

OVERVIEW: SIGN ORDINANCE UPDATE

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CAUTION

**THIS SIGN HAS
SHARP EDGES**

DO NOT TOUCH THE EDGES OF THIS SIGN



ALSO, THE BRIDGE IS OUT AHEAD



AGENDA

- Major policy choices – overview only
- Legal framework
- Questions

POLICY CHOICES

- Temporary signs (A-frames, etc.)
- Billboards
- Readerboards (changeable copy)
- Conversion to digital / LED / electronic displays (August)
- Mobile billboards (“sign trucks”)
- Illuminated and projecting signs (August)



POLICY CHOICES

- Visual displays on City property
 - Traditional public forum (streets, sidewalks, parks, maybe area around City Hall)
 - Banner programs
 - City's own speech
 - Co-sponsored events



POLICY CHOICES

- Real estate signs – private and public land
- Window signs
- Temporary commercial signs
- Murals
- Amortization – removal of non-conforming signs
- Maintenance, repair, replacement

LEGAL FRAMEWORK

- Expression freedoms
- Property rights
 - Public or private land?
- Legal principles are adapted to the characteristics of each medium
- Sign law is a distinct body of concepts

EXPRESSION FREEDOMS

First Amendment (1791):

Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

CALIFORNIA CONSTITUTION

LIBERTY OF SPEECH [Article I, section 2(a)]

Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge **liberty of speech or press.**

COURTS' CONCERNS

- Using sign reg as a tool for censorship, or to favor or disfavor certain messages or messengers?
- Regulating the message or the medium?
- Strive for “content-neutral” rules
- TPM – time, place, manner rules
 - Easier to justify
- City acting as “art jury”?
- Narrow, objective standards for permits

KEY DISTINCTIONS

- Commercial Speech and Non-Commercial Speech
- On-site and Off-site
- Temporary and Permanent
- Stationary or moveable
- Static or changing image
- Public land or private land
 - Which hat: regulator or proprietor?

Commercial and Non-Commercial

- Non-commercial speech:
 - Mostly religion and politics
 - Also art, sports, science, philosophy
 - Commentary on public issues
 - Seeks converts, votes, support
 - Marketplace of ideas
- Commercial – promotion goods and services – standard “advertising”
 - Seeks customers, sales, deals, business
 - Marketplace of goods and services
- Hybrid speech: elements of both

Speakers Corner, Hyde Park, London England





COMMERCIAL SPEECH

Original view: No protection

- First Amendment protection extended to commercial speech - mid 1970's - three cases
- Central Hudson v PSC (1980)
- “intermediate scrutiny”





CHOOSING TOPIC OF DEBATE

- The First Amendment means that the government has no power to restrict expression the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. [*Police Dept. of Chicago v. Mosley*, 1972]
- Applies mainly to “non-commercial speech”

Metromedia v. San Diego (1981)

- 5 opinions, 90 pages – “Tower of Babel”
- “Metromedia Rules”:
 - 1. City may ban all billboards (7 votes)
 - 2. City cannot favor commercial speech over non-commercial (4 + 2 concur on result)
 - 3. No favoritism between non-commercial messages (4 + 2 concur on result)

MESSAGE SUBSTITUTION

- Any non-commercial message may be substituted in place of any other message
- Continuing right, not one time
- Substitution in whole or in part
- Permit required only for structural change
- Does NOT allow “off-site” commercial to be substituted for “on-site commercial”
- All “non-commercial” treated equally
 - No special rules just for “political” or “campaign”
- Change of copy only / on-site commercial

WHEN METROMEDIA APPLIES

- Regulating signs on private land
- Signs in “traditional public forum” areas
 - Surface of city streets
 - Public sidewalks
 - Public parks; area around City Hall (?)
- DOES NOT APPLY to public forum areas that are not “traditional open forums”
 - Street banners, city vehicles, inside City Hall, other City-owned properties

AFTER METROMEDIA

- 60% - 70% of sign litigation brought by “billboard” companies
- Ignore ban or limits on billboards, attack entire sign ordinance
- Free speech / civil rights litigation
- Possible damages, attorney fee awards

RESIDENTIAL SIGNS

- City may not completely ban onsite real estate for sale signs [*Linmark v. Willingboro*, 1976]
- City may not completely ban all political protest signs [*Ladue v Gilleo* (1994)]
- But, more temperate measures might be ok
- Reasonable rules for size & height - OK



REAL ESTATE SIGNS

- California State law – Civil Code 713
- Overrides local bans on real estate signs
- Applies only to private land
- Applies both onsite and offsite
- Allows reasonable local rules on location, dimensions, design (physical type, not graphic design)

OWNERSHIP

- Property ownership
 - Private land – regulation of use, not ownership
 - Public land
 - Parks, streets, sidewalks – trusteeship
 - All other city owned property – designation
 - Land in city owned by other governments
 - School districts can opt out of local zoning
- Signage rights and duties attach to, and travel with land, regardless of ownership

PUBLIC FORUM

- Based on government's ownership rights
- City acts as owner, not regulator
- Traditional public fora – trusteeship
 - Public parks
 - City streets (not highways)
 - Most sidewalks
 - Area around state house, city hall, etc

PUBLIC FORUM SIGN CASES

- City may completely ban all signs on public property that is not “traditional public forum” [*Taxpayers for Vincent* (1986)]
- Gov’t can ban political signs in areas where it allows commercial signs [*Lehman v Shaker Hts* (1974)]

PUBLIC FORUM SIGNS

- Political, Real Estate in PROW
- Across the street arches
- Lamp post banner programs
- Benches – parks, transportation

TPM

- Time Place and Manner Rules
- No direct regulation of speech
- Incidental effect on speech – OK
- Signs: size, height, setback, illumination, spacing, density, orientation
- Reasonable, content neutral, adequate alternatives

STRUCTURAL RULES

- Communicative vs. non-communicative
- Structure v. message
- Temporary v. permanent
- Static v. hand held or personally attended
- Free standing / attached
- Vehicles, vessels, trailers
- Airborn, wind activated
- Sign twirlers, sign clowns, commercial mascots

QUESTIONS