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White Paper

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Your Legal Rights

If you simply cannot get the sign you need, and complying with the city's code will leave you with an ineffective sign, it is a good idea to know some things about your legal rights. Based on numerous U.S. Supreme Court decisions, your on-premise commercial sign is protected by the First Amendment. It is speech – a civil right – and it may only be limited in certain circumstances.

The sign code must be content-neutral regulation of time, place and manner (or size, height, placement and illumination) of display. It can only control a sign's content or restrict a sign's size, height, placement and illumination in a way that makes the sign difficult to see and/or read if doing so serves a substantial government interest in a direct and material way, if the code is narrowly tailored to serve that interest, and if there is no other way to serve that interest without restricting speech even more.

The sign code must allow you a realistic and effective alternative way of communicating to your customers. The restriction cannot be based on "common sense" or subjective personal tastes. Instead, it must be based on scientific research and provable data. If you challenge the law in court, the burden of proof is on the government, not on you. If the municipality fails to prove to the court that its restrictions complied with these guidelines to protect your free speech rights, you may file a claim for a civil rights violation, and if the Court agrees, the municipality will be required to pay your legal fees and may also have to pay you damages.

Your sign is also protected by the equal protection clause of the Fourteenth Amendment, which protects you from being treated differently than others under the law. Further, its due process clause protects you from a sign code with broad or arbitrary standards, with no provision for timely decision and appeal, or that grants too much discretion to the permitting authority.

How Can I Tell If a Sign Code Is Potentially Illegal?

Here are some specific things sign regulations cannot do:

- A sign code cannot have different regulations for different signs based on what the signs say. In other words, the wording of the message and the identity of the messenger cannot be a factor in determining whether the sign will be permitted (of course, obscenity is not protected speech). An example of an illegal sign code might be one that allows a grocery store have a bigger sign than a shoe store simply because of the type of store it is.
- A sign code cannot require a sign to be so small or short, or to be set back from the road so far that it cannot be seen and/or read by its intended audience in time to stop at the business.
- A sign code cannot forbid businesses from using electronic message centers, while allowing electronic message centers to be used by the local government.
- A sign code cannot charge you sign permit fees and then use all or part of those fees to pay for a program that is unrelated to regulating signs.
- A sign code cannot allow time and temperature displays but ban other electronic messages.
- A sign code cannot require you to change the colors of your registered trademark.
- A sign code cannot regulate signs that are located inside your building unless they are intended to be read from outside.

Your mobile customer relies on your sign for guidance and information. Thus, your sign must be allowed to communicate effectively – and to do that, it must be visible and readable from behind the wheel of a moving automobile.