

# Sign Regulation

by Edward T. McMahon

[Editor's Note: In this issue, Edward McMahon departs from his usual column format to present a more comprehensive look at an important issue facing many cities and towns: the regulation of on-premise signs].

When was the last time you really looked at the streets of your community? Drive out to the edge of town. Stop at the city limits. Now look at what you see. Is the scene pleasing? Does it make a good first impression on visitors, or is the scene ugly and cluttered?

Now, head downtown. Look at the streetscape along the way. Does your community appear attractive, interesting, unique? Or, does your town look like "Anyplace, USA?" Whatever your answer, you know that the physical appearance of your community is important. You should also recognize that sign control — or the lack of sign control — can have a significant impact on your community's appearance.

Sign regulation is one of the most powerful actions a community can take to make an immediate, visible change in its physical environment. Properly drafted and enforced, sign controls can reinforce the distinctive design quality of the entire community. And as I have noted in previous columns, a community's image and how it looks often correspond with its economic vitality. [See, e.g., "Design Matters," in PCJ #21].

We need signs. We can't get along without them. They give us direction and necessary information. As a planned feature, a business sign can be colorful, decorative, even distinguished. So why talk about a sign problem? The answer is obvious: too often signs are misused, poorly planned, oversized, inappropriately lit, badly located, and altogether too numerous.



Sign clutter is ugly, costly, and ineffective. (All photos by E. McMahon unless otherwise noted.)

In many cities, sign clutter dominates the landscape, overshadowing buildings and trees, eroding community identity, ruining scenic views, degrading historic ambiance, and blighting whole neighborhoods.

In an effort to attract business, merchants often engage in a destructive competition to see who can build the biggest, tallest, most attention-grabbing signs. Ironically, in such competition both the merchants and the town lose. When there is an overabundance of competing signs, the message of each is lost. One city planner explained it this way: "When everyone shouts, no one can be heard; when all speak softly, each voice is distinct."

Some towns allow signs in such profusion that drivers have to scan a confusing smorgasbord of clutter to find what they are looking for. Other, more successful towns control the size, number, and materials of signs. The result: a pleasing, inviting appearance that gently beckons consumers instead of assaulting them.

A good sign code is pro-business, since an attractive business district will

attract more customers than an ugly one. Moreover, when signs are controlled, merchants do a better job of selling, and at less cost. Indeed, studies on visual perception (like those detailed in *Street Graphics and the Law*, cited in the *Resources* sidebar) have shown that when the size and number of signs are reduced, the viewer actually sees more.

Sign control is especially important to areas that seek to increase tourism. Why? Because the more one town comes to look like every other, the less reason there is to visit. On the other hand, the more a community does to enhance its unique assets, the more tourists it will likely attract.

This article examines some of the key legal, political, and practical aspects of on-premise sign regulation. Because off-premise billboards present special problems, they will be the subject of a subsequent article. 🔍 "On- v. Off-Premise Signs"

Sign regulation raises a number of legal issues. These issues do not prevent effective regulation of outdoor signs. However, signs codes must be carefully drafted to avoid legal challenges.



## On- v. Off-Premise Signs

Most local ordinances distinguish between on-premise and off-premise signs. On-premise signs are integral to the business and the building. They are not a separate and distinct land use or business. Off-premise signs, also known as billboards, are a separate and distinct business since a billboard is not an accessory to a building or business.

The distinction between on-premise and off-premise signs is important because communities are allowed to more heavily restrict off-premise signs. On-premise signs are necessary to identify a business. Thus, a total prohibition would violate a property owner's First Amendment right to free speech. On-premise signs are also an accessory to a permitted use, *i.e.*, the store or business. On the other hand, billboards are a distinct business that can be regulated or even totally prohibited by a sign ordinance.



## Editor's Note: Sign Illumination

A few years back we ran several articles dealing with outdoor lighting — including the impact that “light pollution” can have on our ability to view stars, planets, and other celestial objects. *See PCJ #4.* Poorly designed illumination of outdoor advertising signs is one the major culprits.

There is no reason today for municipalities to sanction poor lighting practices. A lighting ordinance can make a major difference. For example, lighting fixtures used to illuminate outdoor advertising signs should be mounted on the top, not the bottom, of the sign structure, and aimed downward, not upward. Not only does this reduce light pollution, but it results in more effective illumination of the sign.

Lighting fixtures should also be shielded. This keeps the light from intruding on other uses, and helps prevent glare, a safety hazard to oncoming vehicles.

In certain parts of a municipality, it may also make sense to require that the lighting be turned off after a certain hour.

Copies of the Tucson and Pima County, Arizona, Outdoor Lighting Control

*continued on page 14*

Like any regulation based on the police power of local government, sign regulation must advance a public interest related to the preservation of the public's health, safety, or welfare.

Courts routinely uphold sign codes under two separate aspects of the police power. First, courts uphold sign ordinances as traffic safety measures, reasoning that signs can distract drivers. Second, many court decisions, particularly in recent years, have upheld the power of a community to maintain or improve its appearance through aesthetic regulations that are related to the general welfare. *[For more on legal issues in sign regulation, consult the material listed in the Resources sidebar; see also Christopher Duerksen's "Zoning for Aesthetics" in PCJ #7].*

### TYPES OF ON-PREMISE SIGNS

#### 1. Portable and Sidewalk Signs

Portable signs are the junk mail of the streetscape. They move around, get in people's way and clutter up the sidewalks in many commercial areas.



*Portable signs are the junkmail of the streetscape.*

Portable signs are almost never allowed in shopping malls or other controlled environments. They are likewise out of place on Main Street. Not only are they unsightly and unnecessary; they are also dangerous in high winds or stormy weather and a hazard to the handicapped and visually impaired (as such, sidewalk signs may well violate provisions of the Americans With Disabilities Act). Sign ordinances typically define a portable sign as “any sign which is movable and which is not permanently attached to a building, structure or the ground.”

*continued on page 14*



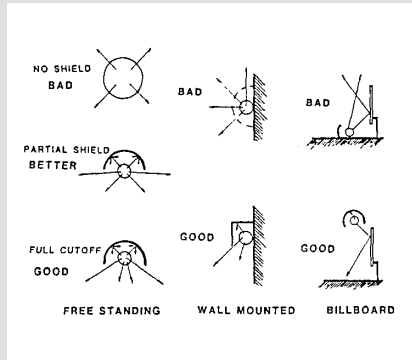
*Is this the best view of the Smoky Mountains?*

## Sign Illumination

continued from page 13

Ordinances, which include all of the above requirements, can be obtained from the International Dark-Sky Association, 3545 N. Stewart Ave., Tucson, AZ 85716 (ask for Information Sheet 91).

As with sign controls, good lighting standards can help businesses communicate more effectively with potential customers. And as with sign controls, education is key to showing businesses that good lighting is, in fact, good for business.



Some examples of good and bad shielding arrangements for outdoor lighting fixtures. From *Light Pollution: The Adverse Impact of Urban Sky Glow ...*, by David Crawford.

One excellent educational resource is the recently published *Outdoor Lighting Manual for Vermont Municipalities*. Funded in part by a grant from the U.S. Dept. of Energy, this well-written and illustrated booklet has much information of value to communities just about anywhere. One section deals with illuminated signs; other sections cover lighting of gas stations, convenience stores, canopies, and other types of buildings. Model ordinance provisions are included. The *Manual* also contains an especially good summary of key outdoor lighting issues. For ordering information, contact Deb Sachs at the Chittenden County RPC, P.O. Box 108, Essex Jct., VT 05453; 802-658-3004.



Lighting from the top works better than lighting from the bottom.

## Sign Regulation

continued from page 13

There are two approaches to regulating portable signs. One is to prohibit them outright, as many communities do. The other is to allow portable signs for *temporary display only* — e.g., 30 days a year for sales, grand openings, etc. This approach, however, has two



Sandwich signs continue down this sidewalk.

problems. First, it is almost impossible to administer and enforce. Second, courts are more likely to strike it down, questioning how a portable sign can be safety hazard and aesthetic concern at certain times but not at others. In my experience, from both a legal and a practical standpoint, the simplest solution to regulating portable signs is to prohibit them outright.

### 2. Wall Signs

Wall signs are signs attached to a building. The design of a building usually dictates the best location for a wall sign. Such signs should be limited in proportion to the size of the building, and not exceed a certain maximum size. For example, a typical sign ordinance might allow walls signs up to 150 square feet or 15 percent of the frontal area, whichever is smaller. Wall signs should also not obscure windows or other key architectural details.

In addition to wall signs, some cities permit one hanging or projecting sign mounted at a right angle to the building. In general, projecting signs should be limited in size, and the ordinance should require that the sign be constructed of materials appropriate to the building.

### 3. Freestanding Signs

Freestanding signs are signs held above the ground by a permanent structure and not attached to a building. There are two types of freestanding signs: pole signs and ground signs. Their



Signs of the respect shown to America's first president?

principal use is for business identification outside the downtown commercial core.

Pole signs are elevated above the ground by a pole or other structure. In many commercial areas, tall pole signs proliferate, creating an unattractive, cluttered appearance. Effective sign control ordinances commonly limit a business to one freestanding sign with a maximum height of 12 to 15 feet. Signs much taller than this are difficult to see through an automobile windshield. Reducing sign height also saves merchants money and makes it easier for signs to do the job they are meant to do.

A growing number of cities are prohibiting pole signs, allowing only ground signs (also referred to as monument signs). Ground signs, as their name implies, are low to the ground. They are typically used by vacation resorts, planned communities, and other cities that seek a distinctive image.

### 4. Flags, Banners, and Pennants

Many cities have ordinances that prohibit flapping pennants, banners, balloon, and inflatables because of their distracting nature. Regulating flags and banners, however, presents problems



This simple, but attractive, ground sign fits well with its surroundings.

that require special attention. It is almost certainly unconstitutional to prohibit the display of the U.S. or other official flags. Yet everyone is familiar with the car dealers and other merchants who display enormous American flags, far larger than any permitted sign. To address this problem, communities can limit the height of flagpoles and the size of flags. In addition, communities can regulate all non-official flags — the McDonald's flag, for example — as signs subject to normal size limitations.

Official banners in a downtown can add color and interest to the streetscape. So how can a community ban unsightly commercial banners that say "Sale Here" or "Open Today" and still allow decorative banners for special events or seasonal decorations? The answer is simple: prohibit banners except as "temporary signs on public property (e.g., street lights) to promote events of general civic interest, subject to a special permitting process."

### 5. Historic Signs

Cities, in their effort to clean up unsightly commercial clutter, sometimes throw out the good with the bad. Old painted wall signs, barber poles, neon, porcelain, and other signs of outstanding craftsmanship or design frequently run afoul of local ordinances drafted to clean up sign clutter or foster a distinctive design image.

Unlike the homogenized, plastic backlit signs so prevalent today, unique, labor-intensive signs from the past are often worth saving. Peter Phillips of the Society for Commercial Archeology describes old historic signs as "examples of a dying art," noting that "they provide local color, historic character, indi-

viduality, a sense of place, and clues to a building's history."

But how do you draft a sign ordinance that cleans up the clutter and, at the same time, recognizes the value of historic signs? First, survey historic signs. Develop an inventory of any signs that may be worth saving because of age, historical association, exemplary design, or aesthetic quality. This list can then be used as the basis for individual designation and protection.

Some cities permit signs to be designated as historic by the city council or planning commission if the signs meet certain criteria. In Culver City, California, for example, a sign can be designated if it is:

- At least 50 years old.
- An appurtenant graphic (i.e., it is an on-premise sign, not a billboard).
- Unique and enhances the cultural, historical, or aesthetic quality of the city.
- Structurally safe.

Once designated, historic signs are deemed in compliance with the sign ordinance regardless of their size, materials, colors, or location.

### DEALING WITH NONCONFORMING SIGNS

One key legal issue in sign regulation involves the removal of nonconforming signs. When you pass a new sign code, many old signs that don't conform to the new law will remain. How do you deal with them?

There are several techniques for removing nonconforming on-premise signs. The most common method is to set a specific date by which they must be removed. This process is known as amortization. Businesses are given a designated period of time (usually between one and five years) during which the nonconforming sign may remain. When the time period is up, the sign must be removed or modified to comply with the code.

Amortization is based on the principle that business owners depreciate, or amortize, their investment in a sign within a number of years, typically five

*continued on page 16*



## Resources:

Scenic America, 21 Dupont Circle, NW, Washington, DC 20036; 202-833-4300.

This organization acts as a clearinghouse for information on sign control, scenic roads and other forms of aesthetic regulation. It publishes a newsletter and provides technical assistance, a video, and other materials to communities upon request. Most of the books and articles listed below are available from either Scenic America or the American Planning Association.

### Books, Articles, and Monographs:

- Kelly, Eric and Gary Raso. *Sign Regulation for Small and Midsize Communities*. APA, 1989.
- Mandelker, Daniel and William Ewald. *Street Graphics and the Law*. APA Press, 1988.
- McMahan, Edward T. "Controlling Billboards." *Zoning News*. APA, June 1988.
- Mintz, Norman. *Signs for Main Street*. National Main Street Center. Washington, D.C.: National Trust for Historic Preservation, 1987.
- Phillips, Peter. "Sign Control for Historic Signs." *PAS Memo*. APA, Nov. 1988.
- Slaughter, Katherine McNett. *Visual Pollution and Sign Control: A Legal Handbook*. Southern Environmental Law Center, 1987.
- Sardon, Richard and James P. Karp. *The Legal Landscape: Guidelines for Regulating Environmental & Aesthetic Quality*. New York: Van Nostrand Reinhold, 1993.



## Signs of Stressful Times

Can sign clutter make you sick? Yes, according to Roger Ulrich, an environmental psychologist at Texas A&M University. Ulrich spent two years with a team of researchers studying the suburban sprawl, and concluded that it is not just unattractive and inefficient. It also has negative psychological and physiological consequences on those who view it.

Although the study appears to be the first time anyone has tried to isolate suburban sprawl as a public health issue, many others have studied and speculated about the effect of the environment on our behavior and well being. For example, investigators at the University of California-Irvine have found a relationship between commuting and stress levels.

For additional information about the Texas A&M study contact Professor Roger Ulrich, Texas A&M University, College of Architecture, College Station, TX 77843-3137.



Business signs can be decorative, distinctive, and in scale with their location.



## Sign Regulation

continued from page 15

years or less. With an amortization provision in place, the municipality does not pay for the value of the sign after the amortization time period has run. [Note: Please consult your municipal or county attorney before developing an amortization provision, as rules vary with state law].

Another method for eliminating nonconforming signs is for the ordinance to require that whenever an old sign is removed, it can only be replaced with one that conforms to the sign control regulations.

Additional techniques that communities have used to encourage the removal of nonconforming signs include the following:

- Provide a size bonus for a new sign if the old sign is removed by a certain date.
- Prohibit installation of any new signs on the property while a nonconforming sign remains.
- Prohibit modification or maintenance of nonconforming signs.
- Prohibit issuance of building permits for the zone lot while nonconforming signs remain.
- Offer to remove the nonconforming sign without charge to the owner.
- Offer a cash incentive or a tax credit for removal of nonconforming signs.
- Condition any rezonings, variances, or conditional use permits on the removal of nonconforming signs.
- Require nonconforming signs to be removed any time there is a change in the certificate of occupancy or business license for the premise.

## SELLING SIGN CONTROL

While there is no legal impediment to effective sign regulation, there is often a political one. Sign manufacturers frequently try to convince local officials that sign control will hurt local business. To combat this tactic, counter-persuasion needs to begin early. Planners need to educate the local business community about the advantages of sign control, and explain how improving the



Left: A confusing array of signs mark the entrance to this shopping plaza.



Below: In contrast, a single sign can be easier to read, more attractive, and less costly. Likewise, one sign effectively announces the tenants of an office complex.

community's overall appearance will benefit businesses. If this is done, the business community itself may become the most effective advocate for sign control.



In Lubbock, Texas, for example, the planning commission was able to demonstrate that sign controls would benefit businesses, and that smaller signs were more attractive and would cost less than larger signs. As a result, more than 60 percent of the local businesses were in compliance with the sign law before the amortization period ended.

In Baldwin County, Alabama, a local quality of life group commissioned a survey of residents' views on sign control, tree preservation, and other community appearance issues. The results: residents preferred fewer signs and more trees and landscaping. The survey helped convince local businesses that sign control was an essential ingredient in enhancing both quality of life and economic vitality.

The State of Vermont is perhaps the most striking example of the economic

## Suggestions for On-Premise Sign Control

Based upon a review of successful local ordinances and recommendations from around the country, communities considering on-premise sign controls should consider the following:

- Limit freestanding signs to one per business, with a maximum height of no more than 15 feet.
- Encourage the use of ground signs by allowing them a size bonus (relative to freestanding pole signs).
- Prohibit, or strictly regulate, "problem" signs such as billboards, portable signs, pennants, streamers, and flashing signs or intermittent lights.
- Limit shopping centers, malls, offices parks, and similar large developments to

one group sign, with no freestanding signs for individual businesses.

- Develop special controls for historic areas, downtown commercial districts, neighborhood shopping areas, and commercial corridors of special importance. These might include limiting the color and material of signs, requiring the use of smaller, shorter signs, or encouraging integrated sign designs for new development.
- Link sign controls to an overall streetscape improvement plan.
- Wherever possible set a limit to life of nonconforming signs and use incentives, education, negotiation, and other techniques to encourage their early removal.

—ETM

benefits that accrue from strict sign controls (in Vermont, all off-premise advertising signs have been prohibited by state law since 1968). When asked about the state's experience with sign control, a spokesman for the Vermont Travel Division said, "Although there was some initial sensitivity that removing big signs might hurt tourism, it has had the opposite effect. Tourism is up for all businesses, both large and small."

Additional benefits of sign regulation include:

- Individual businesses receive a "level playing field." In other words, they get a fairer assurance that their signs will not be obscured by those of neighboring businesses.
- Because small signs cost less than big ones, the total cost of each business's signs will be less in the long run.
- As clutter is reduced, commercial areas will become more attractive to customers.
- The community as a whole will attain a more distinctive sense of place, becoming a more attractive place to live, work, and visit.

### SUMMING UP:

Almost nothing will destroy the distinctive character of a community faster than uncontrolled signs and billboards. Sign control plays an important role in improving the appearance of small

towns and traditional commercial areas, particularly as part of an overall community revitalization process.

The signs along a city's streets influence the public's perception of individual businesses, commercial districts, and the community as a whole. Well-designed, appropriately scaled signs can enhance a community's unique image, while an overabundance of haphazardly placed, oversized, look-alike plastic signs detracts from the community's appearance — and ultimately hurts business.

Today, once skeptical businesses are flourishing in Fairhope, Alabama; Raleigh, North Carolina; Tempe, Arizona; Boca Raton, Florida; Palo Alto, California; Madison, Mississippi; Paella, Iowa; Germantown, Tennessee; and in hundreds of other communities with strong sign controls. ♦

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## On-Line Comment

"I am familiar with the sign controls in Columbia, Maryland. This really does make the case that "less is more," and that smaller, ground level signs at a relatively close distance to the viewer actually are better attention grabbers than huge high signs that are above the normal viewing angle. Note, however, that the signage controls are part of a set of overall streetscape design standards ... if you really want to address the overall appearance issue, think in terms of total street design standards, of which signage controls are an important part.

One example of dysfunctional signage control might be noteworthy. Along Rockville Pike, a major retailing strip artery for an affluent suburban area north of Washington, D.C., they have planted landscaping strips between the main roadway and the strip parking lots ... and they've restricted the signs to modest storefront signs only. However, the stores are so far back from the main road, the permitted signs are so small, and the landscape strip trees are now so tall that nobody can see the signs, and it's virtually impossible to tell who's in business along some of the parts of the roadway. ... The result? Merchants are resorting to "sandwich" signs (walking live people wearing "sandwich" boards) — and costumed characters carrying "enter here" arrows. I've seen hand-lettered sandwich boards, walking mattresses, and a pink pig in front of a barbecue place.

Commercial signage is an important, informative service. You can't and shouldn't try to do without it, you just have to do it well."

—Wayne Lemmon, Silver Spring, Maryland