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Give Me a Sign: ReReading Our Sign Codes

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Author Biographies

Laura Mueller, Associate - Laura previously worked at the Texas Municipal League as Assistant General Counsel. While at TML, she participated in over 100 speaking engagements on various legal topics and continues to be a featured speaker at legal conferences. She has authored amicus curiae briefs for the courts on numerous subjects including billboard regulation, reserved powers doctrine, civil service, elections, unions, takings, open meetings, public official liability, land use, and annexation. Laura received her undergraduate degree from the University of Oklahoma and earned her Doctor of Jurisprudence from the University of Texas at Austin.

Anjali Naini, AICP Consulting Planner - Anjali has several years of planning experience. She is certified by the American Institute of Certified Planners. Anjali assists clients with annexations (both voluntary and involuntary), development agreements, and amending development-related ordinances, including zoning and signs. Anjali also handles clients' day-to-day planning tasks including rezoning requests, subdivision plat and site development reviews, and city map updates. Prior to joining the Firm, Anjali was a planner for GrantWorks, Inc., where she wrote comprehensive plans for small cities and communities throughout Texas that received funding through the TxCDBG (Texas Community Development Block Grant) Program. Anjali received her Master of Science in Community and Regional Planning from the University of Texas at Austin, and her Bachelor of Arts in History from Trinity University.

Alessandra Gad, Associate - Alessandra is the firm's expert on Small Cell Nodes and municipal tree preservation regulations. She helps the team by: conducting legal research and reviewing current law, drafting memoranda and pleadings, drafting ordinances and resolutions, responding to public records requests, handling assignments involving land use, water and other municipal issues. She is one of our top prosecutors and helps handle Code Enforcement cases. Alessandra received her undergraduate degree from The University of Texas at Austin and her Doctor of Jurisprudence from St. Mary's University in San Antonio.

State Regulation of City Regulation of Signs

Defending reasonable sign regulation from First Amendment challenges has become increasingly difficult following *Reed v. Town of Gilbert* and its progeny. *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015)¹. Understanding the basics of municipal sign regulation is key to understanding the far-reaching implications of *Reed* in municipal law. This article will endeavor to both convey the intricacies of sign regulation and the far-reaching implications of *Reed*.

How a city may regulate some signs, but not others, depends on many factors. For example, a city generally may regulate signs on the basis of size, but not regulate signs solely on the basis of content without showing that the restriction is narrowly tailored to meet a compelling interest. *See id.* at 2231. However, some cases have upheld the ability of cities to distinguish based on the type of sign being regulated. For example, a city can often regulate offsite advertising more strictly than onsite advertising. *See, e.g.*, TEX. LOC. GOV'T CODE § 216.035; *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 514 (1981); *Contest Promotions, LLC v. City & Cty. of S.F.*, No. 17-15909, 2017 WL 3499800 (9th Cir. Aug. 16, 2017).

Cities have authority to regulate or prohibit most signs or billboards in the city or the city's extraterritorial jurisdiction (ETJ). TEX. LOC. GOV'T CODE §§ 216.003; 216.902. A city's purpose for such regulation usually involves protecting the appearance or aesthetics of the city, which helps with property values and improving traffic safety. *See, e.g.*, *Luce v. Town of Campbell*, No. 15-2627 (7th Cir. Sep. 22, 2017) ("It does not take a double-blind empirical study, or a linear regression analysis, to know that the presence of overhead signs and banners is bound to cause some drivers to slow down in order to read the sign before passing it.").

¹¹ When I checked the number of sources that have cited the *Reed v. Town of Gilbert* Supreme Court Decision on September 24, 2017, the number was over 1,400.

A city ordinance may prohibit or regulate most signs and all billboards so long as the ordinance's provisions do not abridge the constitutional rights of a sign owner, nor conflict with any state statute. If a city council decides to regulate billboards in a way that affects existing billboards, a city may require removal, relocation, or reconstruction of existing billboards pursuant to the authority of Chapter 216 in the Local Government Code. TEX. LOC. GOV'T CODE ch. 216. To regulate existing billboards in this way, a city must strictly follow the procedures in Chapter 216.

Texas law has affirmed that both general law and home rule cities have some authority to regulate signs and billboards in the ETJ. TEX. LOC. GOV'T CODE § 216.902(a). The statute granting cities the authority to regulate within the ETJ makes no distinction between general law and home rule cities, so either type of city may do so. However, in lieu of regulating signs in the ETJ, a city may request that the Texas Transportation Commission regulate the signs within the city's ETJ. A city that chooses to regulate in its ETJ should ensure that its ordinance clearly extends the regulation to that area.

Additionally, a city has the authority to regulate and prohibit signs in public rights-of-way. A sign owner must request a city's permission before a sign may be legally placed in a city's rights-of-way. TEX. TRANSP. CODE. Ch. 393. Absent city regulation, state law generally prohibits signs in city's rights-of-way. TEX. TRANSP. CODE. §393.0025. Under Chapter 216 of the Local Government Code, a city may require a sign's removal, relocation, or reconstruction. TEX. LOC. GOV'T CODE ch. 216. While a city may regulate any sign, these regulations most often regulate large outdoor signs that are hired out for commercial advertising, commonly known as billboards. Cities usually only prospectively ban or regulate signs because the removal, relocation, or reconstruction of an existing sign often costs the city money and may result in litigation.

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