

A Study of Local Regulation of Outdoor Advertising in 271 U.S. Jurisdictions

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EXECUTIVE SUMMARY

This study examined the type and extent of land use regulation of outdoor advertising for 271 cities in the 46 states that do not impose a state-wide ban on commercial outdoor advertising.¹ The group of 271 cities was selected by first identifying all cities in these states with a population of 150,000 or greater based on the U.S. Census Bureau's 2002 population estimates, and then, for states which had fewer than five cities of that size, adding additional cities in descending order of population to insure that each of the 46 states had at least five cities represented in the Study.

This Study found that 76.8% of the 271 cities allowed new outdoor advertising to be constructed while fewer than 6.6% had adopted regulations aimed at entirely eliminating outdoor advertising. The Study also found that each of the cities allowing the construction of new signs regulates the "physical" aspects of outdoor advertising by imposing some form of restriction on the location, size, height, illumination, etc. of signs.

A statistical summary of the Study's most critical findings appears below:

- 158 of 271 cities (58.3%) permit new sign construction "as-of-right."
 - 142 of these 158 cities (89.9%) permit new signs of at least 300 sq. ft.
 - 100 of these 158 cities (63.3%) permit new signs of at least 672 sq. ft.
 - 42 of these 158 cities (26.6%) permit new signs of at least 750 sq. ft.

- 17 of the 271 cities (6.3%) permit new sign construction as a "conditional use."

- 34 of the 271 cities (12.5%) condition the construction of new signs on the removal or relocation of one or more existing signs.

¹ All states except Alaska, Hawaii, Maine and Vermont.

- 62 of the 271 cities (22.9%) totally prohibit the construction of new signs, with 38 of these 62 cities (61.3%) concentrated in 8 states.²

- Only 18 of the 271 cities (6.6%) have adopted ordinances that seek to eliminate outdoor advertising entirely.

² Arizona (3), California (10), Delaware (3), Florida (6), Maryland (5), New Hampshire (3), Texas (5) and Washington (3).

I. Description of Study

This Study was conducted between July 17, 2003 and December 23, 2003. I constructed a study list of 271 cities utilizing the 2002 population estimates figures from the U.S. Census Bureau. The study list comprised: (1) all cities with an estimated 2002 population of 150,000 or greater in the 46 states that do not impose a state-wide ban on outdoor advertising and (2) for states which had fewer than three cities of that size, adding additional cities in descending order of population to insure that each of the 46 states had at least five cities represented in the Study.

After requesting and obtaining from each city in the Study a copy of its official code(s) addressing land use regulation of outdoor advertising, I determined the type and extent of land use regulation of outdoor advertising for each jurisdiction. In all instances where ambiguities or omissions in the official governmental publication(s) made it difficult to determine the type and extent of land use regulation of outdoor advertising from the documents alone, my Research Assistant or I contacted the jurisdiction by telephone and spoke with an appropriate official prior to making the determination.

II. Zoning Regulation of Outdoor Advertising Signs

A. Overview

All but one of the 271 cities in the Study regulates the “physical” aspects of outdoor advertising by imposing some form of restriction on the location, size, height, illumination, etc. of outdoor advertising signs [hereinafter “signs”]. For 62 of the cities, such regulation takes the form of a ban on construction of all new signs. In the great majority of cities, these regulations are found in the jurisdiction’s zoning or land development code. In a smaller number of cities, the regulations are found in a separate sign code that is distinct from the zoning or land development code. In a relatively few cases, there is a separate code specifically for outdoor advertising signs.

As a general matter, the Study cities’ regulation of the location, size, height, illumination, etc. of signs is best described as a continuum; i.e., in most cases there are very slight differences at each interval between the most restrictive and least restrictive jurisdictions on a particular regulatory issue. Below, I have identified the most common types of sign regulations and indicated the range of the regulatory continuum for each type.

B. Regulation of Sign Locations

All of the Study cities but one regulate the zoning districts where new signs may be constructed and/or existing signs are allowed to remain. The most common form of regulation permits the construction of new signs in one or more non-residential districts while prohibiting their construction in residential districts and other specified districts. It is also common for cities to prohibit new signs in some portion(s) of zoning districts in which they are otherwise permitted. Among the more common terms for such areas are: “sub-area,” “overlay district,” or “scenic corridor.”

Location regulations also restrict the sites (i.e., lots or structures) where signs may be located within the zoning districts where they are permitted. These provisions normally state minimal distances that must be maintained between a site containing a sign and specified land uses or natural features, e.g., parks, residential districts or structures, scenic districts, specified roadways, rivers, lakes, etc.

Locational regulations also specify where sign structures may be located on a lot or structure. Such regulations typically require setbacks from property lines and prohibit signs in the public right-of-way or in “visibility triangles” at traffic intersections. More restrictive regulations may also prohibit signs painted on building walls or on the roofs of buildings. Another form of restrictive regulation is to restrict signs only to lots that have no other structure.

Locational regulations also may impose horizontal and/or vertical “spacing” or “separation” requirements. For example, requiring that sign structures be spaced at least 500 (or 600 or 1,200, etc.) feet from each other or prohibiting signs that are “stacked” one on top of another or placed together horizontally “end-to-end” or “side-by-side.”

C. Dimensional, Structural and Operational Regulations

All of the Study cities that allow new sign construction or the maintenance of legal nonconforming signs impose one or more of the following regulations on sign structures, dimensions or operations.

1. Restrictions on the area, height, or width of the sign structure, including regulation or prohibition of “stacked” or “end-to-end” or “side-by-side” signs, or specifying a permissible maximum angle for “V-type” signs.
2. Restrictions on the number and/or type of support columns.
3. Regulation of the appearance of structural components (e.g., support columns, ladders, walkways, bracing, ends, etc.) as regards screening, landscaping, color, etc.
4. Regulation of means, direction, and intensity of illumination.
5. Regulation of the color or reflectivity of a sign’s structural components.
6. Restriction or regulation of “flashing, blinking or animated” and “trivision” signs.
7. Regulation of the directional orientation of the signface towards either the street frontage or specified roadways.
8. Regulation of “embellishments,” “extensions,” or “cut-outs” (temporary size extensions).
9. Requirements for maintenance and/or landscaping of the base of the sign structure.

D. Comparative Evaluation of Maximum Permitted Size of New Signs

Aside from prohibitions on new construction (see III below), the regulatory mechanism that is most suitable for comparative evaluation based solely on the text of the regulation is the maximum permitted size for new signs. 158 of the 271 Study cities (58.3%) permit new construction “as-of-right.”³ While the maximum permitted size for new signs in these cities varied dramatically, from a low of 80 sq. ft. to no stated limit on size, 100 of these 158 cities (63.3%) permit a maximum size of at least 672 sq. ft. and 89.9% -- 141 of 158 – permit a maximum size of at least 300 sq. ft.⁴

³ New construction is permitted “as-of-right” if a permit to construct a new sign is issued when an applicant meets prescribed objective standards for locational and other regulatory criteria and the permit is not conditioned on the removal of any existing sign(s).

⁴ These correspond to industry standards for a “painted bulletin” (672 sq. ft.) and “30 sheet” poster (300 sq. ft.)

- 1. Examination of 100 cities permitting a maximum size of at least 672 sq. ft.**
 - a. 60 of the 100 cities (60%) allowed signs over 672 sq. ft., with the remaining 40 (40%) adopting 672 sq. ft. as the maximum size.
 - b. 42 of the 100 cities (42%) permitted signs of at least 750 sq. ft. and 22 of the 100 cities (22%) permitted signs over 1,000 sq. ft.
 - c. The 100 cities were geographically dispersed throughout the United States.

- 2. Examination of 42 cities permitting a maximum size of at least 300 sq. ft., but less than 672 sq. ft.**
 - a. 21 of the 42 cities (50%) permitted a maximum size over 300 sq. ft., with 17 of these 21 (81%) permitting a maximum size between 400 and 600 sq. ft..
 - b. 21 of these 42 cities (50%) permitted a maximum size of exactly 300 sq. ft.
 - c. As with the 100 cities permitting maximum sizes of at least 672 sq. ft., the 42 cities permitting a maximum size of at least 300 sq. ft., but less than 672 sq. ft., but were geographically dispersed throughout the United States.

III. Prohibitions on New Construction and Regulation of Nonconforming Signs

As previously stated, the various locational, dimensional, structural and operational regulations for outdoor advertising enacted by the Study cities are best described as occupying a continuum. Significant distinctions among the Study cities do appear, however, when the combined effect of a jurisdiction's regulation of new sign construction and legal non-conforming signs⁵ is considered. Below, I have identified the most common approaches to regulating new sign construction and legal nonconforming signs. In each case, these approaches are ordered from least to most restrictive.

A. Regulation of New Construction

- 1. New Construction Permitted "As-of-Right":** A permit to construct a new sign will be issued so long as an applicant meets prescribed objective standards for locational and other regulatory criteria.

⁵ A "legal nonconforming sign" is a sign that, when erected, was in conformity with all applicable regulations, but is not in conformity with regulations that were subsequently enacted.

2. **New Construction Conditionally Permitted:** A permit to construct a new sign is made subject to a discretionary decision that an applicant has met both objective and subjective standards for locational and other regulatory criteria.
3. **New Construction Must Meet “Cap and Replace” Requirements:** In addition to meeting all applicable locational and other regulatory criteria, the construction of new signs is permitted only if one or more existing sign(s) is removed or “relocated” for each new sign constructed.
4. **New Construction Prohibited:** Construction of new signs is totally prohibited.

B. Regulation of Legal Nonconforming Signs

1. **Legal Nonconforming Signs Permitted to Remain:** Legal nonconforming signs are permitted to remain, but may not be rebuilt if “damaged” or “destroyed” and must be removed if “abandoned.”⁶
2. **Legal Nonconforming Signs Permitted to Remain if Greater Conformance Possible:** Only those legal nonconforming signs which can be brought into greater compliance with current regulations are permitted. Such regulations often take the form of stating that a legal nonconforming sign may be replaced, relocated or renovated at its current location if such action will bring the structure into greater conformance and outdoor advertising is a permitted use at the location.
3. **Legal Nonconforming Signs Permitted to Relocate:** Legal nonconforming signs may be “relocated” to a different site if the new sign will conform with existing regulations at such site.
4. **Legal Nonconforming Signs “Amortized”:** Legal nonconforming signs must be removed after a specified “amortization” period, which may range up to twenty years, with the most common periods falling between five and fifteen

⁶ Typical provisions require that a sign be removed if the sign structure is totally destroyed or suffers damage equal to 50% or more of the replacement cost of the sign structure or if the sign face is found to be abandoned because it remains blank for a specified period of time, which may range from 90 days to one year or more.

years. Such amortization provisions may either be for specified districts (e.g., nonconforming signs in residential districts)⁷ or apply city-wide.

C. Comparative Evaluation of Regulation vs. Prohibition of New Sign Construction in Study Cities

1. 175 of the 271 cities (64.6%) permit the construction of new signs either “as-of-right” or as a “conditional use” in one or more zoning district, with 158 of the 271 cities (58.3%) permitting their construction “as-of-right.” Thus, almost two-thirds of the Study cities allow new signs to be constructed, so long as applicable locational and other regulatory criteria are met, without any requirement that existing signs be removed or relocated.
2. 34 of the 271 cities (12.5%) have adopted a “Cap & Replace” ordinance that conditions the construction of new signs on the removal or relocation of one or more existing signs. (See Appendix D).
 - a. Location: The Cap & Replace cities are geographically concentrated, with 20 of the 34 (58.8%) located in seven states.⁸
 - b. Population: The 34 Cap & Replace cities represent all population groupings, ranging from cities having a population over 1,000,000⁹ down to cities with a population just under 40,000.¹⁰
3. 62 of the 271 cities (22.9%) totally prohibit the construction of new signs. (See Appendix F).
 - a. 38 of the 62 cities (61.3%) that totally prohibit new construction are geographically concentrated in just 8 states.¹¹
 - b. Aside from their concentration in a small number of states, other patterns or groupings among the 62 are not clearly-defined.

⁷ See, e.g., Section 17.104.050 of the Oakland, CA Planning Code: Amortization of Advertising Signs in Residential Zones.

⁸ California (7), Washington (3), and Colorado, Idaho, South Carolina, Utah, & Wisconsin with 2 each.

⁹ Philadelphia, San Diego, and San Antonio.

¹⁰ Meridian, ID.

¹¹ Arizona (3), California (10), Delaware (3), Florida (6), Maryland (5), New Hampshire (3), Texas (5) and Washington (3).

4. When the 62 cities that prohibit new construction and the 34 cities that condition new construction on the removal of one or more signs are considered as a single group of 96, their geographical concentration is pronounced. 56 of the 96 cities (58.3%) are concentrated in just nine states¹² and almost 40% of these cities – 37 of 96 (38.5%) – are located in just 6 areas.¹³

D. Comparative Evaluation of Regulation of Legal Nonconforming Signs in Study Cities that Prohibit New Sign Construction

As noted previously, the most severe regulation of outdoor advertising signs occurs when a total prohibition on the construction of new signs is combined with the requirement that legal nonconforming signs be removed, without compensation, after a specified “amortization” period. Fewer than one-third of the cities that totally prohibit new construction -- 18 of 62 (29%) -- also require the removal through amortization of all legal nonconforming signs not subject to state or federal compensation requirements. When viewed in light of the entire Study, the 18 cities that have adopted this most restrictive form of regulation for outdoor advertising account for only 6.6% of the 271 Study cities.

¹² Arizona (4), California (17), Colorado (4), Florida (6), Maryland (5), New Hampshire (3), Rhode Island (3), Texas (6), Utah (3) and Washington (5).

¹³ Southern California (Chula Vista, Garden Grove, Glendale, Huntington Beach, Irvine, Moreno Valley, Oceanside, Ontario, Pomona, San Bernardino, San Diego & Stockton); Suburban Phoenix (Glendale, Mesa, Scottsdale & Tempe); the San Francisco Bay area (Fremont, Oakland, San Francisco, San Jose & Santa Rosa); the Baltimore/Washington, D.C. area (Arlington, VA; and Baltimore, Bowie, Frederick, Gaithersburg and Rockville, MD); and Eastern Texas (Austin, Houston, Garland, Irving, Plano & San Antonio).

IV. Summary of Findings

This Study reveals several significant findings.

- A.** Regulation, not prohibition, is the norm among the 271 Study cities:
- Over three-fourths of the cities (77.1%) provide opportunities for the construction of news signs.
 - While 22.9% of the cities totally prohibit the construction of new signs, only 6.6% of the 271 cities in the Study have adopted the most restrictive form of prohibition for outdoor advertising by combining a prohibition on new construction with amortization of legal nonconforming signs not subject to state or federal compensation requirements.
- B.** There is a positive correlation between city size and permitting the construction of new signs. While 77.1% of all cities allow for construction of new signs, almost 85% of the cities with population over 300,000 permit the construction of new signs.¹⁴
- C.** There is a positive correlation between city size and permitting the construction of large signs.
- 8 of the 10 largest cities¹⁵ permit a maximum size of at least 672 sq. ft.
 - 5 of the 10 largest cities¹⁶ permit a maximum size of at least 1,000 sq. ft.
 - 2 of the 10 largest cities¹⁷ permit a maximum size of at least 1,200 sq. ft.

¹⁴ 48 of 57 cities over 300,000 (84.2%) allow new signs to be constructed.

¹⁵ New York (1), Los Angeles (2), Chicago (3), Philadelphia (5), Phoenix (6), Dallas (8), San Antonio (9), and Detroit (10). Note: Of these cities, Philadelphia, San Antonio and San Diego only allow new signs as a replacement for an existing sign.

¹⁶ New York (1), Chicago (3), Philadelphia (5), Dallas (8) and Detroit (10).

¹⁷ New York (1) and Detroit (10).

D. Cities that regulate signs most stringently are geographically concentrated.

- 38 of the 62 cities (61.3%) that totally prohibit new construction are geographically concentrated in just 8 states.¹⁸
- 56 of the 96 cities (58.3%) that either prohibit new construction or condition new construction on the removal of one or more existing are concentrated in just nine states¹⁹ and almost 40% of these cities – 37 of 96 (38.5%) – are located in just 6 areas.²⁰

¹⁸ Arizona (3), California (10), Delaware (3), Florida (6), Maryland (5), New Hampshire (3), Texas (5) and Washington (3).

¹⁹ Arizona (4), California (17), Colorado (4), Florida (6), Maryland (5), New Hampshire (3), Rhode Island (3), Texas (6), Utah (3) and Washington (5).

²⁰ Southern California (Chula Vista, Garden Grove, Glendale, Huntington Beach, Irvine, Moreno Valley, Oceanside, Ontario, Pomona, San Bernardino, San Diego & Stockton); Suburban Phoenix (Glendale, Mesa, Scottsdale & Tempe); the San Francisco Bay area (Fremont, Oakland, San Francisco, San Jose & Santa Rosa); the Baltimore/Washington, D.C. area (Arlington, VA; and Baltimore, Bowie, Frederick, Gaithersburg and Rockville, MD); and Eastern Texas (Austin, Houston, Garland, Irving, Plano & San Antonio).