



THE TEXAS MUNICIPAL LAW BULLETIN™

A Supplemental News Bulletin Published by the Bojorquez Law Firm, PC ★ October 2016

A SIGN IT'S TIME FOR CHANGE

In light of a recent United States Supreme Court opinion and a recent Texas Appellate Court opinion, it's time to take another look at your sign regulations. When regulating the beauty of your city and the safety of your streets, signs are a focus.

Protecting the appearance of the city and improving traffic safety are two of the main reasons cities choose to exercise their sign regulation authority. See TEX. LOC. GOV'T CODE § 216.003. Currently, city ordinances regulate size, material, and locations of signs, but also have exemptions for certain signs. Because of constitutional issues, cities may need to rework their sign ordinances.

For noncommercial signs, such as election or ideological signs, courts have invalidated city regulations that would prohibit or severely regulate such signs. See *Reed v. Town of Gilbert*, No. 13-502 (June 18, 2015); *City of Ladue v. Gilleo*, 512 U.S. 43 (1994). In *Reed*, the Court struck down an ordinance that treated directional signs and ideological signs differently. The Court invalidated the ordinance because the town could not show that the different treatment furthered a compelling interest, and because the different treatment was not narrowly tailored to achieve the town's interests. It held that any ordinance requiring a city employee to read the content of a sign, before deciding how to treat the sign, was likely invalid.

In *Auspro Enterprises, LP v. Texas Dep't of Transp.*, 03-14-00375-CV, 2016 WL 4506161, at *1 (Tex. App.—Austin Aug. 26, 2016, no. pet. h.), the Third Court of Appeals in Texas held that the Texas Highway Beautification Act, which regulates when election signs can be placed, was invalid because the rules were content-based. This case and *Reed* require that cities evaluate their sign ordinances for content-based restrictions, particularly for election and other noncommercial signs.



Can a city still keep all election signs out of the right-of-way? Yes; but the regulation cannot be content-based and must apply to all signs—not just election signs.

We Can Help You with Your Next Steps:

1. Provide training on constitutional sign regulations.
2. Review your sign ordinance for exemptions and other potential hazards.
3. Amend the sign ordinance to fix any constitutional issues while still keeping the benefits of regulating aesthetics and traffic safety.

Contact our office for more information.

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