



# CONTENT-NEUTRAL ADVERTISING LAWS



Local governments often have legitimate reasons to restrict various aspects of advertising, such as improving the aesthetic quality of an area or promoting public safety.

Content-neutral advertising policies restrict all advertising regardless of content and can also have the added benefit of limiting the influence of commercial tobacco<sup>1</sup> advertising in a community.<sup>2</sup> An example of a content-neutral restriction is a law that requires retail stores to have no more than 25 percent of their windows covered by advertising signage of any kind. This fact sheet provides a brief overview of content-neutral restrictions and contains basic information that communities might want to consider when adopting or using content-neutral advertising laws.

## Policy Benefits

Content-neutral advertising restrictions can support important governmental interests. For



Photo: Counter Tobacco

instance, reductions in signage, especially when paired with enforcement of litter, graffiti, and related laws, can reduce driver distractions and can make communities safer, more appealing to residents, and more desirable for businesses and consumers. Also, limiting the space that signage can take on store windows and doors can make a store less of a target for crime by enabling law enforcement, first responders, and passersby to see potential criminal activity inside a building from the street.

The multiple benefits of content-neutral advertising policies also mean that they are often supported by coalitions representing various community interests, such as public health and safety, substance abuse prevention, community preservation, and tobacco control.<sup>3</sup> Such community endorsement helps to build political support for the passage of these policies and can make it less likely they will be weakened or repealed.

## Policy Approaches

Local governments can limit advertisements through content-neutral advertising policies in several ways:

- **Size:** Communities can restrict the size of advertisements that appear outside businesses, on windows, or other areas. Many localities choose to limit advertisements to a certain percentage of the total window area or frontage of the business.
- **Location:** Many localities limit advertisements to certain areas, either by ordinance or as part of a larger zoning scheme. For instance, a locality might limit billboards and other large advertisements to industrial or mixed-use areas, and prohibit them in residential zones. Ordinances can also restrict where advertisements can be located on a particular property, such as requiring them to be a certain distance from pedestrian areas.
- **Type:** Communities can limit the types of advertisements that appear. Some cities have determined that electronic, scrolling or dynamic display advertisements detract from the aesthetic quality of the community, and prohibit them if they meet certain specifications. Most localities specify the types of materials that can be used; some limit colors and typefaces, while others specify the minimum quality of construction required.
- **Number:** Localities might also consider limiting the number of outdoor advertisements that each business can display. Communities often impose this type of restriction in conjunction with size limitations. For example, businesses could choose between a smaller number of large advertisements or a greater number of small advertisements.

## Policy Findings

No matter what approach a community decides to take in regulating advertising, local laws are always more legally defensible if they contain substantial factual findings to justify them. A community enacting an advertising ordinance should describe the rationale for passing the law, and ensure that the intent and purpose of the law focuses on non-content based reasons for the advertising restrictions.



Photo: Counter Tobacco

## Legal Challenges

States or local communities considering content-neutral advertising restrictions should also be aware of the importance of local authority and preemption, and keep in mind that broad sweeping policies may be more vulnerable to legal challenge than narrow local policies.<sup>4</sup> When faced with an allegation that a law unconstitutionally restricts commercial speech like advertising in violation of the First Amendment, courts look to previous Supreme Court decisions for guidance. The U.S. Supreme Court has developed a series of tests to determine whether the First Amendment's speech protections are being violated. Different tests are applied depending on what type of speech is being regulated.<sup>5</sup> Advertising is a form of commercial speech, which the courts afford less protection than other kinds of non-commercial speech, such as individual political expression. The First Amendment's free speech tests consist of several components — often called prongs. The challenged law must meet the requirements of each prong to be held constitutional. If the law fails to meet any one of these prongs, it violates the First Amendment and is unconstitutional.

Content-neutral policies affect the time, place or manner of commercial speech, but do not affect the message being conveyed, and do not single out particular subject matter for differential treatment.<sup>6</sup> Courts first determine what type of speech the law applies to

(commercial speech, noncommercial speech, or both),<sup>7</sup> and whether or not the policy is, in fact, content-neutral. The Supreme Court has recently refined its approach to determining whether a policy is content-neutral, and communities considering adopting content-neutral advertising restrictions should always consult legal counsel.<sup>8</sup>

If the policy only restricts commercial speech and is content-neutral, courts then apply the following test:

- 1 Is the law narrowly tailored to serve a significant governmental interest?
- 2 Does the law leave open ample alternative channels for communication?<sup>9</sup>

If these prongs are met, the policy will not be invalidated on 1<sup>st</sup> Amendment grounds.

## Examples of Content-Neutral Advertising Policies

Below are a few examples of content-neutral advertising restrictions. Please note that the Public Health Law Center does not endorse or recommend any of the following policies. These examples are only select provisions of how some jurisdictions have regulated advertisements in a content-neutral manner, and do not include the full ordinances or zoning law. Communities considering adopting any of the language in the following provisions should read the laws in their entirety and assess whether the provision in question is practical and legal in their jurisdiction.

**Jurisdiction / St. Paul, Minnesota**

**Policy Element / Intent & Purpose**

### Policy Text

The purpose of this chapter is as follows:

- (a) To regulate the time, place, and manner in which signs may be exhibited;
- (b) To protect the right of information transmittal;
- (c) To promote the public health, safety and general welfare of the community;
- (d) To encourage a concern for the visual environment which makes the city a more desirable place to live;
- (e) To identify and promote business and industry in the city;
- (f) To reduce hazards which may be caused by signs projecting over public rights-of-way;

- (g) To protect open space and areas characterized by unique environmental, historical and architectural resources;
- (h) Along advanced speed arteries, to promote the safety, convenience and enjoyment of public travel, to protect the public investment in highway beautification, and to preserve and enhance the natural scenic beauty or the aesthetic features and roadways in scenic and adjacent areas;
- (i) To reduce the number of nonconforming signs in the city, particularly billboards;
- (j) To control the quality of materials, construction, electrification and maintenances of all signs;
- (k) To promote traffic safety by reducing the distracting effect of signage on motorists and cyclists; and
- (l) To deter crime by improving visibility from a business into the street and from the street into a business; and
- (m) To provide for the administration of this chapter.<sup>10</sup>

**Jurisdiction / St. Paul, Minnesota**

**Policy Element / Definitions**

**Policy Text**

*Wall sign.* A sign attached to or erected against the wall of a building, with the sign face parallel to the wall.

*Window sign, interior.* A sign placed on or behind and within four (4) feet of a window or within the window display area that is oriented toward the street and plainly visible from an adjoining street, sidewalk or other public right-of-way, but excluding skyways. It does not include merchandise on display. Any sign on an opaque window, or any sign on or in a poster frame or poster case that offers no visibility to the interior of the building, shall be regulated as a wall sign.

*Window sign area.* The entire area of any window sign. For signs consisting of lettering or design on the window with no defined background and that allow visibility into the interior of the building through the spaces, the window sign area shall be the smallest area encompassing all of the words, numerals, figures, designs, or trademarks, as well as any ornamental strip, border, or design around the edges of the sign, and shall be reduced by fifty (50) percent in calculating the permitted window signage. Window signs less than one (1) foot apart shall be measured as one (1) sign. The window sign area shall not be counted as part of the gross surface display area of signage allowed on a zoning lot.<sup>11</sup>

**Jurisdiction / La Mesa, California**

**Policy Element / Sign Regulations**

**Policy Text**

(8) Window signs, permanent.

- a. Maximum number: one per establishment frontage.
- b. Maximum sign area: twelve square feet per establishment frontage on a dedicated street, alley, or pedestrian walkway;
- c. Maximum height: window signs shall be located only on the first and second floor of nonresidential buildings and uses;
- d. Illumination: with the exception of exposed neon tubing, permanent window signs shall not be internally lighted, nor include the use of flashing or blinking lights.

(9) Window signs, temporary.

- a. Maximum sign area: forty percent of the total window area for each window or glass door located on the business frontage; an additional window sign area of up to seventy-five percent coverage is allowable for purposes of seasonal or holiday window decorations, not to exceed forty-five days in any calendar year;
- b. Maximum height: temporary window signs shall only be located in the ground floor windows of multi-story buildings and only permitted for use by establishments located on the ground floor;
- c. Other standards.
  - (i) Construction: temporary window signs shall be limited to signs, placards, or other advertising constructed of paper, cloth, paint, or expendable material affixed to the interior of a window or glass doorway;
  - (ii) Display time: temporary window signs shall be displayed for no longer than sixty consecutive calendar days without replacement or removal.<sup>12</sup>

**Jurisdiction / Henderson, Nevada**

**Policy Element / Signs in Commercial, Mixed-Use, & Industrial Districts**

**Policy Text**

**C. FREESTANDING SIGNS**

**1. Where Allowed**

Freestanding signs are allowed in all nonresidential zoning districts to which this section applies.

**2. Number**

(a) A maximum of one freestanding sign is permitted per 500 feet of street frontage or fraction thereof.

(b) Where the freestanding signs on the site are less than or equal to eight feet in height, a maximum of two freestanding signs are permitted per 500 feet of street frontage or fraction thereof.

(c) Mixed-use parcels are permitted one freestanding sign that is greater than eight feet in height per 1,000 feet of street frontage or two freestanding per 1,000 feet of freestanding signs where both signs are less than or equal to eight feet in height.<sup>13</sup>

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**Other Helpful Resources**

The [Public Health Law Center](#) provides several resources on its website that explain ways in which state and local governments and retailers can regulate tobacco advertising and promotion.<sup>14</sup> Please feel free to contact the Public Health Law Center with any questions about the information included in this fact sheet or to discuss concerns you may have about implementing a content-neutral tobacco advertising policy.

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## Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://www.keepitsacred.itcml.org>. When the word “tobacco” is used throughout this document, a commercial context is implied and intended.
- 2 Laura Brossart et al., Ctr. for Pub. Health Systems Sci., *Point-of-Sale Strategies: A Tobacco Control Guide* (2014), <https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1102&context=cphss>.
- 3 *Id.*
- 4 See, e.g., Public Health Law Center, *Untangling the Preemption Doctrine in Tobacco Control* (2018), <https://www.publichealthlawcenter.org/resources/untangling-preemption-doctrine-tobacco-control-2018>; Public Health Law Center, *Dillon’s Rule, Home Rule, and Preemption* (2020), <https://www.publichealthlawcenter.org/sites/default/files/resources/Dillons-Rule-Home-Rule-Preemption.pdf>.
- 5 See, e.g., Public Health Law Center, *A “Commercial Speech” Flowchart for Public Health Regulation* (2018), <https://www.publichealthlawcenter.org/sites/default/files/resources/Public-Health-Commercial-Speech-Chart-2018.pdf>.
- 6 *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 156 (2015).
- 7 Laws that restrict both noncommercial and commercial speech may be subject to strict scrutiny. See *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 796 (1988) (applying strict scrutiny to a regulation of commercial speech because the speech at issue was “inextricably intertwined with otherwise fully protected speech.”)
- 8 See *City of Austin, Texas v. Reagan National Advertising of Austin, LLC*, \_\_\_ U.S. \_\_\_, 142 S. Ct. 1464 (2022).
- 9 *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).
- 10 ST. PAUL, MINN., ZONING CODE § 64.101.
- 11 ST. PAUL, MINN., ZONING CODE § 64.125.
- 12 LA MESA, CAL., SIGN CODE § 15.10.040.
- 13 HENDERSON, NEV., SIGN CODE § 19.8.7.
- 14 See Public Health Law Center’s *Retail Sales, Internet Sales, & Licensure*; see, e.g., Public Health Law Center, *Using Retailer AVCs as a Tool in Tobacco Control* (2022), <https://www.publichealthlawcenter.org/sites/default/files/resources/Retailer-AVCs-as-a-Tool-in-Tobacco-Control.pdf>.