

Legal Q&A

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Q: What regulations can a city impose on signs and billboards in its city limits and extraterritorial jurisdiction?

A: A city council may regulate or prohibit most signs or billboards in the city or the city's extraterritorial jurisdiction (ETJ). TEX. LOC. GOV'T CODE § 216.902. The usual justification for such regulation is to protect aesthetics or to provide for improved traffic safety. In lieu of regulating signs in the ETJ, a city may request that the Texas Transportation Commission regulate the signs within the city's extraterritorial jurisdiction. TEX. LOC. GOV'T CODE § 216.902(a). The statute granting cities the authority to regulate in the ETJ makes no distinction between general law and home rule cities, so either type of city may do so. A city that chooses to regulate in its ETJ should ensure that its ordinance clearly extends the regulation to that area.

A city may also require removal, relocation, or reconstruction of existing billboards pursuant to the authority in Chapter 216 of the Local Government Code. TEX. LOC. GOV'T CODE ch. 216. A city ordinance may prohibit most signs so long as the ordinance's prohibitions do not abridge the constitutional rights of a sign owner. In addition, some state laws expressly preempt city authority. For example, cities in Harris County and surrounding counties have limited regulatory power regarding onsite signs in their ETJ. TEX. LOC. GOV'T CODE § 216.035. In addition, state law limits the authority of cities to regulate political signs (see below).

Q: What types of signs are cities prohibited from regulating?

A: Under state law, a city generally may not prohibit or restrict the size of signs with a primarily political message, like a campaign sign, located on private land, unless the sign has billboard-like proportions. TEX. LOC. GOV'T CODE § 216.903. A city may not charge a placement fee, require permits for political signs, or charge more for removal than it would for other signs. *Id.* The courts have also dealt with signs with a noncommercial or political message that are located on residential property, and have held invalid city regulations that would prohibit or severely regulate such signs. *See City of Ladue v. Gilleo*, 512 U.S. 43 (1994).

Q: May a city prohibit political signs from being placed in the city's right-of-way?

A: Yes. A city has the authority to regulate and prohibit signs in its rights-of-way, including political signs. A sign owner must request a city's permission before a sign can be placed in a city's right-of-way. TEX. TRANSP. CODE Ch. 393. Under Texas Transportation Code Section 393.0025, a city may choose to regulate sign placement in the city's rights-of-way. Absent city regulation, state law generally prohibits signs in city rights-of-way. However, for free speech reasons, a city cannot generally prohibit signs in its rights-of-ways based on content. For example, a city may not prohibit all political signs in the rights-of-way and allow other types of signs.

Q: May an ordinance contain exceptions allowing certain signs but prohibiting others?

A: Whether a city may regulate some signs but not regulate others depends on many factors. For example, a city generally may not regulate signs solely on the basis of content. 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) (“Although the city may distinguish between the relative value of different categories of commercial speech, the city does not have the same range of choice in the area of noncommercial speech to evaluate the strength of, or distinguish between, various communicative interests”). But again, most content-based regulations are likely to be struck down by the courts. *See Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 514 (1981). Regardless of the inherent validity of an exception or distinction, exceptions that defeat the stated purposes of an ordinance (for example, aesthetics or traffic safety) can result in an entire ordinance being struck down.

Q: May a city remove existing signs?

A: Yes. A city may require a sign's removal, relocation, or reconstruction under Chapter 216 of the Local Government Code. TEX. LOC. GOV'T CODE ch. 216. 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.

Q: What is the procedure for having an existing sign removed?

A: A city must first have an ordinance that applies to existing signs. Before a city may require removal of a sign, the city must determine compensation for the sign owner through a municipal sign board. The sign board's membership is provided for in state law, and the board determines the amount of compensation. TEX. LOC. GOV'T CODE § 216.005. Before the board makes a determination on the amount of compensation, the city must give the sign owner an opportunity for a hearing. Once regulatory action is taken and compensation for the sign is determined by the municipal sign board, “any person aggrieved by a decision” may appeal. TEX. LOC. GOV'T CODE § 216.014. Compensation may be examined by a court for its reasonableness; if the compensation payments are provided over a period longer than one year, the duration's reasonableness will also be examined.

Q: May a city regulate electronic billboards?

A: On June 1, 2008, Texas Transportation Commission rule changes became effective that permit electronic billboards on state highways within a city's limits or ETJ, subject to the city's written consent. 43 TEX. ADMIN. CODE § 21.163. Those rules apply only to an area that is adjacent to a state highway. A city may regulate or prohibit electronic billboards in other areas within the city and its ETJ. The Texas Department of Transportation (TxDOT) rules allow an electronic billboard adjacent to a state highway only if an applicant: (1) receives a permit from TxDOT; (2) complies with TxDOT billboard rules; and (3) receives written consent from the

city. The rules were drafted in such a way that, even if TxDOT rules would allow an electronic billboard along a state highway in a city or its ETJ, the city can prohibit the sign by simply refusing permission.