

LEGAL Q & A

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May a city council ban all off-premise billboards within the city limits?

Yes. The United States Supreme Court has held that a complete ban of off-premise outdoor advertising is constitutional and supported by the legitimate government purposes of safety and aesthetics. *See Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981). A recent Texas case has also held that a complete ban of off-premise billboards is permissible. *See Eller Media Co. v. City of Houston*, 101 S.W.3d 668 (Tex.App.-Houston [1st Dist.] 2003, review denied).

The cases cited above only address the authority of a city to prospectively prohibit billboards. While a city may require the removal of an existing billboard, Chapter 216 of the Texas Local Government Code may require a city to compensate the billboard owner for the removal.

When is a city required to compensate a sign owner for imposing sign regulations?

Chapter 216 of the Texas Local Government Code requires a city to compensate a sign owner if the city requires an existing sign to be relocated, reconstructed, or removed. However, compensation is only required if a city requires relocation, reconstruction, or removal of a sign that is in compliance with current regulations when new regulations with additional restrictions are passed. In legal parlance, the sign then becomes a “nonconforming” use. In contrast, if a nonconforming sign is later substantially destroyed, or a sign is erected in violation of a valid ordinance, the removal or relocation of the sign does not require compensation. TEX. LOC. GOV’T CODE § 216.013.

Is a city required to have a municipal board on sign control to enforce sign regulations?

A city council must appoint a municipal board on sign control only if the city intends to enact a regulation that requires the relocation, removal, or reconstruction of existing signs. TEX. LOC. GOV’T CODE § 216.004. The purpose of the board is to determine the amount of compensation that is due to a sign owner. Thus, a city may arguably enact regulations that prospectively prohibit or regulate new billboards without appointing a municipal board on sign control.

How does a municipal sign board determine the amount of compensation that may be due a sign owner?

The municipal board on sign control determines the amount of compensation after a sign owner is given a hearing. TEX. LOC. GOV’T CODE § 216.005. The amount of compensation depends on whether the regulation requires a sign to be relocated, reconstructed, or removed completely. If a sign is required to be relocated, the city must

compensate the sign owner for the costs of dismantling, transporting, and reerecting the sign. *Id.* at § 216.006. If a sign is required to be reconstructed, the city must compensate the owner for the labor and material expenses and any loss of value due to the reconstruction. *Id.* at § 216.007. If a sign is required to be removed, the city must compensate the sign owner based on a complicated amortization formula under § 216.008 of the Local Government Code.

By what methods may a city compensate a sign owner whose sign is required to be relocated, reconstructed, or removed?

Section 216.010 of the Local Government Code proscribes how a city may compensate a sign owner whose sign is required to be relocated, reconstructed, or removed. For costs relating to relocation or reconstruction, a city may abate municipal property taxes that otherwise would be owed by the owner of the sign. The taxes may be abated on any of the sign owner’s real or personal property except the sign owner’s residence. The compensable costs must include reasonable interest and the period of tax abatement must last five years or less.

Cities may also allocate a fund to pay the compensable costs to the sign owners. Cities may deposit all or part of property taxes paid on signs or property on which signs are located in a “sign abatement and community beautification fund.” A city uses the fund to pay the costs for signs to be relocated, reconstructed, or removed.

Another alternative is for a city to issue sign abatement revenue bonds to reimburse the owners of the signs that are within the corporate limits that are relocated, reconstructed, or removed.

Finally, a city may compensate a sign owner in cash.

May a city use aesthetics as a basis for sign ordinances?

In many cases aesthetics is given as a primary reason for sign regulation. *See, e.g., Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981); *City of Ladue v. Gilleo*, 512 U.S. 43 (1994); *Eller Media Co. v. City of Houston*, 101 S.W.3d 668 (Tex.App.-Houston [1st Dist.] 2003, review denied). However, while protecting aesthetics is a legitimate governmental purpose, it is not always sufficient to justify broad governmental regulations. In the cases above, in which the cities succeeded in regulating commercial speech based on aesthetics, each city also based its sign regulation on traffic safety concerns. Consequently, a city should, in addition to aesthetic justification, include additional health, safety, and welfare justifications when enacting sign regulations.

May a city regulate political signs on private property?

Texas Local Government Code § 216.903, enacted by the Seventy-Eighth Legislature, provides that a city may not: (1) prohibit political signs from being placed on private property; (2) require a permit or fee for the sign being placed on private property; (3)

restrict the size of the sign based solely on the fact that it is a political sign; or (4) impose a charge for the removal of the sign that is greater than the charge for removal of other regulated signs. TEX. LOC. GOV'T CODE § 216.904(b).

The bill does not prohibit a city from regulating a political sign that: (1) has an effective area greater than thirty-six feet; (2) is more than eight feet high; (3) is illuminated; or (4) has any moving elements. *Id.* at § 216.904(d).