Signs and Right-of-Way
Encroachments

Georgia Association of Code Enforcement

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Should signs be regulated?
Signs are meant to attract attention!

➢ A community with a restrictive sign code works against itself, as it puts its businesses at risk of underachieving.

Is this statement True or False?

Permissive vs. Restrictive
Do you see any problems with signs in this photo?
Are signs in the R-O-W a distraction?

If this is a distraction...... Why is this not?
The “Spinner”
“Political Signs”
The Role of Driver Distraction in Traffic Crashes

The specific sources of distraction among distracted drivers were:

- *Outside person, object or event* 29.4%
- Adjusting radio, cassette, CD 11.4%
- Other occupant in vehicle 10.9%
- Moving object in vehicle 4.3%
- Other device/object brought into vehicle 2.9%
- Adjusting vehicle/climate controls 2.8%
- Eating or drinking 1.7%
- Using/dialing cell phone 1.5%
- Smoking related 0.9%
- Other distraction 25.6%
- Unknown distraction 8.6%

Prepared by the Highway Safety Research Center at the University of North Carolina for the AAA Foundation for Traffic Safety, a non-profit research organization funded mainly by the AAA (American Automobile Association), 2001.
What about LED or Electronic Signs?
Is it really worth the effort to enforce?
Sources of Authority
The governing authority of each county and each municipality may adopt plans and may exercise the power of zoning. This authorization shall not prohibit the General Assembly from enacting general laws establishing procedures for the exercise of such power. Ga. Const. Art. 9, § 2, ¶ 4
State Law

– OCGA § 36-66-1 et seq.
– OCGA § 32-6-51
– OCGA § 16-7-58
– OCGA § 32-6-70 et seq.
OCGA § 36-66-1 *et seq.*

- **Zoning and Procedures Law**
  - It requires notice and a public hearing before “zoning decisions”
  - “Zoning decisions” includes the adoption of a zoning ordinance.
OCGA § 32-6-51

- No signs in the public right-of-way without government authorization.

- May be removed by local government without notice to owner, or owner may be required to move.
Signs Not in the Right-of-Way

- Signs not in the right-of-way and...
  - imitating official traffic control device,
  - hiding from view official traffic control device, or
  - obstructing clear view of road

may be removed by local government, or owner may be instructed to remove, and if he fails, local government may do it and charge the homeowner.
Collection Procedure

• Local government gives written notice to the owner of sign or property directing removal.

• If structure not removed within 30 days, local government may remove and submit a statement of expenses to remove to owner.

• If owner does not pay within 60 days, the local government may certify the amount to the Attorney General to collect.
OCGA § 16-7-58

- Protects political signs

- Signs within public rights-of-way are governed by OCGA § 32-6-51.

- On private property, local government is limited in its regulation of political signs.
O CGA § 32-6-70 et seq.

• State regulates billboards on state highways.
• DOT issues permits.
• A DOT permitted sign gives the owner protected property rights which cannot be taken without compensation.
• Signs not in compliance are public nuisances.
OCGA § 32-6-97 provides that local governments may have ordinances more restrictive than the state law.


This case approved of a local ordinance amortizing permitted signs over a two-year period.
New Law Allowing Tree Cutting Near Outdoor Advertising Signs

- HB 179, passed House and Senate and signed by Governor
- Allows much expanded cutting of trees in the right-of-way.
  - DBH
  - Target view area
  - Newer signs
- Expressly does not preempt local ordinances.
OCGA 32-6-75.3(k)

• “Nothing in this Code section shall supersede any applicable local rules or ordinances.”
Sign Ordinances

Sign ordinances must be dealt with differently from other land use regulations because unlike most land uses, they are protected by the First Amendment to the U.S. Constitution:

Congress shall make no law...abridging the freedom of speech...
Likewise, signs are protected by the Georgia Constitution:

No law shall be passed to curtail or restrain the freedom of speech or of the press.
Regulate the structure, not the message.
How Does the Sign Ordinance Challenge Typically Rise?

- Billboard challenges
- Facial challenge to the ordinance as a whole
- May strike the entire ordinance
- May award damages and attorney fees
The Levels of Judicial Scrutiny

There are three levels of judicial scrutiny applied to zoning and land use ordinances.

THE RATIONAL BASIS TEST

- Only requires that the local government show that the ordinance is rationally related to a lawful governmental purpose.

- It is the easiest test for the local government to meet.
STRICT SCRUTINY

- The hardest test.

- Applies to all ordinances that regulate speech (i.e. signs) based upon the content of the message.

- In order to pass strict scrutiny, the local government must show that the ordinance is the narrowest means of achieving a compelling governmental interest.
INTERMEDIATE SCRUTINY

• The middle test.

• Applies to content neutral, time, place, and manner restrictions.

• A local government can survive this test if:
  - it can show that the ordinance is reasonably tailored to meet a legitimate governmental interest, and
  - it leaves open ample alternative means of communication.
Crafting Effective Sign Ordinances

Rule 1: Avoid Content-Based Restrictions

If you have to read the sign in order to determine whether or not it is allowed, then the ordinance is content based.
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Examples of Problem Language

Everything requires a permit except…
Residential lots may have one real estate sign.
Each lot may have no more than one political sign, and only for a period of 30 days before an election or primary.
Each lot may have one sign or decoration which conveys a holiday message.
No sign shall be maintained without a permit, except for signs maintained by a governmental entity, which shall not require a permit.
A sign ordinance that exempts signs of churches and religious institutions.
All signs require permits except... directional signs.
Illuminated or electronic signs are prohibited, except for signs telling the time or temperature.
Only on premises signs are permitted.
Off premises signs a/k/a “outdoor advertising signs” are prohibited.
Can *any* sign be regulated based upon its content?
GO ALABAMA! BEAT AUBURN! POISON THE HISTORIC OAKS OF TOOMEY’S CORNER!

Signs that encourage criminal behavior.
Bobby Ray, you stole my girl, you good for nothing son of a $&(#@, and I’m gonna cut you!

Fighting words
Signs that depict obscenity. OCGA 32-6-52
Signs that tend to cause official confusion or obstruct official signs are banned by state law. OCGA 32-6-51(b)(1)
Other Common Problems

Failure to properly justify the sign ordinance in the record.

- evidence (studies and reports, cases)
- findings and conclusions
- purpose
Permitting Problems

- Unbridled discretion.

- No specified or reasonable time for decisions.

- No appeal process.
How Do You Do It Right?

- Regulate structures only, and not message content
- Allow reasonable and adequate speech (and sign) opportunities
<table>
<thead>
<tr>
<th>Districts /Uses</th>
<th>No. of ground signs</th>
<th>Total area of all ground sign faces</th>
<th>Max area of single ground sign face</th>
<th>Max height of ground signs</th>
<th>Window Signs (number/ maximum total area)</th>
<th>Wall Signs (number/ max total area)</th>
<th>Max size of single wall sign</th>
</tr>
</thead>
<tbody>
<tr>
<td>AU, RC</td>
<td>3</td>
<td>64 sq. ft.</td>
<td>32 sq. ft.</td>
<td>10 ft.</td>
<td>2, up to 8 sq. ft. total area</td>
<td>2/200 sq. ft.</td>
<td>200 sq. ft.</td>
</tr>
<tr>
<td>RR, R1, R1A, MHP</td>
<td>3</td>
<td>20 sq. ft.</td>
<td>4 sq. ft.</td>
<td>5 ft.</td>
<td>2, up to 8 sq. ft. total area</td>
<td>None</td>
<td>n/a</td>
</tr>
<tr>
<td>GB</td>
<td>2</td>
<td>200 sq. ft.</td>
<td>100 sq. ft.</td>
<td>20 ft.</td>
<td>Can cover 25% of windows</td>
<td>4/200 sq. ft.</td>
<td>200 sq. ft.</td>
</tr>
<tr>
<td>WLI</td>
<td>2</td>
<td>400 sq. ft.</td>
<td>200 sq. ft.</td>
<td>35 ft.</td>
<td>Can cover 25% of windows</td>
<td>4/250 sq. ft.</td>
<td>250 sq. ft.</td>
</tr>
<tr>
<td>H-I</td>
<td>3</td>
<td>600 sq. ft.</td>
<td>300 sq. ft.</td>
<td>35 ft.</td>
<td>Can cover 25% of windows</td>
<td>4/300 sq. ft.</td>
<td>250 sq. ft.</td>
</tr>
</tbody>
</table>
- Permitting
  - As a matter of right
  - Fast
  - Appeal process
Maintenance

- You can regulate and require maintenance of the structure.

- International Building Code has some good provisions.
Zoning

versus

Street Character Classifications
Cone of Vision / Sign Setbacks

The angle at which someone sees a sign influences how much time a driver needs to react to the sign.

A sign at a 90 degree angle to the road would be the best option, while those parallel to the road are the hardest for drivers to see.
• Pedestrians and motorists passing through traffic intersections must see clearly around corners in order to avoid collisions.

• Clear visibility at intersections of streets, alleys, driveways and sidewalks is a matter of life safety.

• The ability to see around corners can be impaired by the growth of trees, plants, vehicle parking and even fence installations.

• Visibility triangle rules require that certain areas of the private property and the abutting City right of way be maintained clear of visibility obstructions.

• To enhance enforcement, check your local Development Regulations, Zoning Ordinance, as well as your sign ordinance
How does this affect the visibility triangle?
Enforcement Tips
Enforcement Tips

- Photographic evidence - denote location, date and time
- Issue a “one-page” to all business about the sign restrictions
- Cite repeat offenders
- Maintain a report on number of signs removed for a specific period
- Establish the R-O-W authority in your jurisdiction

Property owner did not obtain a vested right to build a sign even though the city issued a permit if the permit was invalidated because the location of the sign violated the sign ordinance.
Right-of-way Encroachments

What is a right-of-way?
Right-of-way vs. Easement

A public right-of-way is *generally* owned outright by the government.

An easement is a right to use the property in some way, such as to access an adjoining property or for a utility line, but it is *not* actual ownership of the underlying ground.
What is the Right-of-Way?

- Right of Way (R-O-W) refers to the land on which infrastructure is built.

- Projects such as pipelines, power lines, or telephone facilities all require R-O-W.

- The right to cross somebody else’s property by a specific route, e.g. as a means of accessing your own property.
• The ownership of the underlying property includes exclusive possession. Thus, the local government can fully control the use of property in the deeded right-of-way. Even where the right-of-way is actually an easement, the local government can control the area necessary for travel.
Proving the Right-of-Way

• A deed and plat should show the actual boundary of the right-of-way (for newer roads).

• In the context of older right-of-ways, there may not be a deed or a plat. In that case, the public right-of-way is the area that has traditionally been maintained as a road.

“Ditch to Ditch”
Right-of-ways do not exist simply because an ordinance says how wide the public right-of-way should be.

- Subdivision ordinance
- Final plat
Word of the Day

Purpreture

An encroachment upon public rights and easements by appropriation to private use of that which belongs to the public.

- Black’s Law Dictionary
Things Found to be Purprestures

- Oil and gas tanks
- Sidewalk telephones
- Piles of lumber
- Crates
- Powerlines and powerpoles
- Stairways
Abatement

• An encroachment is a public nuisance and may be abated just like any other public nuisance.

• Superior court / magistrate or municipal court.
• Pursuant to O.C.G.A § 32-6-51, as it may be amended from time to time, it shall be a violation of this ordinance for any person to erect, place, or maintain within the dedicated right-of-way of any public road any sign, except as expressly authorized by law. Signs erected in violation of this ordinance are declared to be public nuisances, and they may be removed by the City without notice to the owner, or the sign owner may be directed to remove the sign.
Signs as Encroachments – OCGA § 32-6-51

- Unlawful to erect signs in the public right-of-way
- Every sign is a separate offense.
- Local governments can adopt ordinances that similarly address the issue.
Settling

Think about the risk that the encroachment creates; does this create liability for the local government?
• Where a building inspector failed to conduct an inspection on an electricity reconnect, he failed to perform a ministerial duty, and could therefore be held liable for deaths occurring as a result of a fire after reconnection.