



Technical Assistance Legal Center

How to Strengthen Your Local Sign Laws¹

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I. Introduction

Virtually all local governments in California have laws to regulate the placement and posting of signs in some manner.² In most cases, these sign laws are part of a city or county's larger zoning laws, which define, for example, the boundaries of residential and commercial zones in any given community. These sign laws often have been in place for years, and have likely undergone many amendments and revisions. Sign laws are generally designed to promote effective communication while "protecting the public and preserving the aesthetic character of the city."³ The laws attempt to strike a balance between allowing access to information (through the posting of signs) and limiting visual blight.

This memo is intended to educate the public about how a typical local sign law is constructed and to provide advice about how best to strengthen the sign law to promote the public health.⁴ An appendix to this memo provides sample ordinance language that strengthens local sign laws in two ways: (1) by limiting the amount of storefront signage allowed; and (2) by eliminating certain types of signs such as "A" frame/sandwich board signs and pole signs. If sign laws are strict and well-enforced, they may be an effective tool in limiting the amount of tobacco advertising in a community, since tobacco is one of the most heavily advertised products at a retail outlet.

A. Purpose of Sign Regulations

Traditionally, the sign law portion of a city or county code begins with a statement of purpose. Purpose statements may be lengthy or brief, specific or broad, depending on the goals of the elected officials and the government's legal obligations to consider First Amendment rights as they apply in the zoning context. However, most sign laws are based upon a desire to encourage attractive signage and minimize visual clutter.⁵ The statement of purpose utilized by the City of Long Beach is a good example of the interests that must be balanced in passing sign regulations. It reads:

¹ This document was created with funds received from the Tobacco Tax and Health Protection Act of 1988–Proposition 99–under grant #99-85069 with the California Department of Health Services, Tobacco Control Section.

² Local laws are also called the local government's "code"; the terms "law" and "code" will be used interchangeably in this memo.

³ City of San Diego Municipal Code § 142.1201.

⁴ The analysis in this memo and the attached "Sample Sign Law Amendments" are based primarily on California law that may not be applicable in other jurisdictions.

⁵ A statement of purpose also may mention the effect that signs can have on public safety or property value.

The City recognizes and strongly subscribes to the right of business people to identify their businesses with signs and other advertising graphics. However, the City also recognizes that the location, number, size and design of signs significantly influence the City's visual environment and the perception of the City's economic condition. It is the intent of these regulations to maintain and enhance the quality of the city's visual appearance while continuing to recognize the need of businesses to advertise goods and services.⁶

The statement of purpose is generally followed by a set of definitions, which are used throughout the sign code. The statement of purpose and definitions apply to all sign regulations within a jurisdiction. Following the statement of purpose and definitions is the main part of a sign law – the rules setting standards for the design, materials, construction, size, location and maintenance of signs and sign structures.

Sign regulations often will be linked to land use patterns in order to ensure that the signage needs of a particular area are compatible with the architecture and use of the buildings where they are located.⁷ For example, restrictions on advertising signs may be more stringent in an area zoned for residential use and more relaxed in a commercial district.

Generally, sign laws apply regardless of the content of the message. For example, a 10% limit on window signage is designed to reduce the overall amount of advertising on storefronts, rather than dictating which products may or may not be advertised. Note that the First Amendment limits a local government's power to regulate the content or message of a sign. (See Section III below for more information on legal issues associated with sign laws.)

B. Finding Your City or County Sign Code

If you wish to review your city or county sign code, you have two options.

1. Call Your City or County Clerk's Office

You can call your city or county clerk's office and make a request for specific information. This option works well if you have a good idea of the type of sign regulation you are looking for, or if you have the specific number or name of a code section.

2. Search for Your Sign Code on the Web

Many cities and counties have posted their municipal code on an internet-accessible database. This search method is more appropriate if your search is broad in scope, or if you are seeking a better idea of the structure of a particular city or county sign code. You can find out if your city or county municipal code is available online by visiting a city or county website and

⁶ City of Long Beach Municipal Code § 21.44.010.

⁷ See, e.g., *Bohannon v. City of San Diego*, 30 Cal. App. 3d 416 (1973) (upholding a city rule requiring signs to conform in "appearance, size, and position, to the quaint and distinctive character of Old Town San Diego.")

clicking on a link to the clerk's office, which will usually link you to any existing municipal code database.⁸ Alternatively, certain websites provide links to a number of local government codes.⁹ Most databases feature word search functions that will lead you to precisely the type of regulation you are seeking. You will find that larger cities¹⁰ and counties may feature sign regulations as a subset of a vast array of zoning regulations, whereas smaller municipalities¹¹ may maintain an independent chapter on sign laws.

II. What to Do With Your Sign Code

When you review your local government's existing sign code, you will want to look for a few key provisions. In the "definitions" section, you can determine what types of signs your local law covers. For example, if a definition is provided for "window signs," it is likely that window signs are mentioned later in the code. Following the definitions, the actual sign regulations determine what kinds of signs are prohibited entirely, or are limited to certain places or times. In these sections, you should be able to determine if your community places strict limits on retail signs (e.g., no more than 10% of the window can be covered by signs, "A" frame/sandwich board signs are prohibited, etc.). Once you review your local sign law, you may wish to seek increased enforcement of the existing law or to amend the law to make it stronger.

A. Increase Enforcement of Existing Law

If your local sign code does restrict storefront or other signs, you may realize that these laws are not being enforced. If so, you may wish to work toward greater local enforcement of the sign laws. For example, the City of Los Angeles has a 10% limit on window signs. L.A. LINK (the regional community linkage project for Los Angeles) has developed a program to increase enforcement of this law.¹² The Los Angeles enforcement effort involves volunteers who identify and report violations of the sign law, which are then forwarded to the Los Angeles Department of Building and Safety for enforcement.

This project is successful because community advocates researched what agency is charged with enforcement (Building and Safety) and how best to reach that agency. In Los Angeles, the Department of Building and Safety's protocol is to respond to complaints but not to proactively enforce the law. Therefore, the advocacy groups have been able to increase

⁸ To find your city on the web, visit the California League of Cities at http://www.cacities.org/cities_online/cities_online.asp (last visited 2/13/2002). To find your county on the web, visit the California State Association of Counties at: http://www.csac.counties.org/counties_close_up/county_web/index.html (last visited 2/15/02).

⁹ Visit http://california.lp.findlaw.com/ca01_codes/municode.html or <http://www.igs.berkeley.edu:8880/library/calcodes.html> to find out if your city or county code is available on the web.

¹⁰ See, e.g., City of San Francisco City Code, available at, <http://www.amlegal.com/sanfran/viewcode.htm> (last visited 1/17/2002); City of San Diego City Code, available at, <http://clerkdoc.sannet.gov/Website/mc/mc.html> (last visited 1/17/2002).

¹¹ See, e.g., City of Concord Municipal Code, available at, <http://www.ci.concord.ca.us/citygov/municode/alphaindall.htm> (last visited 1/17/2001).

¹² L.A. LINK, "How to Stop Window Advertising Blight within The City of Los Angeles: A Community Program to Report Violations of Los Angeles Municipal Code Section 91.6214.1," available upon request from TALC, or directly from L.A. LINK by calling (562) 429-0134.

enforcement of the law by generating complaints to Building and Safety.

B. Strengthen Your Local Sign Code

If your local sign code is weak, your city or county may wish to consider amendments to limit the amount and type of signs that can be posted in your community. Two types of amendments are summarized in this memo: (1) limits on storefront signs; and (2) prohibiting certain signs entirely, such as “A” frame/sandwich board signs, or “pole signs.”

1. Enhancing Window Sign Restrictions

Most sign laws contain limits on the amount or size of “window signs.” A window sign is generally defined as a sign that is posted or painted on or otherwise affixed to a display window. Window signs are a desirable form of communication to many merchants because the signs are visible to passers-by. Window signs may include anything from signs advertising products sold on the premises, to informational signs indicating the hours of business operation.

Current state law provides that no more than one-third of the square footage of windows and clear doors of an alcohol retailer may have *advertising signs* of any sort.¹³ This includes advertisements for everything from soft drinks to alcohol and tobacco products. The law specifies that the state Department of Alcoholic Beverage Control and local law enforcement agencies are responsible for the enforcement of the state law. However, in most jurisdictions the law has not been widely enforced unless local groups or law enforcement officials have made it a priority.

Despite somewhat lax enforcement, local governments recognize the importance of storefront sign regulations. Many cities and counties have created regulations more stringent than state law. A common way to strengthen the law is by reducing the allowable signage area. For example, a city or county could follow the lead of the City of Los Angeles and reduce the limit on storefront signs from one-third to 10% of the storefront.¹⁴ In addition to reducing visual clutter, such ordinances protect public safety by ensuring visibility into retail businesses from the street, allowing the public to view – and report – holdups and other crimes. Another way cities and counties have improved the state law and rate of enforcement is by expanding the definition of a “window sign.” For example, the state’s definition of window signs can be broadened by:

- including all signs rather than just advertising signs (i.e., to reach hours and other information signs);
- including both temporary and permanent signs;
- including signs visible from outside the store rather than just those signs visible from the “public right of way;” and

¹³ Cal. Bus. & Prof. Code § 25612.5(c)(7).

¹⁴ City of Los Angeles Municipal Code section 91.6214.1 states: “The total area of all window signs shall not exceed 10 percent of the area of the window.”

- regulating what qualifies as a “window sign” based on the distance of the sign from the internal window surface (e.g., a sign is a “window sign” if located within 12 inches of the interior window).

Local governments also may expand the window coverage area to include doors or other entranceways, the use of hanging signs and paper signs visible through windows, and displays of merchandise in windows. A city may even wish to regulate the appearance of the signs themselves in the name of aesthetics by regulating the size of the letters and logos used on the signs (e.g., sign letters may be no greater than 6 inches in average height, and logos may not exceed 16 inches in any dimension).¹⁵

Please see the Appendix for sample ordinance language that might be used by your city or county to strengthen the limits on window signs. Because storefront signs are a means for retailers to convey information about their products, TALC recommends that communities seeking to limit window signs do not enact a window sign restriction lower than 10%.¹⁶ (See Section IV.A. for more information on legal limits to local sign regulation.)

2. Eliminating Certain Types of Signs

In addition to strengthening a city or county’s limit on window signs, a local government could consider eliminating certain categories of signs. For example, some cities have prohibited portable ground signs.¹⁷ A “portable ground sign” is any sign which is movable and which is not permanently attached to the ground, a structure, or any other sign. This includes “sandwich-board” signs, often formally referred to in municipal code sections as “A” frame signs.

Another type of sign commonly prohibited is the “pole sign.”¹⁸ A “pole sign” can be defined as a freestanding sign that is erected or affixed to one or more poles or posts, such as a telephone pole.¹⁹ Bans on both ground and pole signs can usually be found under the heading “prohibited signs” along with a laundry list of other types of undesirable signs, such as roof signs and flashing or blinking signs. Like the window sign limitations, ground sign and pole sign prohibitions may be based on a community’s desire to minimize visual blight.

¹⁵ Such regulation is permissible so long as the local government does not require alteration of a registered trademark. *Blockbuster Videos Inc. v. City of Tempe*, 141 F. 3d 1295 (1998). See Section IV.B of this memo for further discussion of this case.

¹⁶ TALC’s research has found only one local government, Lake Tahoe, that has enacted a window sign restriction lower than 10%. The Tahoe Regional Planning Agency Code of Ordinances section 26.3(12) restricts signs intended to be seen from the outside to 5% of the area of each window. However, it should be noted that the aesthetic needs of Lake Tahoe may differ greatly from the needs of a more urban community.

¹⁷ See, e.g., City of Anaheim Municipal Code § 18.05.064.010; City of Concord Municipal Code § 7402(G); City of Fresno Municipal Code § 13-911(i); City of Palm Desert Municipal Code § 25.68.090(D); City of Santa Barbara Municipal Code § 22.70.030(C)(11); City of Santa Ana Municipal Code § 41-861(1); City of San Jose Municipal Code § 23.02.1010(A)(5).

¹⁸ See City of Santa Barbara Municipal Code § 22.70.030(C)(2). See also, City Of Los Angeles Municipal Code § 91.6212.1 (permitting pole signs only on lots having more than 50 feet of street frontage).

¹⁹ City of Los Angeles Municipal Code § 91.6203.

These prohibitions may be extended to cover signs on public property as well as private property. For example, a local government could completely prohibit the placement of sandwich board signs on a public sidewalk (e.g., outside of a retail outlet), or the attachment of paper signs to publicly owned traffic and telephone poles. Alternatively, a city or county could require private individuals to request permission to post signs on public property.

Advertising in every community is likely to be different. Look around your community to see what types of signs are problems and then consult your local sign law to see if those types of signs are prohibited. If not, your city or county may be willing to eliminate or reduce such signs.

Please see the Appendix for sample ordinance language that might be used by your city or county to limit portable signs and pole signs on either public or private property.

III. Why Regulating Storefront Signs is Legal

A local law that places limits on storefront signs of *all types* is different from a law that singles out only *tobacco* advertising. General limits on storefront signs apply to advertising for products of any kind, such as for tobacco, alcohol, or snack foods. Such limits are “content neutral,” meaning that they apply regardless of the content of the message in the sign.

Local governments have greater power to limit signs when they do so in a content-neutral manner. The United States Supreme Court decision in *Lorillard v. Reilly* affirmed local governments’ traditional zoning powers to limit the size and location of signs in their community even while it limited local government power to regulate tobacco advertising in a content-specific way.²⁰ Therefore, subject to the caveats noted below, local government limits on storefront and other signs are not preempted by federal law nor do they violate the First Amendment.

In contrast, the Supreme Court found in *Lorillard v. Reilly* that local governments generally do *not* have the authority to regulate cigarette advertising in a content-specific way. The *Lorillard* case involved a challenge to Massachusetts’ regulations that would have limited tobacco advertising inside and outside of retail outlets within 1,000 feet of schools and playgrounds. The Supreme Court struck down the Massachusetts regulations, in part because the Court found them preempted by the Federal Cigarette Labeling and Advertising Act (FCLAA). The FCLAA prohibits state or local governments from imposing limits on tobacco advertising that are “based on smoking and health.”²¹

The Supreme Court found that although Massachusetts may have a valid interest in limiting cigarette advertising visible to children, “Congress enacted a comprehensive scheme to address cigarette smoking and health in advertising [through the FCLAA] and pre-empted state regulation of cigarette advertising that attempts to address that same concern, even with respect

²⁰ *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001).

²¹ 15 U.S.C. § 1334(b).

to youth.”²² Therefore, the Court found that Massachusetts did not have the authority to limit cigarette advertising on the basis of the content of that advertising. The Court also found that regulations proposed by the State of Massachusetts to limit tobacco advertising were too broad, and therefore violated the First Amendment’s grant of free speech rights to tobacco companies.

As a result of the Supreme Court’s decision in *Lorillard v. Reilly*, cities and counties currently are not advised to impose content-specific limits on cigarette advertising such as restricting it where children are likely to be, including on storefronts. However, changes to a city or county’s sign law to reduce storefront and other signs are lawful, *so long as* the changes do not single out advertising for a particular type of product, such as tobacco.

In seeking changes to a local sign law, tobacco control advocates should consider partnering with other community-based organizations. As discussed above, local governments have aesthetic and other reasons for limiting signage at retail outlets. For example, from a public safety perspective, having storefront windows clear of signs helps protect customers and employees in the event of a robbery (because the inside of a store can more easily be seen by the public and by law enforcement). Additionally, a community may wish to reduce obstacles and hazards to pedestrians and people with disabilities by eliminating sandwich-board signs. Therefore, tobacco control advocates may find allies in groups that are concerned about public safety, neighborhood aesthetics, access for the disabled, or even alcohol advertising.

IV. A Few Caveats

Local governments should note the following issues when enacting the sign law changes suggested by TALC.

A. Elimination of *All* Storefront Signs

Even where sign prohibitions are essentially “content neutral,” they still may limit too much speech if they eliminate a common means of speaking. For example, in the case of *Ladue v. Gilleo*, the Supreme Court struck down a city ordinance that banned *all* residential signs except those falling within one of ten exemptions provided by the law.²³ Although the Court recognized that the city has a valid interest in minimizing visual blight, it found that the ordinance violated a homeowner’s right to free speech by completely banning a common means of speaking – signs with a political message posted in front of a person’s home. It follows that even in a commercial setting, while a city or county may limit storefront signage without violating the First Amendment, they may not legally be able to eliminate *all* storefront signs. Therefore, TALC recommends that communities seeking to strengthen window sign restrictions do not go below a 10% limit on window signs.²⁴

B. Alteration of Trademarks

²² *Lorillard*, 533 U.S. at 569.

²³ *Ladue v. Gilleo*, 512 U.S. 43, 53 (1994).

²⁴ The Supreme Court case of *Ladue v. Gilleo* should not prevent local governments from eliminating “A” frame or pole signs because the city or county is not banning all types of advertisements at the store site.

There are limits on how much a local government can regulate the specific visual content of signage. Courts have repeatedly recognized that a city or county must balance its interests in zoning for aesthetic purposes with a vendor's interest in "displaying messages concerning their own products, services, or activities."²⁵ For example, in *Blockbuster Videos Inc. v. City of Tempe*,²⁶ the Ninth Circuit upheld the portion of a challenged city zoning ordinance specifying the color, size, and general architectural features of storefront signs so long as it did not require the alteration of a registered trademark. The court clearly stated that "[p]recluding display of a mark for zoning purposes is permissible; requiring alteration of a mark is not."²⁷ Thus a local government can prohibit logos on window signs altogether, or limit the Marlboro logo size to 16 inches in area. However, a zoning regulation may not require that the logo be posted, for example, in black and white instead of the trademark red and white.

C. Timing of Sign Removal

The adoption of a new sign ordinance may not, in all cases, require storeowners to remove the undesirable signs immediately after the amendment is passed. While it is possible to prohibit the posting of future signs and eliminate existing signs after a set period of time, the signs may not disappear overnight.²⁸ It is likely that your city or county code already contains procedures to remove newly prohibited signs, to phase out such prohibited signs, or to "amortize" certain signs (i.e., provide government compensation for the removal of signs). These procedures would apply to any new sign code amendments. Please contact TALC for examples of local amortization language.

D. Increased Prominence of Remaining Tobacco Advertisements

Finally, tobacco control advocates should be aware that if the overall amount of storefront advertising is reduced, then the advertising that does remain might become more prominent. Because tobacco companies pay retailers to place advertisements for their products, it is likely that tobacco ads would be the last type of advertising taken down by retailers when faced with a limit on window signs. This remaining tobacco advertising may become more prominent to the passerby if it is not competing for the viewer's attention with many other ads. However, if tobacco ads already exceed all other forms of window advertising, this may not be a concern in your community.

²⁵ *City & County of San Francisco v. Eller Outdoor Advertising*, 192 Cal. App. 3d 643, 660 (1987).

²⁶ 141 F. 3d 1295 (1998).

²⁷ *Id.* at 1300.

²⁸ For example, California Business & Professions Code section 5499 prohibits the removal of a very narrow class of signs. Business & Professions Code section 5499 states, in part, "no city or county shall require the removal of any on-premises advertising display on the basis of its height or size by requiring conformance with any ordinance or regulation introduced or adopted on or after March 12, 1983, if special topographic circumstances would result in a material impairment of visibility of the display or the owner's or user's ability to adequately and effectively continue to communicate with the public through use of the display." See *Denny's, Inc. v. City of Agoura Hills*, 56 Cal. App. 4th 1312 (1997) (finding that a local ordinance prohibiting pole signs based on their height and size violated Business & Professions Code § 5499 when special topographical circumstances existed).