

➞ ISSUE NUMBER 11

PRACTICE SIGN REGULATION



Setting Up Your Community for Sign Code Success

By Dawn Jourdan, AICP, and Eric Strauss, AICP

For decades, cities and counties, through their planning departments, have sought to better engage the general public in decision making. This involvement begins with comprehensive planning processes, where citizens help decision makers envision the future of urban development. It is followed by encouraging stakeholders to participate in processes to develop or reform regulations, such as zoning and land development codes, which implement the comprehensive plan.

Because regulations that guide and govern signs can be controversial and complicated, cities often create specialized task forces to help craft these codes. The more expertise brought into this process, the more likely the codes are to be implemented and the less likely they are to be litigated. This article explores the fundamentals of sign codes from scope and purposes to the process of creation, appeal, and amendment.

It addresses common controversies that communities must address before revising their sign regulations, and it presents a series of recommendations to help planners engage community stakeholders in sign code development or revision processes.

SCOPE AND PURPOSE

A sign code is a local regulation developed by a city or county for the primary purpose of controlling the volume and magnitude of messages associated with all land uses, particularly those that are commercial in nature. Early sign regulations date back to the turn of the 20th century, when cities sought to get a handle on the proliferation of snipe signs used to advertise one-off events like traveling circuses or boxing matches. The typical purview of these codes includes signs for on-site activities and those for off-site activities (e.g., billboards). Sign codes do not seek to regulate signage contained in a building unless it is visible from outside.

Sign codes regulate commercial and noncommercial speech. This article focuses on the regulation of commercial signs that seek to advertise businesses and the products or services they provide. These codes regulate two dichotomies of commercial signs: on- and off-premise and temporary and permanent signs. Generally, a sign is defined as an object that attracts attention and is visible from a right-of-way. It does not apply to merchandise or landscaping.

On-premise commercial signs relate to activities that occur on the property. Off-premise signs, like highway billboards, describe activities that occur at another location. The law has empowered cities to substantially limit off-premise commercial messages and, in some cases, disallow them

all together. The same is not true for on-premise signs.

Codes typically distinguish between temporary and permanent signs. A temporary sign may include any on-premise commercial sign not permanently affixed to the ground, including inflatable signs, searchlights, or even human billboards. These signs are often subject to different regulations than permanent signs.

The purposes of sign codes include balancing the interests of the property owner, sign owner, neighboring property owners, and citizens of the community at large.

Communities must balance economic concerns, aesthetics, traffic safety, protection and promotion of special areas, and the prevention of blight when adopting sign regulations. Modern sign codes commonly include standards addressing the following topics:

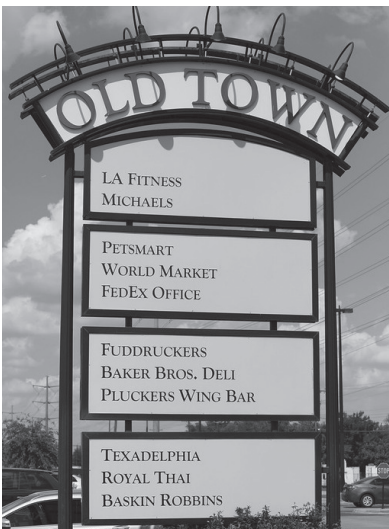
- The amount of information on a sign, based on a belief that too much or too little information causes confusion
- Copy size to ensure the visibility and legibility of commercial messages meant for passersby, whether on foot or by automobile
- The types and number of signs that may be displayed based on the land use,



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Sign codes often limit the types and number of signs that can be displayed on a property to prevent clutter and information overload.



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The legibility of written sign messages depends on the size of the lettering, the font design, and the color contrast between text and background, among other factors.



➡ Some sign standards are intended primarily to reinforce aesthetic preferences.

zoning designation, location on a street, or the number of curb cuts

- Permissible locations for signs, including minimum setbacks, again to ensure the visibility and legibility of commercial messages meant for passersby
- Minimum spacing between signs to improve visibility
- Sign size to ensure that larger signs are allowed on roadways with faster speeds
- Sign height for practical and aesthetic reasons
- Illumination to minimize glare and to mitigate the spillover effects on adjacent properties, which is of increasing importance given technology advancements that allow messages to be conveyed at nighttime and in a dynamic fashion

SIGN CODES AND ZONING

Sign codes may or may not be part of a zoning ordinance depending upon the wishes of the community and the legal basis for regulations in a jurisdiction. Traditionally, sign provisions are treated as accessory uses in each of the land-use districts in a zoning ordinance. They are considered to be part of “bulk” regulations contained in zoning regulations. Under these conditions, sign regulations are subject to the provisions of each state’s zoning enabling legislation or home rule revisions. If a proprietor seeks to deviate from the established sign regulations, they must typically seek a variance from the local zoning board.

If a sign regulation is in a zoning ordinance, it is considered part of the underlying land-use designation. A variance from those regulations would be an “area” variance that would be granted if there is “practical difficulty” to the property owner. Theoretically, if an off-premise sign was not allowed in a land-use district, a “use” variance could be granted if there is “unnecessary hardship” in the denial of a sign permit. Many states prohibit local governments from issuing a “use” variance.

Ordinary standards for granting variances may be too general in the case of signs. Criteria that are content-neutral and tied to specific objectives such as aesthetics or traffic safety would have a much better chance of being upheld in subsequent litigation. Appeals from denial of a variance would go to a court. If the sign regulations are in an independent sign code, a variance or appeals process would need to be established. A decision maker would need to be identified and the standards for granting or denying an exception would need to be indicated.

Whether crafting a new regulation or a modification to existing regulations, city officials must hold public hearings before a planning commission and the city council. Thus, such modifications must be made as a part of a political process. This political process may go unnoticed or, alternatively, draw significant attention, as more fully detailed in the sections that follow.

SIGN CODE CONTROVERSIES

One thing is for certain. Sign regulations are controversial. These codes have probably generated more litigation than any other type of land-use control. The focal points of this contention are described generally below.

What Is a Sign?

First, it is often unclear what is a sign and what is not. As defined in the *Evidence Based Model Sign Code*, a sign is, “Any device, structure, fixture, painting, or visual image

using words, graphics, symbols, numbers, or letters designed and used for the purpose of communicating a message or attracting attention” (Jourdan et al. 2011).

However, definitions such as these do not often cover all things that may or may not be signs. For example, a number of cities attempted to regulate the “lady liberties” (actors dressed in Statue of Liberty costumes) who parade outside tax preparers’ offices during late March and early April. These actors certainly draw attention to the businesses who fund their activities. They may not hold signs with the names of the businesses they serve, but they are as good or better about attracting attention. Many towns seek to regulate these actors as temporary signs, given the temporary nature of the season they represent. The tax preparers that hire them have fought back hard, claiming constitutional protections such as the First Amendment.

Similarly, planners find themselves trying to figure out if they have the authority to regulate light shows and projections some businesses use to draw attention to their buildings at night. While business owners claim that these light shows are merely efforts to illuminate their building, planners and neighboring property owners often complain that these demonstrations amount to additional nighttime commercial speech. These are but a few examples of commercial speech that challenge the common notion of what constitutes a sign. For example, there is often a great deal of controversy associated with efforts to regulate murals. Historically, businesses would paint murals that invariably incorporated a picture of someone drinking a Coca-Cola. While some might have perceived it as art, a modern code would likely view this sort of mural as a sign that counts toward the total amount of allowable sign area.

Are Signs Part of the Land Use or Accessories to It?

Signs have always been treated as an afterthought. Cities are most interested in the land use; that is, what structure will be built and what activity will occur inside it. They are concerned about the nature of the structure because of a common value of coherence

and mitigating conflict. A structure that is too tall might, for example, cause a shadow. For this reason, we have specific regulations for bulk requirements, such as height, density, and intensity. However, signs are treated as a bit of an afterthought. Commercial signs are precluded, almost exclusively, from residential areas because of standard presumptions that commercial and residential land uses should be separated from one another. This can result in a lost opportunity for a home-based business that might be nearly impossible to identify in the absence of some sort of signage.

What Law Governs the Regulation of Signs?

The law that has developed as a result of sign litigation is complex. Though signs can be regulated pursuant to police powers applicable to zoning, they are also protected by the First Amendment to the U.S. Constitution. So long as a community avoids regulating the speech being conveyed on a sign, it may freely (or mostly so) regulate the size, height, and placement of signs. However, the moment that a regulation refers to the content of a sign, First Amendment protections limit the ability of local governments to regulate all signs.

How Many Signs Do Businesses Really Need?

In commercial zones, it is expected that businesses will have signs. In most communities, sign regulations specify the number and type of signs businesses may have. Regulations set rules about height, location, materials, and illumination. However, these regulations are rarely based on knowledge about how the business and its signage will fit into the totality of the urban environment. Even more rarely do these regulations fully contemplate issues like setback, angle, or speed of traffic flow when proscribing the “appropriate” dimensions for signs.

On occasion, a city may know what is needed. For example, a business is required to build two entrances off two separate roads. However, the rules in place state one sign per business. From a practical standpoint, this doesn’t make sense as the dual drives encourage passersby to enter from two directions. However, cities aspire to treat property owners fairly and often

impose rules that don’t make sense within the context of a given site. The processes for modifying sign regulations are so cumbersome that developers look for workarounds or sometimes simply take their chances and install illegal signs.

How Will Disruptive Technologies Expand the Modes of Communication?

Sign designers and the businesses who hire them are innovators. They are often the first to embrace new developments in technology. For example, in the early 1990s, the introduction of electronic message boards caused great shock waves in cities across the U.S. These signs, while relatively simple in form, allowed businesses to communicate the specifics of their business to draw in more discerning customers.

Cities were rightfully concerned about the potential impacts of these signs on aesthetics and safety. While they didn’t know if these electronic signs would negatively impact either element, many city planners felt unprepared to make quick decisions about the regulation of these signs. They wanted to know more. Many cities even went as far as passing moratoria to buy some time to consider the size of letters, length of messages, speed of scrolling, and other factors.

Given the impact of disruptive technologies on the sign industry, the electronic message board now seems like a somewhat primitive technology. The Sydney Opera House in Australia is now fully illuminated with both art and advertising. This majestic structure is transformed at night in a way that some view as magical. Others, however, are offended that private entrepreneurs benefit from being able to advertise their businesses on this iconic building.

In the age of the smart city, technology allows businesses to use their signs to get to know their customers more intimately. For example, one company has created a digital sign that is able to profile its viewer (gender, race, age, etc.) and use this information to craft an advertisement that might be appealing to that individual consumer. This is the future of advertising. Sign designers will continue to innovate using these technologies. Cities must be ready to

embrace this creativity in a way that is good for all stakeholders.

Should Sign Codes Strive to Create a Community-Wide Aesthetic?

Very few communities have an agreed-upon aesthetic. In most places, it is difficult, if not impossible, for residents to identify a predominate architectural pattern. There are exceptions, of course. Places like Seaside and Coral Gables, both in Florida, were master planned with a certain aesthetic in mind. Because a standard architectural pattern was developed at the communities’ inceptions, the cities are tidy. Everyone who seeks to modify a building or sign, or to construct a new one, is clear about what is expected. This clarity can be derived either from very specifically written regulations or by looking around.

Most places are not master planned. Instead, they grow organically, with each area taking on its own character. Sometimes, there is no specific character; development may be piecemeal, representing different



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- ➡ Existing signs often contribute to a sense of place, especially when there is no predominant architectural style or development pattern.

patterns of land development within close proximity. Beyond the architectural structures themselves, the difference in styles is often manifest in signage. On-premise signs, in particular, come in all shapes and sizes.

Proprietors typically seek to use signs to draw individuals to their establishments. Sometimes neighbors consider these signs to be in poor taste. For example, in an unregulated market, businesses who trade in adult entertainment might seek to illuminate provocatively named businesses or images that shock community morals.

Signs like these, as well as those that are much less provocative, have caused some communities to clamp down on creativity in the name of community aesthetics. In one community outside Las Vegas, projecting signs and pole signs are not allowed. This community prohibits electronic message signs, most forms of illumination, and specifically sets the size and type of fonts that can be used—all in an effort to protect the community from the decisions made by proprietors who have “poor taste.”

What Is the Advertising Value of a Sign?

Concerned with the bad taste of a few, some communities have forgotten why on-premise signs are installed at all. Signs are wayfinding devices. Public and private vendors use these static and dynamic communication devices to attract the attention of passersby. Commercial vendors, in particular,

know that good signage is necessary to draw a sufficient number of customers to their establishments to make their ventures viable and profitable. There is, after all, a lot of competition for those seeking to capture their share of any given market. This challenge is exaggerated for those who continue to operate their businesses in economically struggling areas. It is often difficult to know what businesses are still open in a downtown that has been largely abandoned.

By contrast, it is also very difficult for small local businesses to compete against national chains. The owner of a local coffee shop, for instance, may feel that she needs to install multiple signs of varying types to bring in customers. Rather than a sign featuring the name of the business, the entrepreneur may feel the need to have signage that describes products, provides pithy quotations that draw attention, or lets passersby know that the wifi is free. By contrast, a well-known, national business like Starbucks may have more customer recognition with the logo alone.

TRIGGERS FOR SIGN CODE REVISIONS

Often, cities amend their codes as a result of a standard set of external factors that trigger action. These may include such attributes as changes to the law as a result of newly decided cases or the adoption or amendment of existing legislation, advances in technology, and the proliferation of variance requests by a concentrated group of property owners.

Changes in Case Law

Sign law is a quickly evolving field. There has been a significant amount of litigation in this area over the past three decades at all levels of the court system. The Supreme Court has issued several important decisions relating to all types of signs, whether they are temporary, permanent,



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- ➞ Some property owners retain legally nonconforming sign structures as a potential amenity for a future tenant.

on-premise, off-premise, commercial, or political. *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 576 U.S., 192 L. Ed. 2d 236 (2015) resulted in a number of changes to the ways communities are able to refer to signs in their regulations. Because of *Reed*, communities across the U.S. are revising their sign codes to regulate signs by type, rather than by name. Communities that fail to embrace this legal change will likely face litigation. Keeping track of and understanding these changes is a challenge for most communities. As such, planners must work with their professional organizations, like the American Planning Association, to keep up.

Changes in Technology

The sign industry is creative and enterprising, often experimenting with new technologies in an effort to help clients draw market share to their businesses. The proliferation of new technologies, particularly disruptive ones like autonomous vehicles, will change the means and mode of advertising exponentially. In the past, such changes have shocked communities. The advent of electronic message boards, for example, caused many communities to suspend their sign regulations until they could figure

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- ➞ Most successful businesses that depend on automobile or foot traffic understand the importance of legible, attractive signage.

out if these new advertising devices were threats to public safety. Rather than shutting out these technologies, cities should constantly monitor and assess new products even before they enter the market. An ongoing advisory committee comprised of local experts might help ensure that communities are prepared for these changes.

Abundance of Variance Requests

In an effort to provide legal consistency, sign codes are often crafted without flexibility. These codes often interfere with businesses' sign plans. The businesses must apply for variances in order to do what they ultimately believe is necessary to draw in customers. In many cases, the governing bodies who consider these requests agree with business owners, granting variances to deviate from the sign code.

It is common to see sign code variation requests clustered into particular areas of a city. These clustered requests often signify the necessity for reconsideration of sign code parameters. Planners should respond with a thorough review of the regulations for the affected area and, if there is time, for the application of these principles to the community at large.

RECOMMENDATIONS FOR PARTICIPATORY SIGN CODE REVISION PROCESSES

Some cities prepare sign regulations that are highly prescriptive and provide very little room for creativity. In other communities, the threat of litigation has led to leaving sign codes untouched, ensuring that the regulations are ineffective at greeting new technologies. In one community in particular, a city planner joked that she would not be able to amend her city's regulations until one of the original drafters (a lawyer) passed away.

What is missing from both ends of the spectrum are valuable discussions between regulators and business owners regarding the importance and value of wayfinding to the economic vitality of the whole community. The best place for these conversations to happen is as part of the participatory planning process.

Citizen participation has become a common practice in the development of local plans and regulations. Beyond basic public

meetings, local governments have begun to identify and bring together diverse groups of stakeholders in an effort to ascertain what is most important to them.

Invitations to participate in planning processes don't often draw a diverse crowd of stakeholders on their own. Those with time and special interests attend, while the general public rarely pays attention. The preparation and amendment of sign codes often draws little attention by the public at large. However, two groups commonly attend such meetings: business owners and those interested in preserving community character or aesthetics. These two invariably clash, often causing planners to avoid such processes.

Sign code regulations are much more effective when drafted as part of an open process in which participants represent a multitude of interests. Clearly, business owners and community character advocates are vital to these conversations, as are sign designers, economic development specialists, artists, historic preservationists, and home owners, among others.

In order to make the collaborations successful, planners should recruit a diverse array of stakeholders and provide them with a common vocabulary to make it possible to discuss this complex form of communications. The following list of best practices was cultivated by Jourdan, Strauss, and Hunter (2017) to aid planners in working with stakeholders to develop effective sign codes.

Revise the Code With Zoning Regulations

As previously detailed, sign regulations are rarely included in the zoning code. They are typically stand-alone documents that are often based on a general set of principles and beliefs, rather than locational characteristics. But this often results in something very much detached from the reality of development on the ground. Zoning codes that incorporate sign regulations by land use and by zoning district are mindful of the context for development and much more sympathetic to the needs of specific land uses.

Develop In-House Expertise

To diffuse local tensions related to signage, private consultants are often hired to lead

code revision processes. Consultants are experts in subject matter but not necessarily in the particularities of the community. The regulations they generate can be cookie-cutter and typically are not frequently revised due to the costs associated with such revisions. In order to ensure that these codes can be revised with the frequency necessary to meet changing needs and technologies, communities should develop in-house expertise in the area of sign regulations. City and county planners and attorneys must be trained, and their training updated, so that they can lead these important community conversations.

Create Opportunities for Participation

Sign code development and revision requires a different kind of participatory process. Rather than general meetings, city and county planners must specially invite those with an interest in signage to join working groups who can fully study issues and trends in this rapidly evolving area of communications. This group should be a standing committee so that it may continue to develop its knowledge and expertise. Training will be necessary to create a group that can really tackle the issue of signage.

Visualize Regulations

The old adage that a picture is worth a thousand words is relevant to sign code development. Sometimes participants have to see it to understand. Graphics should be generated as a part of the sign code development process to signal the local government's expectations for signs and wayfinding, while also helping those who are less familiar understand the types of signs permitted in the area. This additional information will likely be effective at generating communication about sign needs before the enactment of a code that does not reflect sound development practices. Much like some form-based codes, visualized regulations often communicate expectations much more clearly than text-only regulations.

KEEPING THINGS MOVING

Developing a sign code can be a time-consuming process. Even the most active

stakeholders lose attention if the process takes too long. Planners must follow the seven steps outlined below to ensure the efficiency and effectiveness of code development processes:

1. Introduce participants and goals, and determine whether the code remains free-standing or becomes integrated with the zoning code.
2. Discuss and present on the value of signs.
3. Review current code and issues necessitating the revision.
4. Provide a visual tour of signs—"the good, the bad, and the ugly."
5. Review sign codes of peer communities.
6. Lead a fieldtrip to a peer community with "good" signs.
7. Seek examples of best practices from similarly situated communities or industry leaders.
8. Visualize impacts of regulations on sites through the use of design tools that help imagine changes to the urban landscape.

Following these steps "will keep stakeholders engaged and ultimately positive about the final outcome" (Jourdan et al. 2017).

Sign codes are a unique form of local regulation. While the average citizen may not comprehend their value in the same way they understand economic development or the free flow of traffic, these specialized regulations play an important role in ensuring that those navigating through a city can find where they need to go and that businesses can successfully compete to draw in a sustainable and potentially profitable market share. It is very important that those with vested interests are brought together for continuous dialogue about the role of signage, in all of its iterations, in the overall aesthetic and economy of communities.

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DOES YOUR SIGN CODE COURT CONTROVERSY?

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