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**Sign Regulation after *Reagan v. City of Austin*:
Changes to the Sign Landscape**

Laura Mueller

City Attorney

City of Dripping Springs, Texas

Author Biography

Laura Mueller, City Attorney - 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. After spending three years as an associate at the Bojorquez Law Firm, Laura became the City Attorney of the City of Dripping Springs. Laura has been working on this paper since 2003. Thanks to Robyn Miga, Consulting Planner, and Cristian Rosas-Grillet, Attorney, from Bojorquez Law Firm for working through these issues with me.

Introduction: Hindsight in 2020 meets Off-Premise-Regulating in 2021

Five years ago, U.S. Supreme Court case *Reed v. Town of Gilbert* initiated a constitutional review of almost every sign code in Texas. These changes focused primarily on fixing definitions, focusing on zoning districts, and analyzing the purposes for sign regulation to ensure that cities had adequate bases for their regulatory framework. After *Reed*, the Third Court of Appeals in Austin weighed in, and the federal Fifth Circuit issued a case interpreting *Reed*, again triggering some adjustments to sign ordinances. This paper will review sign regulation statutes and case law from *Gilleo* until February 2021 while providing guidance for reviewing regulations, including your Sign Ordinance, that involve constitutional questions in 2021.

A Message from the Texas Legislature: Preemption of City Regulation of Signs

Ensuring enforceable sign regulation from First Amendment challenges has become increasingly challenging following *Reed v. Town of Gilbert* and its progeny including *Reagan v. City of Austin*. *Reagan Nat'l Advertising v. City of Austin*, No. 19-50354 (5th Cir. August 25, 2020); *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015)¹. Understanding the basics of municipal sign regulation is key to understanding the far-reaching implications of *Reed* in municipal law. While a city may regulate any sign, these sign regulations most often focus on the restriction or prohibition of 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. The regulation of billboards are the ones most affected by state law and cases. See, e.g., TEX. LOC. GOV'T CODE Ch. 216. The primary issue in all sign regulation cases is proving that the reasons for the regulation make sense and are truly met by the regulations in place, regardless of whether such a regulation is content-based or not.

Cities have authority to regulate signs 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, aesthetics, and environment of the city, which helps with property values, and improving traffic safety. See, e.g., *Luce v. Town of Campbell*, 872 F.3d 512, 517 (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."). Texas law has affirmed that both general law and home rule cities have some authority to regulate signs and billboards in the ETJ. *Id.* § 216.902(a). 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. *Id.* A city that chooses to regulate signs in its ETJ should ensure that its ordinance clearly extends to that area by including a precise applicability or jurisdiction section in its sign ordinance.

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. In order to require removal of a nonconforming sign, a sign that was legal when the ordinance was adopted, the city must first determine compensation for the sign owner through appointment of a municipal sign board. The sign board's membership is provided by state law, and the board determines the amount of compensation. TEX. LOC. GOV'T CODE § 216.005. Before the board decides on the amount of

¹¹ When I checked the number of sources that have cited the *Reed v. Town of Gilbert* Supreme Court Decision in September 2020, the number was almost 4,000 including over 700 cases throughout the United States.

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