Articles

Sign of the Times:

Enforcement and Impact of Sign Ordinances

By
Roger Gordon
Attorney-At-Law

BOJORQUEZ
LAW FIRM, PLLC
TexasMunicipalLawyers.com

Table of Contents

A special thanks goes out to **Damien Shores**, Law Clerk for the Bojorquez Law Firm who was instrumental in assisting with the preparation of these materials. Additional thanks to **Laura Mueller**, of the Texas Municipal League and **Alan Bojorquez**, of the Bojorquez Law Firm for their significant contributions to the content of this paper.

I. Introduction

Sign ordinances help a city maintain a safe and aesthetically pleasing environment. A city's ability to create and enforce a sign ordinance is limited only by the constitutional protections of property and speech. As such, crafting a valid sign ordinance is very much a balancing act between the desire to improve the city's visual landscape and not offending a citizen's constitutional rights, the latter of which can result in costly litigation. The purpose of this paper is to assist Judges with an understanding of the process cities undertake in adopting such ordinances, so as to assist with the prosecution and enforcement of the regulations themselves. An understanding of the balancing act facing cities in adopting constitutionally valid sign ordinances, that also achieve a city's aesthetic and safety goals, will assist the municipal judge tasked with interpreting and enforcing the same.

In order to withstand judicial scrutiny, it is generally required that sign ordinances have the following factors:

1. The ordinance must serve a sufficiently substantial governmental interest and that there is a compelling justification for it;
2. The ordinance must be narrowly tailored to carry out the government's purpose, reaching no further than necessary;
3. The ordinance must be justified without reference to the content of the regulated speech;
3. The ordinance must have content-neutral time, place, and manner restrictions;
4. The ordinance must leave open ample alternative channels for communication of the information;
5. The sign owner must be compensated if they are adversely impacted by the ordinance.[1]

II. Substantial Governmental Interest

Sign ordinances are typically justified as a legitimate exercise of municipal police power to:

1. Regulate aesthetics; and
2. Improve traffic safety.

A. Aesthetics

A majority of US courts have upheld sign ordinances that are based solely on aesthetic considerations. Sign regulations, like other land use tools, can be utilized to ***preserve***, or in some cases ***create***, the look and feel of a community. With the explosive growth that is occurring across Texas, maintaining or accentuating the appearance of a community is becoming an increasingly difficult task. New residents, businesses and industries come to town. The desire for new amenities sometimes conflicts with the desire to preserve the *status quo*.

---

[1] *See City of Ladue v. Gilleo*, 512 U.S. 43, 53-54 (1994); *See also Valley Outdoor, Inc. v. County of Riverside, California*, 337 F.3d 1111 (9th Cir. 2003).

With certain restrictions, Texas municipalities are granted specific statutory authority to enact regulations for the relocation, reconstruction, or removal of signs within the city limits and extraterritorial jurisdiction (ETJ).[2] A person may not place a sign on the right-of-way of a road or highway maintained by a city without municipal authorization.[3] The Texas Department of Transportation (TxDOT) exercises regulatory authority over signs along certain roadways. No outdoor advertising sign that is visible from the main-traveled way of an interstate or primary highway may be erected or maintained along a regulated highway, except in accordance with state regulation, which includes receiving a permit.[4] If a city has established a program regulating signs, a permit issued by the city shall be accepted in lieu of a permit issued by TxDOT. The city must certify to TxDOT that it has established and will enforce standards and criteria for size, lighting, and spacing of outdoor advertising signs.[5]

Addressing citizen concerns over aesthetics and falling property values (actual or perceived) is clearly a legitimate government interest. [6] Texas cities have authority to regulate the community's aesthetic interests through broad municipal police powers. Cities have the authority to adopt ordinances that are "...for the good government, peace, or order of the municipality or for the trade and commerce of the municipality..."[7] Cities may adopt zoning regulations promoting "public health, safety, morals or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance or significance."[8]

B. Safety

Traffic safety can be cited as a justification for regulating signage. In the landmark *Metromedia* case, a plurality of the US Supreme Court, and three of the dissenters, agreed that, as a matter of law, billboards and other forms of signage are intended to divert, and do divert, a driver's attention away from the roadway.[9] A few years before the Metromedia opinion, a study done by the University of Texas concluded:

1. Any number or color of distractions (e.g., signs) will quite likely cut down on a driver's ability to react appropriately; and
2. The presence of signs within view, especially close to the roadway, district from driving tasks.[10]

---

[2] Tex. Loc. Gov't Code § 216.003.
[3] Tex. Transp. Code Ann. § 393.0025(a).
[4] 43 TAC § 21.146.
[5] 43 TAC § 21.151.
[6] *CMH Manufacturing, Inc. v. Catawaba County*, 994 F.Supp.697, 710 (W.D. N.C. 1998), citing *Texas Manufactured Housing Association, Inc. v. City of Nederland*, 101 F.3d 1095, 1101 n. 10 (5th Cir. 1996), cert. denied, 521 U.S. 1112 (1997) ("There can be no dispute that the governmental interest at stake is legitimate. Maintenance of property values has long been recognized as a legitimate objective of local land use regulation.").
[7] Tex. Loc. Gov't Code § 51.001(1).
[8] *Id.* § 211.001.
[9] *Metromedia, Inc. v. City of San Diego,* 453 U.S. 490 (1981).
[10] Relationship Between Roadside Signs and Traffic Accidents: A Field Investigation (1978), Holahan, Charles, Campbell, Michael, Culler, Ralph, and Veselka, Celia; Texas Office of Traffic Safety at the University of Texas at Austin, as reported in Warning Signs: Billboards, Signs, and Traffic Safety, Scenic America (1996).

III. Compelling Justification

While aesthetics and safety are sufficiently substantial interests of a city, they are not always a compelling justification for sign regulations that restrict free speech, whether such regulation is directed at commercial speech, noncommercial speech, or both. A good example of an ordinance being justified but still invalidated is *City of Ladue v. Gilleo*, 512 U.S. 43 (1994). The City of Ladue cited its governmental interests as aesthetics and traffic safety for its almost complete ban on residential or noncommercial signs.[11] The Supreme Court held that while these are important governmental interests that may sometimes justify sign regulations or other land use restrictions, these interests are not compelling enough to validate Ladue's ordinance, especially considering that the city allowed various exceptions for commercial signs and not residential ones.[12] The court stated that "exemptions from an otherwise legitimate regulation of a medium of speech may be noteworthy for a reason . . . They may diminish the credibility of the government's rationale for restricting speech in the first place."[13] The Court held that the ordinance violated the First Amendment right to free speech because it did not protect residential speech and foreclosed an entire medium of speech, signs, for Ladue residents.[14]

When a city allows multiple exceptions, two problems are created:

1. Whether the excepted signs would defeat the government's interests; and
2. Comparison between the signs allowed and prohibited may be viewed as inappropriate content or viewpoint discrimination.

---

[11] *See City of Ladue v. Gilleo*, 512 U.S. 43, 47 (1994).

[12] *See Id.* at 52-53 (The city included many exceptions including: "municipal signs"; "[s]ubdivision and residence identification" signs; "[r]oad signs and driveway signs for danger, direction, or identification"; "[h]ealth inspection signs"; "[s]igns for churches, religious institutions, and schools" ; "identification signs" for other not-for-profit organizations; signs "identifying the location of public transportation stops"; "[g]round signs advertising the sale or rental of real property," subject to the conditions, set forth in § 35-10, that such signs may "not be attached to any tree, fence or utility pole" and may contain only the fact of proposed sale or rental and the seller or agent's name and address or telephone number; "[c]ommercial signs in commercially zoned or industrial zoned districts," subject to restrictions set out elsewhere in the ordinance; and signs that "identif[y] safety hazards." § 35-4, *id.*, at 41a, 45a).

[13] *Id.* at 52.

[14] *Id.* at 58.


NOTICE
THANK YOU
FOR NOTICING THIS
NEW NOTICE
YOUR NOTICING IT
HAS BEEN NOTED
AND WILL BE REPORTED TO THE AUTHORITIES

IV. Content Neutral

Avoiding constitutional landmines requires the crafting and enforcement of sign regulations that do not discriminate based on the message being communicated by the sign. The more neutral and objective the regulation, the better off the city is going to be.[15] There are circumstances, however, when differentiating between categories of signs (such as commercial v. non-commercial) are justified.[16] Just be careful when the message being targeted by the regulations can be construed to be political in nature.[17]

A. Non-Commercial Speech / Political Speech

Restricting political signs is risky business. Cities can establish reasonable, non-discriminatory restrictions on such traits as size.[18] However, cities cannot enact blanket prohibitions on all political signs in residential neighborhoods.[19] When faced with the issue, the U.S. Supreme Court rejected a city's "time, place and manner" defense, finding that there was no adequate substitute for a political sign on a home.

While signs are certainly a form of speech worthy of First Amendment protection, they may be subject to municipal regulation because, "unlike oral speech, signs take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation." [20]

Political subdivisions cannot impose overly strict durational limits. In striking down one post-election removal requirement, a court stated has that "there is no natural termination date for a 'cause' sign; a cause and a private resident's passion for it exists as long as the cause

---

[15] See *TxDOT v. Barber*, 111 S.W.3d 86 (Tex. 2003)(Essentially, the Texas Highway Beautification Act (the Act), Tex. Transp. Code § 391, prohibits signs on non-commercial, non-residential property that was located within a certain distance of an interstate highway, if the sign related to an activity being conducted on the property. The landowner posted a billboard on his non-commercial, non-residential property that overlooked an interstate in Texas. The billboard advised drivers to "Just Say No to Searches" and gave a telephone number where callers could receive a recorded message about the landowner's opinions about illegal searches being conducted on the highway. The Act, as applied to the landowner's billboard, did not impermissibly infringe upon the landowner's free speech rights under the United States Constitution. The Act was content neutral and constituted a valid time, place, and manner restriction on speech.).

[16] See *Lehman v. Shaker Heights,* 418 US 298 (1974)(A political candidate wanted to buy advertising space inside public transportation vehicles. The city refused to accept the ads, under their policy that only commercial and public service ads were accepted. The court upheld the city's policy, with the prevailing plurality explaining that "a city transit system has discretion to develop and make reasonable choices concerning the type of advertising that may be displayed in its vehicles.").

[17] See *Boos v. Barry*, 485 US 312 (1988) (The Court invalidated a sign display portion of the District of Columbia Code, enacted by Congress, which forbade the display within 500 feet of any foreign embassy of any sign "tending to bring a foreign government into public odium or public disrepute." Without deciding if the protection of the dignity of foreign diplomats was a compelling state interest, the Court concluded that the provision was not narrowly tailored to serve such interest, because a less restrictive alternative – 18 U. S. C. § 112, which prohibits intimidating, coercing, or harassing foreign officials or obstructing them in the performance of their duties – served that purpose with far less restriction on speech.).

[18] *Baldwin v. Redwood City*, 540 F.2d 1360 (9th Cir. 1976).

[19] *Ladue v. Gilleo*, 512 U.S. 43 (1994).

[20] *Id.*, at 48.

exists."[21] The Court held that although traffic safety and aesthetics are *significant* interests, they are not *compelling* interests, especially given the nature of the First Amendment rights at stake.[22] Although restrictions imposed on political signs but not commercial signs are not content-neutral, they may still survive constitutional scrutiny if they are narrowly tailored. In order to narrowly tailor such restrictions, the city must be prepared to demonstrate how its interests in aesthetics justify a durational limit on political signs.[23]

In 2003, the Texas Legislature enacted a statutory provision that restricts the ability of municipalities to regulate signs that contain primarily a ***political*** message if the political signs

1. Are on private property;
2. Are not located within the public right-of-way;
3. Do not exceed a surface area of 36 square feet;
4. Are not artificially illuminated; and
5. Do not have moving parts.[24]

There are also state (and sometimes local) limitations on the ability to place certain signs within a certain proximity to polling places. These types of limits are generally upheld.[25] Furthermore, the Local Government Code specifically prohibits cities from regulating the size of political signs and from indirectly limiting the number of the signs by requiring a permit or fee for the signs.[26]

Speech that may be protected as "political" is not necessarily limited to communications regarding elections, government, or partisan politics. Religious speech is afforded similar protections, including the constitutional right to post certain signs on one's own property in residential areas. Consequently, municipalities should use caution when requiring permits for signs rendering political, social or religious messages.[27] Such requirements can have a chilling effect on Free Speech.

It is important to point out that an exception to a content-neutral ordinance may undermine the neutrality of the ordinance, causing a court to find the ordinance content-based after all. An ordinance in Illinois with a 30-day restriction on all temporary signs was struck down because it allowed commercial signs like realty and construction signs to stay up until the

---

[21] *Curry v. Prince George's County*, 33 F. Supp.2d 447.
[22] *Id.*, at 452.
[23] See *Whitton v. City of Gladstone*, 832 F.Supp. 1329, 1335 (W.D.M.O. 1993).
[24] Tex. Loc. Gov't Code § 216.903.
[25] *Burson v. Freeman*, 504 US 191 (1992)(The Court upheld a 100 foot protection zone -- no signs or electioneering of any kind – around entrances to polling places on election day. Although this was a total ban on speech at the core of First Amendment protection, in a public forum, the Court approved the law as narrowly tailored to serve compelling state interests in preventing voter intimidation and preventing election fraud.).
[26] Tex. Loc. Gov't Code § 216.903(b).
[27] See *Sybil Peachlum v. City of York, Pennsylvania,* 333 F.3d 429 (3rd Cir. 2003)(City unsuccessfully sought to bar woman from posting a sign in her front yard that included the words, "Peachy News. Jesus is Alive." The existence of the permit system chilled speech.).

property was sold or the project was completed.[28] A sign regulation must apply equally to all signs, regardless of its content, in order to be valid.

B. Commercial Speech

Although *Central Hudson Gas and Electric v. Public Service Commission*,[29] is not a sign case, it is important in the law of signs because it states the test for constitutionality of restrictions on commercial speech. The steps are:

1. Is the speech protected by the First Amendment? If it is false or misleading, or concerns illegal activity, it is not protected.
2. Does the regulation serve a substantial governmental interest?
3. Does the regulation directly advance the substantial governmental interest?
4. Is the regulation more restrictive than necessary to serve the governmental interest.[30]

Metromedia is the court's only modern case on regulation of billboards ("offsite advertising").[31] The case produced five different opinions. Scattered among these opinions were five or more votes (a majority of the 9 votes on the court) for the following points:

- While the government has a legitimate interest in controlling the non-communicative aspects of billboards, First Amendment concerns place some limits on billboard regulation;
- Commercial speech has less First Amendment protection than noncommercial speech;
- Regulations on commercial speech are measured under the *Central Hudson* test;
- the government's interests in traffic safety and community esthetics are enough to justify a complete ban on offsite commercial billboards.
- San Diego's sign ordinance was unconstitutional because it had two fatal flaws:

    1. It allows commercial messages in certain places where noncommercial messages (advocacy) are not allowed; this is a violation of the principle that noncommercial speech is entitled to a higher degree of First Amendment protection than commercial speech; and
    2. The ordinance results in the city showing a preference for certain kinds of noncommercial speech over other kinds of noncommercial speech; this was a violation of the principle that regulations may not be based on message content.

V. Allows Alternatives

---

[28] *Christensen v. City of Wheaton*, 2000 WL 204225, *3 (N.D. Ill. 2000) (not published).
[29] 447 US 557 (1980).
[30] This last element, the "degree of fit" between means and ends was refined in *Board of Trustees v. Fox*, 492 US 469 (1989), to "a means narrowly tailored to achieve the desired objective."
[31] 453 US 490 (1981).

A key characteristic of any successful sign regulation is that it leaves available alternate means of communicating the message restricted by the sign regulation.[32] This is especially true of many political signs, even in residential areas.[33] A court can find even a narrow restriction to have a detrimental effect on residents' ability to convey important information because the alternatives are "far from satisfactory." The court in *Ladue* provided that even if the ordinance only restricted time, place, or manner (rather than totally foreclosing speech), there still must be other viable alternative options for communication available.[34] In that case, the city cited the use of flags, which were not prohibited, as an alternative means to using signs.[35] The court rejected Ladue's assertion, stating that "the mere possibility that another medium could be used in an unconventional manner" was not a viable alternative and therefore does not save the city's ordinance.[36]

VI. Compensation

Currently, compensation is governed by Sections 216.005 through 216.010 of the Local Government Code, with special provisions and exceptions located under Sections 216.012 and 216.013. Compensation guidelines for relocated signs are under Section 216.006 and for reconstructed signs under Section 216.007. Section 216.008 deals with off-premise sign relocation compensation and 216.009 deals with on-premise sign relocation compensation. Generally, sign owners are compensated either monetarily or through tax abatement. An amortization plan may also be available to some cities.

Compensation for a relocated sign includes "the expenses of dismantling the sign, transporting it to another site, and re-erecting it."[37] The amount paid to the sign owner is determined the same way as in an eminent domain proceeding pursuant to the guidelines of Chapter 21 of the Property Code, which involves the determination of the value of the property and the injury to the owner, as well as the local market value and/or the amount of the worth of the property and the regulation's affect on other property.[38] When the place of business must be relocated, the property owner may recover "the reasonable expenses of moving the property owner's personal property from the dwelling or place of business."[39] However, the expense of

---

[32] See *Linmark Associates v. Township of Willingboro*, 431 US 85 (1977)(The town passed an ordinance which forbade the posting of "For Sale" signs in residential neighborhoods, with the purpose of trying to stop "white flight" panic selling. The court declared the ordinance unconstitutional, saying that all other options for expressing the same message were inadequate because of cost and lower likelihood of reaching persons who were deliberately seeking the information.).

[33] *City of Ladue v. Gilleo*, 512 US 43 (1994)(The court struck down a city ordinance which prohibited the posting of political signs in residential neighborhoods. The ordinance restricted too much speech and did not leave adequate alternatives for expressing the same message. The court said "Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window signs may have no practical substitute.").

[34] *Id.* at 56.

[35] *Id.* at 58, n.16.

[36] *Id.*

[37] Tex. Loc. Gov't Code § 216.006.

[38] Tex. Prop. Code §§ 21.041, 21.042.

[39] Tex. Prop. Code § 21.043.

moving the property cannot exceed the market value of the property.[40] In other words, if it is more expensive to relocate a sign than to remove it completely, then only the cost of removal or the sign's market value would be paid.[41]

Chapter 216 also requires cities to take other steps, besides straight compensation for the sign itself, to assist sign owners whose signs have become nonconforming and which must be moved or changed. Additional provisions govern relocation and the site of relocation.[42] Relocation costs and reconstruction costs are outlined in Chapter 216 and should be reviewed before action is taken by the city.[43] Compensation for the removal of an off-premise sign is calculated differently than compensation for an on-premise sign and Chapter 216 should be reviewed to ensure correct calculations.[44]

Signs that are removed or otherwise regulated because they were originally constructed in violation of local ordinances or laws are not compensated under Chapter 216.[45] However, these signs may have other compensable costs if the ordinance is found to be an unreasonable taking of property as governed by constitutional case law. Also, a sign owner is not compensated for a nonconforming sign that had been allowed to be in place and is later required to be removed because the sign or a "substantial part of it" is destroyed by wind, hurricane, or other natural forces.[46] "Substantial" destruction occurs when the "cost of repairing the sign is more than 60 percent of the cost of erecting a new sign of the same type at the same location."[47] If the sign was constructed in violation of existing law, was given a permit to be nonconforming, and the sign is then required to be removed because it was destroyed by natural forces, a city is not required to compensate the sign owner under Chapter 216.

Pursuant to the Local Government Code, cities have the authority to regulate signs within their corporate limits or extraterritorial jurisdiction. Cities that establish a sign ordinance that requires that existing signs be moved, removed, or changed, must compensate sign owners for the relocation, reconstruction, or removal of their signs. This includes compensation for sign owners whose once-conforming signs were made nonconforming by a change in ordinance. Cities that regulate signs in a way that requires compensation must have a municipal board of sign control that determines the amount of compensation by following the guidelines laid out in Chapter 216 of the Local Government Code. Cities may only compensate sign owners according to the payment methods available to them as under Chapter 216.

VII. General Considerations

A. Extraterritorial Jurisdiction

---

[40] *Id.*
[41] *Id.*
[42] TEX. LOC. GOV'T CODE § 216.006.
[43] *Id.*; *Id.* § 216.007.
[44] *Id.* § 216.008; 216.009.
[45] *Id.* § 216.013(a).
[46] *Id.* § 216.013(b).
[47] *Id.* § 216.013(c).

State law grants municipalities the authority to regulate signs in both the city limits and the ETJ. If the city is going to attempt to regulate in the ETJ, it should make certain that the ordinance expressly applies to the ETJ. A mere reference to the ETJ in the caption may not be sufficient. Ordinance writers are urged to clarify throughout the ordinance that the rules apply to the city limits and ETJ.[48]

B. Administrative Process

Sign ordinances that contain clear permitting procedures can help municipalities avoid litigation, or at least help municipalities prevail in litigation. Applicants should be made to exhaust their administrative remedies prior to challenging municipal sign regulations in court.[49]

C. Limit Discretion

Because of the constitutional implications of sign regulations, it is important that municipal ordinances contain clear, specific standards in order to avoid unbridled administrative discretion.[50] Procedural safeguards regarding the permitting process can protect the city from liability for abuse of discretion.[51]

In addition to helping a municipality avoid content-based allegations, clear standards can also prevent an ordinance from being found void for vagueness. This is especially true in the Design Review phase of the permitting process. Design Review procedures may violate the First Amendment as a prior restraint on the exercise of free speech through the display of a sign.

D. Timelines

---

[48] *Brown Outdoor Advertising v. Town of Prosper* (The Town's ordinance prohibited commercial billboards in the town's ETJ. The advertising company unsuccessfully sought a declaratory judgment that the ordinance did not have such effect. The court, noting that the ordinance's caption and its general statement of purpose specifically stated that the ETJ was to be regulated, concluded that the ordinance included the ETJ within its sign regulations. The court gave great weight to the fact that the ordinance, which prohibited commercial billboards, did not refer only to areas within the town limits.).

[49] See *National Advertising Co. v City of Miami, Florida,* 402 F.3d 1335 (11th Cir. 2005)(The company never properly pursued its claim through the administrative process that the city's zoning ordinance made available to them. The claim was not ripe. The company, at a minimum, had the obligation to obtain a conclusive response from someone with the knowledge and authority to speak for the city regarding the application of the zoning scheme to the company's permits.).

[50] See *Café Erotica of Florida, Inc. v. St. Johns County, Florida* 360 F.3d 1274 (11th Cir. 2004)(The court held that the ordinance lacked specific and definite statutory checks on the county administrator's discretion, thereby impermissibly creating the potential for content-based discrimination. The county's stated goals to protect the safety and aesthetic interests of its citizens, while "substantial," could not justify allowing billboards to be built up to 560 square feet while allowing a maximum of only 32 square feet for political message signs. Severance of just this one provision would not address the court's concerns with the Administrator's unfettered discretion).

[51] See *THG Enterprises, Inc. v. City of El Cajon, California,* 60 Fed. Appx. 711; (9th Cir. 2003); 2003 U.S. App. LEXIS 6624 (A person of ordinary intelligence would not have reasonably known whether placing an off-site real estate sign on public property was prohibited. The municipal code was an unconstitutional prior restraint on speech. Even if it was assumed the ordinance was content neutral, it did not provide adequate procedural safeguards governing when, where, or how a permit was granted.).

A good sign ordinance includes a schedule for submissions, administrative action, and council approval (if required).[52]

E. Inspections

An aspect of the municipal regulatory process may call for the inspection of certain signs, and impose a corresponding fee to pay the administrative costs of those inspection programs.[53]

F. Specifications

To prevent the hazards posed by signs that divert and distract motorist, municipalities may limit a sign's dimensions.[54]

- Height[55]
- Moving Images[56]
- Numbers[57]
- Illumination[58]

---

[52] *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Florida,* 348 F.3d 1278 (11th Cir. 2003)(Although the lack of a time limit for consideration of applications could be used to arbitrarily suppress disfavored speech, that alone did not render the sign ordinance unconstitutional. The ordinance was content-neutral, based upon considerations of uniformity, aesthetics, and safety, and did not permit the exercise of unlimited discretion by the city, but rather contained adequate standards to guide official decision-making based upon the objective criteria set forth in the ordinance. Rejection of permit applications was not permitted based on proposed content, and administrative and judicial review of the denial of permits was available).

[53] See *Clear Channel Outdoor Inc. v. City of Los Angeles, California,* 340 F.3d 810 (9th Cir. 2003)(The Court deemed it okay to require the inspection of exterior signs in the city, differentiating between off-site and on-site signs. Los Angeles' ordinance subjected all off-site sign structures to regular inspection and required the person in control of an off-site sign structure to pay an annual fee for inspection. The on-site/off-site distinction was not unconstitutional. Moreover, the fee was imposed on off-site structure regardless of whether they carried a noncommercial message, and the designation of on- or off-site was a function of the permittee's choice).

[54] *Sun Oil Co. v. City of Madison Heights*, 199 N.W.2d 525, 529 (Mich. App. 1972).

[55] Height restrictions, by their very nature, require that a maximum be established at some level deemed adequate to the specific community. See *Prime Media Inc. v. City of Brentwood, Tennessee,* 398 F.3d 814; (6th Cir. 2005)(The court stated that the question was not whether a municipality could explain why the 120-square-foot limitation detracted more from the aesthetics of the city than signs with smaller sign face sizes, but whether the regulation was substantially broader than necessary to protect the city's interest in eliminating visual clutter and advancing traffic safety).

[56] Courts have upheld a city law which prohibited signs with moving images. See *State of Minnesota v. Dahl*, 676 NW2d 305 (Minn. App. 2004).

[57] The Courts have generally upheld limitations on the number of signs allowed. *See People v. Goodman*, 290 N.E. 2d 139 (N.Y. 1972); *Sun Oil Co. v. City of Upper Arlington*, 379 N.E. 2d 266 (Ohio App. 1977); *Judd v. Zoning Hearing Board*, 460 A.2d 202 (Pa. Cmwlth 1983).

[58] The cases have upheld restrictions on the illumination of signs, in part, because light migration can have a measurable adverse impact on the valuation and marketability of nearby properties and affect traffic safety. See *Ellen Media Co. v. City of Tucson*, 7 P.3d 136 (Ariz. App. 2000); *Wallace v. Brown County Area Plan Commission*, 689 N.E.2d 491 (Ind. App. 1998); and *City of Fayettevill v. S&H, Inc.*, 547 S.W. 2d 94 (Ark. 1977).

Legal challenges to the structural regulation of signs are rare.[59]

VII. Enforcement

Chapter 216 of the Local Government Code grants authority to each city to regulate signs and allows a city to establish procedures to relocate, reconstruct, or remove signs within its corporate limits or extraterritorial jurisdiction that do not conform with regulations.[60] Any city may regulate or prohibit signs in the city or in the extraterritorial jurisdiction, but cities in Harris County and some of its surrounding counties have limited regulatory power regarding onsite signs in their extraterritorial jurisdiction.[61]

A. Home Rule Cities

Under the miscellaneous provisions of Chapter 216, home rule cities are allowed to regulate signs by charter or ordinances without contradicting the statute.[62] A city may extend and enforce its sign ordinance in the extraterritorial jurisdiction, or alternatively it may ask the Texas Transportation Commission to regulate the signs with their extraterritorial jurisdiction.[63] As discussed more in depth above, a city that has a sign ordinance generally may not: (1) prohibit or restrict the size of political signs located on private land with consent of the owner, unless the political sign has billboard-like proportions; or (2) charge a placement or permit fee for political signs.[64] A city can ban almost all offsite and onsite signs as long as it meets the requirements of Chapter 216, such as allowing political signs, and the requirements of current constitutional law, which requires that the ordinance not have too many exceptions thereby defeating its purpose nor discriminate against signs based on content or viewpoint.

B. Rights-of-Way

Another area where a city might have a problem with signs, especially political signs, is in its rights-of-way. The Legislature has addressed this concern by requiring a city's permission before a sign can be placed in a city's right-of-way.[65] A city can decide whether to regulate sign placement in the city's rights-of-way. Absent any regulation by the city, the default is that such signs are not permitted.[66] A city needs to be careful not to solely prohibit signs in its right-of-ways based on content, for example, prohibiting all political signs but allowing other signs.

IX. Conclusion

---

[59] Sign Regulation for Small and Midsize Communities, American Planning Association, Planning Advisory Service Report Number 419 (1989).
[60] Tex. Loc. Gov't Code §§ 216.001(a), 216.003(a).
[61] *Id.* § 216.035.
[62] *Id.* § 216.901.
[63] *Id.* § 216.902(a).
[64] *Id.* § 216.903.
[65] Tex. Transp. Code Ch. 393.
[66] *Id.* § 393.0025.

When worded correctly, sign ordinances keep cities safe, pleasing to the eye, and don't curtail anyone's constitutional rights. While an ordinance must be a narrow means of protecting such interests, it does not have to be the least restrictive means imaginable. At the very least, the ordinance must provide for a viable alternative means of communication. Otherwise, the regulation will not hold up in court and will be deemed unconstitutional. Ordinances may validly favor noncommercial speech over commercial speech, or onsite advertising over offsite advertising, but the reverse is not true.

To determine the validity of any ordinance, it is especially important to keep in mind the following while considering the regulation: the sufficiently substantial interests of the government, the locations of the regulated signs, whether the restricted information is commercial or noncommercial in nature, and who is communicating the information.

Cities that establish a sign ordinance must also ensure the code does not violate any state law on the regulation of political signs and compensation structures. A city must compensate sign owners for the relocation, reconstruction, or removal of their signs if signs are deemed nonconforming and required to be removed by a new sign code. Cities that regulate signs and require removal, relocation, or reconstruction, must have a municipal board of sign control that determines the action and amount of required compensation. The methods of compensation, such as tax abatement or specific funds, are prescribed under Chapter 216 of the Local Government Code. Furthermore, it should be noted that a sign owner may appeal such a decision.

As long as the sign ordinance and enforcement are consistent with state law and do not become an overly burdensome restriction on free speech, it should be valid. However, look for this area of the law to change as municipal residents and sign companies continue to challenge municipal ordinances.