair rights existing prior to the date of its enactment. To insist that private rights are immutable and once vested can never be changed is to ignore the precept that private right is always subordinate to public right asserted by the proper exercise of the police power. [citations]

The property interests impaired have value only in the exploitation of publicly constructed highways. General Outdoor Advertising v. Department of Public Works, 289 Mass. 149, 193 N.E. 799. Billboards make use of the highways and the property right imposes a servitude on them. Kalbro, Inc. v. Myrick, 113 Vt. 64, 30 A.2d 527.

We do not mean this characterization of appellants' property rights gives the Commonwealth any special authority to destroy them. We do say their nature is such the legislature may reasonably find that public rights of travel in the highways outweigh this private manner of use. . . . The nature of rights impaired certainly has a bearing upon the reasonableness of the statutory scheme.

Moore v. Ward, 377 S.W.2d 881 (Ky. 1964).