

Fast FAQs: Sign Code Shakedown



Is your community next?

All over the country, communities are facing a new obstacle in sign regulation. An attack on the constitutionality of sign laws in small towns and communities can seem like an overwhelming legal battle, but experience has shown that properly equipped cities and counties can successfully combat this sinister strategy. Below are some fast FAQs on the issue.

Question 1: How many communities have had their sign ordinances overturned so far?

Answer: Less than three dozen communities have had their entire sign code struck down. But the tactic used by the billboard industry is to force a settlement that ensures that more billboards will appear on the landscape.

This disturbing trend was described in an article in the Dallas Business Journal in February 2005:

"Over the last eight years [one attorney] has sued at least 97 times to get billboards constructed where local governments have banned them. ... Court records show that it's rare that the lawsuits produce outright wins for [the attorney]. But in this line of work, a settlement can be as good as a win. [The attorney] couldn't say how many billboard suits he has filed or how often he has won a billboard suit, but he said that his clients are usually satisfied with the result."

Question 2: Does a successful lawsuit in one town affect sign ordinance in other communities?

Answer: Yes. Billboard developers seek to capitalize on their successes. In Snellville, Georgia, two billboard companies sued the city in federal court to put up 13 billboards where they were not otherwise allowed. The companies cited earlier cases that had been won against other jurisdictions and then persuaded a federal district judge to strike down Snellville's entire sign ordinance.

Rather than pursue an appeal to the U.S. Eleventh Circuit, the city settled by allowing 8 billboards to be erected so as to avoid the prospect that as many as 13 new billboards would go up. Tragedy then struck. As the Ledger-Enquirer reported in its on-line publication on August 1, 2002:

"Snellville, Ga. - A 35,000-pound billboard collapsed at a suburban Atlanta shopping center Thursday, killing three workers who fell 40 feet from the sign and were crushed by the falling steel. ... The city of Snellville issued a press release blaming the collapse on a federal court decision that threw out the city's restrictions on tall billboards. The decision

was based on a lawsuit brought by two advertising companies [Trinity Outdoor, LLC and ADvantage Advertising, LLC]."

Question 3: How do these lawsuits open up historic and residential neighborhoods to billboards?

Answer: The lawsuits are filed to implement a tactic to strike down the "entire" sign ordinance, with the result that any billboards located any place (historic, residential, open space) would have to be allowed. The tactic was described in the Atlanta Journal Constitution in July 2003:

"So, [the attorney] sues, with the goal of getting a judge to invalidate an entire sign ordinance. Then his sign-company client demands that the city issue billboard permits, saying the ordinance in place when permits were originally denied was invalid. Sometimes, [the attorney's] client doesn't even put up the billboards, but sells the permits to other companies."

Photo simulations used by experts in such litigation show what the billboards would look like from a residential area.

Question 4: What can happen in my community if a lawsuit successfully challenges our local sign regulations?

Answer: Modern steel structures are now estimated to have a useful life of up to 70 years. Therefore, a new billboard will effectively be a permanent blight for generations. But there is another problem for cities that settle and allow billboards to be erected. They are retargeted; consider the experiences of Pompano Beach, Fla. and Covington, Ga.

Pompano Beach, FL was sued in federal court and actually won. But then to avoid an appeal, the city settled, issued two or three permits, and allowed giant billboards to go up where they were not otherwise allowed. The lesson for the billboard developers was that even if a case is initially lost, they can still win by settling during the appeal period with a city that will give them something. Pompano Beach essentially grabbed defeat from the jaws of victory.

Sure enough, with the lesson learned, a second billboard company sued Pompano Beach with the knowledge that it could succeed regardless of the initial outcome - a Win-Win proposition for the billboard developers. And this time the billboard company obtained yet another settlement. When the relationship between the owners of the two billboard companies came up in yet another lawsuit, the second billboard company's president testified that there was a non-compete agreement that kept the owners of the first billboard company from participating in the profits from the second lawsuit; although usually the companies' owners shared the profits from the sale of permits obtained through litigation.

Covington, GA was sued, and a settlement included the billboard company's lawyer helping to write a revised sign ordinance. Then the same lawyer representing a different client sued the city, and sought to strike down the revised sign ordinance and put up even more billboards. According to a story published in an Atlanta newspaper, the attorney reportedly defended his conduct by saying that more recent court rulings make the revised law unconstitutional now. The city manager was quoted as saying: "It makes you sick."

Naturally, communities that have won their cases are fearful that other communities will fail to adequately defend against the same. The result could easily be bad precedents fueling new lawsuits against the victorious cities to overturn the previous results in their cases. Their fears are well founded.

Question 5: What can I do to defend my community?

Answer: Lawyers who have been in the trenches fighting these schemes are concerned that local governments are often ill-prepared to deal with these assaults. The law seems to be built on shifting sands, leading one federal district judge to remark on the difficulty of drafting a constitutional sign ordinance: "local governments have been placed in a tenuous and near impossible position in drafting a constitutional or content-neutral sign ordinance." With so many schemes hinging upon the use of the First Amendment as a sword, rather than the proverbial shield, there needs to be technical assistance that can point concerned citizens and officials to helpful resources. Similarly, there needs to be a single repository of briefs and key source material.

To help your community to deal with the ever changing schemes, we need your support for Scenic America's efforts to stand with local governments and their citizens in defending the content-neutral sign restrictions on billboards. Scenic America has submitted nearly a dozen amicus briefs in the past few years to federal appellate courts, often partnering with the American Planning Association (APA), the International Municipal Lawyers Association (IMLA), and other concerned amici. But the magnitude of the problem has reached unprecedented levels. Without additional help, America's landscapes and those in your communities are threatened with permanent blight.