

SIGN LAW 101
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Presented to
The Riverside City Sign Committee
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www.signlaw.com

- I. What Is a Sign?
- * Visually communicative image on public display
 - * Look to definition in local sign code
 - * Some things can be excluded from a general definition
 - Common exclusions: grave markers, statues, stained glass windows

- II. Why Have Sign Rules?
- * Limit visual clutter
 - * Prevent sign “shouting matches”
 - * Serve the county’s esthetic interests, avoid “cheapening of the city”
 - * Total signage plays a large role in the overall appearance of a city
 - * Safety factors – driver distraction, pedestrian impediments

III. First Amendment to U.S. Constitution (1791)

Congress shall make no law respecting

[1] the establishment of religion, or
[2] prohibiting the free exercise thereof; or

[3] abridging the freedom of speech, or
[4] of the press; or

[5] the right of the people peaceably to assemble, and
[6] to petition the Government for redress of grievances.

Every freedom listed in the First Amendment can be invoked by the display of a message on a sign.

IV. Categories of Speech

A. Commercial speech

- * Regular advertising: seeking customers, clients
- * Debate in marketplace of goods & services
- * Lower level of First Amendment protection

B. Noncommercial speech (“classical” or “core” speech)

- * Marketplace of ideas (politics, religion, *etc.*)
- * Full protection under First Amendment

V. California Constitution, Article 1, 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.*”

In the context of sign regulation, rights under the state constitution are usually interpreted as coterminous (equal) with the federal right. However, this interpretation is currently being challenged in a case against Los Angeles. A billboard company asserts that the “every person” and “all subjects” words in the state constitution forbid the commercial / noncommercial distinction, and the onsite / offsite distinction.

VI. Foundation Concept – *Police Dept. of Chicago v. Mosley* (U.S. Supreme 1972) (segregation protest)

“The First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”

“[O]ur people are guaranteed the right to express any thought, free from government censorship. The essence of this forbidden censorship is content control.”

VII. Unprotected Categories

Despite the seemingly absolutist language of the *Mosley* case, some categories have no protection.

- * Defamation (false statements of fact that injure reputation)
- * Obscenity, child pornography
- * Fraud, deceit - lies intended to deceive
- * Perjury (lying under oath)
- * Fighting words - incitement (“shouting fire in a crowded theater”)
- * Blackmail, criminal conspiracies
- * Threats against president, VP
- * False or deceptive commercial advertising (FDA vs. Kevin Trudeau, \$37 million fine)

VIII. Expression Freedoms Are Not Absolute

Expression can sometimes be limited, restricted, channeled by the gov’t.

But . . . limits must be justified.

Courts ask:

- * Legitimacy and importance of the gov’t goal or interest
- * Is the rule “narrowly tailored”?
- * Does it leave open adequate alternatives?

IX. Political Signs

Political signs are usually defined signs that advocate a particular vote in an upcoming election.

When a city bans all politicals except in the pre-election period: always invalid.

Size / height limits: invalid if applicable only to politicals; (usually) held valid if equally applicable to all messages.

Political / Religious signs on residences cannot be completely banned (*Ladue* case).

A reasonable amount of display area must be available at all times.

Optional: the amount of display space can be increased during the pre-election time; this is okay if the area is available to all varieties of noncommercial speech.

- X. Residential Signs / Yard Signs
 Most courts: commercial signs, including home-based occupations, can be banned in res'l zones.
 Justification: keep neighborhoods peaceful, quiet, unpolluted by commercial signs.
 Reasonable limits on size, height, setback, illumination are usually approved.
- XI. Flags
 Limits on total area, height of poles, *etc.* are usually approved.
 Special display rights for “official” and “governmental” flags are almost always invalidated.
 POW/MIA or “skull and cross bones” flags have same display right as stars and stripes.
- XII. Real Estate Signs (REFS=Real Estate For Sale)
 City cannot completely ban real estate for sale signs, on-site (*Linmark*) or off-site (Civil Code 713).
 Home Owner Associations CC&Rs and Mobile Home Park rules cannot ban REFS signs.
 City has no legal duty to allow REFS on public property or public right of way, but may allow such signs as a matter of policy choice.
- XIII. Billboards
 A. What is a billboard?
 * Not just a large, freestanding sign
 * Not just “offsite messages”
 * Real distinguishing factor: economic nature (general advertising for hire)
 * Display space is rented out to advertisers
 * The sign is a separate business / profit center, not an accessory land use
 B. Riverside City has a long history of “no new billboards.”
 Billboard policy is not within this Committee’s assignment.
 C. Most famous billboard case: *Metromedia v. San Diego* (U.S. Supreme 1981)
 Metromedia rules (apply to all signs, not just billboards):
 1: Gov’t can ban billboards, even if it allows on-site signs.
 2: Gov’t cannot favor commercial speech over noncommercial.
 3: Gov’t cannot favor certain classes of noncommercial over others.
- XIV. Message Substitution
 “A noncommercial message may be substituted for any commercial message or any other noncommercial message.”
 This text defeats most claims of “favoring commercial speech” (*Metromedia* Rule 2).
 Every sign ordinance should include “message substitution.
- XV. Litigating a Sign Dispute
 Judges ask: Is this rule based on message content?
 If yes (*i.e.*, “violent video games”), courts suspect censorship; demand strong justification.
 If content neutral: Time, Place and Manner rules (size, height, setback, spacing, location) are usually approved.
 Is the on-site / off-site distinction “content based”?
 Billboard companies say YES.
 Most courts say NO, the onsite/offsite is a location factor, chosen by the sign owner or advertiser.

XVI. Sign Regulator's Mantra

The medium is NOT the message.

We regulate the medium, not the message.

Gov't should not play art jury.

Rules about colors, fonts, coverage ratios create legal risk.

But: gov't can play art jury for its own public art projects.

XVII. Common Drafting Error: The General Rule with Content Based Exceptions

Exceptions based on non-communicative factors (event, location) – usually okay.

Example: digitals only in main retail corridor – location rule, probably okay.

Exceptions based on message, examples:

* No neon, except beer, night clubs

* No portable signs, except real estate

Ballen v. Redmond WA

Bagel shop signwalker fell into definition of “portable sign.”

City banned portable signs, but made exceptions for politicals, real estate, construction.

9th Circuit: as written, unconstitutional. But a ban on portables would be okay if there were no content based exceptions. Attorneys' fee award: \$165,000.

XVIII. The Artistic Murals Problem

Most cities want to encourage visual art in public places. Is the “art mural” a sign?

Start with definitions in local code. Sometimes the distinction is hard to make.

What if the art mural is thematically linked to the store's sales inventory?

See: [wagmoredogs.com](http://www.wagmoredogs.com) (city says the happy dog cartoon is commercial advertising)

http://www.washingtonpost.com/blogs/the-state-of-nova/post/arlington-wag-more-dogs-mural-is-no-more/2012/09/25/ed180e82-074c-11e2-a10c-fa5a255a9258_blog.html

XIX. Digital Signs

Also called “electronic signs” or “message centers” or “dynamic signs” etc.

Technology similar to televisions, monitors

LED panels can produce vivid, color images

Still slides or full motion video

Complete bans have been upheld by several courts

Often controversial (“Don't carnivalize our town” vs “Let us compete with modern technology.”)

Presumably, a general ban with a location exception would be okay.

XX. Signs on Government Property / Public Right of Way

A. Traditional Public Forum (TPF)

Definition: surfaces of city streets, sidewalks, parks; places where people have traditionally protested, picketed, held demonstrations.

Gov't cannot ban live in-person picketing on noncommercial speech topics.

U.S. v. Grace (1983): Live, in-person picketing and protesting could not be banned from sidewalks around U.S. Supreme Court building. Same rule applies to residential sidewalks

Some courts allow bans on inanimate signs in TPF areas. *Sussli v. San Mateo*.

Most courts okay bans on commercial messages in TPF areas.

Light posts and utility poles are not TPF even if mounted in the sidewalk.

B. Private signs on government property that is not TPF

Lehman v. Shaker Hts OH (1972) – public transit authority refused political ad but accepted commercial ads. U.S. Supreme: valid choice, justified by government’s ownership.

DiLoretto v. Downey Unified (9th Cir. 1999). Youth baseball booster program – okay to ban all noncommercial ads while accepting commercial.

Uptown Pawn v. Hollywood FL (11th Cir. 2003): Categorical exclusion of unwelcome commercial ads (alcohol, tobacco, pawn shops, adult uses, etc.) - valid.

In this context – private signs on gov’t property that is not TPF, Metromedia Rule 2 (no favoring of commercial) does not apply.

XXI. Government Speech – Government’s Own Message to the Public

Most of the First Amendment DOES NOT APPLY to the government’s own speech. The only constitutional limit on government speech is the “establishment of religion” clause.

There is no constitutional duty for the gov’t to give private parties equal access, even if the gov’t message is controversial.

Common examples: City welcome signs, neighborhood themes, banners promoting city-sponsored events, traffic control and directional signs.

Party Animals – public art project sponsored by City of Washington DC.

Fiberglass models of political party mascots (donkey and elephant). City invited private sponsorships consistent with “light and whimsical” theme of the project. PETA proposed a message about cruel treatment of elephants in circuses; City refused. Court decision: City could refuse PETA ad while accepting others; PETA’s message was inconsistent with the theme. It was a city-created and managed program. *People for the Ethical Treatment of Animals v. Gittens*, 396 F.3d 416 (DC Cir. 2005).

XXII. Amortization

A. Billboards: Under state law (B&P 5412), legally installed billboards cannot be amortized out of existence without payment of compensation or relocation agreement. There are narrow exceptions for billboards on residentially or agriculturally zoned land; even in those situations, a grace period or compensation must be allowed.

B. Permanent Store Signs: State law (B&P 5490 *et seq*): if new sign ordinance is more restrictive and calls for amortization of nonconforming signs, then 3 steps are required: 1) adopt the new ordinance; 2) conduct an inventory to determine which signs will be subject to amortization; 3) hold a reconfirmation hearing. City must allow fifteen years to recoup the investment, or pay compensation based on 15 year straight line depreciation schedule.