



RISK MANAGEMENT INFORMATION
REGULATING DYNAMIC SIGNAGE

Executive summary

Cities have authority and responsibility to regulate dynamic signs as appropriate for each community. There is no single correct approach to regulation. Because the regulation of signs involves the First Amendment, courts hold sign regulations to a higher standard than most land use regulations. Cities still have considerable discretion to regulate, as long as they do so reasonably and without regard to sign content.

Introduction

In the fall of 2006, a number of Minnesota cities were surprised by the appearance of large electronic billboards akin to giant television screens. These signs are the next generation of sign displays with the ability to feature changing images and movement—known collectively as dynamic signs. Attempts to regulate them resulted in litigation in at least one community- Minnetonka. In developing a regulatory response, Minnetonka partnered with the League of Minnesota Cities to commission a study, conducted by SRF Engineering, on the impact of such dynamic signs on traffic safety. This memorandum discusses the legal framework of regulating dynamic signage in light of the recent litigation and study.

More Information

Find the results of the SRF Consulting Group's research on dynamic signage in:

- *"Dynamic" Signage: Research Related to Driver Distraction and Ordinance Recommendations*

It's available in the Land Use area of the League website at www.lmc.org.

Regulatory framework

While the federal and state government can enact and have enacted laws regulating signs, those regulations only provide minimum standards. Courts have explicitly recognized that cities have the ability to regulate signs, including dynamic signs, more restrictively.

There is no uniform system of regulation that cities must follow. Each community is different and has different needs that local ordinances may reflect. Such regulations must meet the same basic legal tests for all sign regulation.

Most city land use decisions get a very deferential standard of review known as *rational basis* review. Under this level of review, city decision will be upheld if they have any rational basis.

Because sign regulations implicate free speech rights which are protected by the First Amendment, they are subjected to higher levels of scrutiny. The highest level of scrutiny, called *strict scrutiny*,

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applies when government tries to regulate based on the content of speech. The only content-based sign regulation that courts have upheld is treating off-premise signs (billboards) differently than on-premise signs that advertise the business on the same property.

One distinction that may seem like it is content based, but our federal court of appeals has said is not, is a ban on dynamic signs with an exception for time and temperature displays. The court held

that because of their unique nature, allowing only time and temp displays is not a prohibited content-based regulation. It is important not to overstate this, however. Regulations that go further and carve out a broader exception for “public information” are likely to be struck down as impermissibly content-based.

Sign regulations that are not content based are subject to *intermediate scrutiny*, which tests whether the regulation is substantially related to a significant government interest. This roughly translates to “regulate for a good reason.” Cities should take care that the *scope* of the regulation is not excessive when viewed in light of all of the regulatory objectives, and that they do not create exceptions to the regulations that cannot be justified by reference to one or more of the city’s articulated objectives

Big-picture regulatory tools

The available research on traffic impacts supports significant content-neutral limits or even bans on dynamic signs for safety reasons. The studies confirm that billboards can tend to distract drivers, dynamic features contribute to the distraction, and even short distractions can increase the risk of accidents. This is not surprising as promotional materials put out by sign companies themselves boast the signs’ ability to hold viewer attention as a benefit of dynamic signs.

Safety is only one concern. Cities may also regulate signs based on values, preferences, and aesthetics. Not every sign is appropriate in every community or every neighborhood. Not every community wishes to become Las Vegas or even downtown Minneapolis.

Cities can take a number of different macro-level approaches to regulation. Some examples include:

1. Complete or near-complete bans that do not allow dynamic signs at all.
2. Allow dynamic signs with restrictions such as minimum display time, allowing only a percentage of a sign to change, or text size limitations.
3. Allow different things in different zoning districts, such as allowing brighter dynamic signs in a downtown business district than in residential neighborhoods.
4. Offering incentive programs to billboard companies to allow dynamic signs in exchange for removal of non-conforming static signs.
5. Encourage dynamic displays. Some communities like the clean, new look of dynamic signs and encourage them to remove old blighted and poorly maintained signs.

More Information

Learn more about sign regulations and free speech in:

- *Sign Ordinances and the First Amendment*

It’s available at www.lmc.org.

Regulating sign aspects

A content-neutral regulation that regulates dynamic signage will be subject to intermediate scrutiny, so a community must show a regulation is substantially related to a significant government interest. In plain language, you must articulate what problem a regulation is intended to address and how the regulation addresses it.

There are at least six aspects of dynamic signs that regulations may address:

1. **Duration of messages/ speed of changeover.** Studies have described the Zeigarnik effect, a psychological need to see a task through to its end. In the case of dynamic signs, a driver's desire to read an entire message before it changes or to complete a scrolling message has been shown to negatively impact drivers' tendencies to maintain a constant speed or remain in a lane. To address these issues, many cities have imposed minimum message durations that might vary depending on community preference and traffic conditions.
2. **Motion, animation, and video.** Motion can range from simple visual effects to full realistic video. Motion can extend the period of time a driver will keep watching a sign, increasing distractedness. Cities may prohibit motion or limit it either to specific areas or to specific characteristics such as a motion time frame calibrated to traffic speed.
3. **Brightness.** Brightness can be a safety factor, particularly at night, as sudden brightness can be distracting or diminish night vision. A number of communities limit brightness based on time of day and by color displayed. This can be difficult to quantify and measure.
4. **Sign placement and spacing.** The number of signs and their location can be a big factor in driver awareness. A large number of signs can increase distractedness. Poorly placed signs may block views or cause distraction in unsafe areas. Cities may impose site standards and spacing requirements. These may present regulatory challenges as spacing may be dependent on the actions of neighboring property owners.
6. **Size of signs.** Size can have impacts in several ways. Too big, and it obstructs views and distracts. Too small, and it takes longer to read and encourages sign users to sequence messages. Cities may limit dynamic signs or the percentage of a sign that can be dynamic.
7. **Text size and legibility.** Signs that are difficult to read invite increased driver focus. Regulations can, for example, require minimum sizes based on road speed.

The specifics of how to regulate each of these aspects is up to each community. Because review of regulations must face intermediate scrutiny, cities have to take some extra steps when drafting and adopting ordinances.

For each aspect regulated, cities should consider adopting findings or local studies that articulate the reason and any support for the regulation. The SRF study and other materials can provide a scientific basis for a number of regulatory steps. In addition, cities may choose more stringent regulation in order to take a conservative approach to protecting safety.

Moving forward

It is recommended that cities think about dynamic signs as early as possible. Regardless of your city's approach, it is better to make a rational choice rather than by having dynamic signs arrive before you have thought about the issue. Once the signs are up, Minnesota's nonconforming use law arguably grants them "grandfathered" status, with a narrow exception for safety.

If your city would like more information about regulating dynamic signs, Paul Merwin, LMCIT Senior Land Use Attorney, can provide assistance and refer you to more information and resources. Contact Paul at (651) 281-1278 or pmerwin@lmc.org.

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Paul Merwin 07/07

Sample Ordinance

View a sample sign ordinance from the city of Hopkins in the Land Use area of the League website at www.lmc.org.