



Content-Neutral Advertising Laws

The Tobacco Control Legal Consortium has created this series of legal technical assistance guides to serve as a starting point for organizations interested in implementing certain tobacco control measures. We encourage you to consult with local legal counsel before attempting to implement these measures.¹ For more details about these policy considerations, please contact the Consortium.

Placing Restrictions on Advertising

Local governments often have legitimate reasons to place restrictions on various aspects of advertising, such as improving the aesthetic quality of an area or preventing offensive images that may be inappropriate for minors. A government can take two approaches in restricting advertising: (1) restrict all advertising without regard to its content, or (2) restrict the content, messages or imagery within the advertisements.



Restricting all advertising regardless of what the advertising says is often referred to as a content-neutral restriction. 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 signage of any kind. Local governments are often well within their authority to regulate in a content-neutral manner, and such restrictions typically do not raise complicated legal concerns such as those associated with the First Amendment of the U.S. Constitution. On the other hand, ordinances that restrict the content, messages or imagery within an advertisement are often subject to legal challenges by those who argue that such restrictions violate commercial speech rights guaranteed by the First Amendment. This guide helps answer commonly-asked questions about content-neutral restrictions and contains pointers that communities might want to keep in mind when using content-neutral advertising laws.

Policy Benefits

Content-neutral advertising restrictions support several important governmental interests. Some communities adopt content-neutral restrictions at the point-of-sale for quality of life and aesthetic reasons, explaining that reductions in signage, especially when paired with enforcement of litter, graffiti, and related laws, make communities safer, more

appealing to residents, and more desirable for businesses and consumers. Other communities adopt content-neutral restrictions because they support a concept called “natural surveillance.” Natural surveillance is the idea of increasing visibility in areas most likely to be the object of crime. For convenience and retail businesses, this means increasing the visibility of parking lots, entrances and the cash register/safe area. Restricting the space that signage can take up on window and other store spaces can enable law enforcement and passersby to see potential criminal activity, making the store less of a target.

Policy Elements

The following are a few ways in which state and local governments can limit advertisements without addressing content issues:

- **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 number of feet away from pedestrian areas.
- **Type:** Communities can limit the types of advertisements that appear. Some cities have determined that electronic, scrolling or otherwise “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 post. 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.
- **Findings:** No matter what approach a community decides to take in regulating advertising, local laws are always more legally defensible if they contain substantial findings to justify them. A community enacting an advertising ordinance should always take care to describe the rationale for passing the law, and ensure that the rationale focuses on the non-content based reasons for the advertising restrictions.

Policy Challenges

If the restrictions placed on advertising affect the time, place or manner of the advertising but do not affect the message being conveyed, the laws are likely to be upheld.² The closer laws come to affecting the content of advertising, the more vulnerable they become to a commercial speech challenge.³

When faced with an allegation that a law unconstitutionally restricts commercial speech, courts use the *Central Hudson* test – named after the case in which the test first appeared – to determine if the law violates the First Amendment.⁴ The *Central Hudson* test contains four factors:

- (1) Is the speech protected by the First Amendment?
- (2) Is the governmental interest in restricting the speech substantial?
- (3) Does the law directly advance the governmental interest?
- (4) Is the law narrowly tailored?⁵

The first and second parts of the *Central Hudson* test are likely to be satisfied by a content-neutral law enacted for aesthetic or public safety reasons—even one that may indirectly or potentially affect commercial speech. Most commercial speech cases turn on the third and fourth prongs of the test, so communities should be prepared to provide substantial evidence that the governmental interests behind their laws are properly served by the resulting restrictions, if any, on commercial speech.

The Supreme Court recently decided its first commercial speech case in about a decade. The ruling in *Sorrell v. IMS Health Inc.* is generally regarded as an expansion of the protection of commercial speech,⁶ but importantly still uses the four-part test from *Central Hudson*. The ruling may suggest that the court could extend to commercial speech the same heightened protections afforded to other types of speech. For now, however, *Central Hudson* remains the standard to measure restrictions of commercial speech.

Select Legislation and Policies

Below are a few examples of content-neutral advertising restrictions. Before you adapt any language from the following policies, take care to ensure the provision in question is practical and legal in your jurisdiction. Please note that the Tobacco Control Legal Consortium does not endorse or recommend any of the following policies. We have included these examples simply to illustrate how various jurisdictions have regulated advertisements in a content-neutral manner. The examples are only select provisions and do not include the full ordinances or zoning laws. Communities considering adopting any of the language in the following provisions should read the laws in their entirety.

Locality/State	Location	Text of Policy
La Mesa, California	Ordinance § 15.10.011(b)	<p>The interests to be served by this chapter include, but are not necessarily limited to, community esthetics, traffic and pedestrian safety, the promotion of tourism and commerce, and the overall quality of life as affected by signs. Specifically, the goals of this chapter are to:</p> <ol style="list-style-type: none"> 1. Protect the general public health, safety, and welfare; 2. Advance the goals, policies and strategies of the general plan; 3. Reduce traffic and safety hazards; 4. Provide directional and destination information to various activities and land uses, in order to serve the public convenience; 5. Establish regulations which strive to express the community's pride, design standards, vitality, diversity, originality, culture, and sense of order, giving it a distinctive appearance and reinforcing the character of La Mesa. 6. Encourage signs which are well designed and pleasing in appearance, and to provide incentive and latitude for the proper, good design relationship between signs, businesses, buildings, and other uses. 7. Provide uniform standards which promote fair competition and unique identification within the business community. 8. Provide clear regulations which provide fair notice, and provide review procedures for any individual action or program undertaken to enforce the requirements of this Chapter. 9. Provide opportunities for residents to express their thoughts and sentiments on noncommercial topics, and to display real estate signs, at their residences. 10. Comply with state and federal laws requiring the posting of signs and notices.
La Mesa, California	Ordinance § 15.10.040(d)(8)	<p>Window signs, temporary.</p> <ol style="list-style-type: none"> 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. <ol style="list-style-type: none"> 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.
Grand Ave. (St. Paul) Minnesota	Special District Sign Plan, § 64.601	Signs that advertise a product and include the name of the business on the premises upon which the sign is placed shall not be permitted. Such signs, which are often provided by product suppliers, fail to highlight the important information, the business, and clutter the appearance of the street. Business signs may take the form of wall signs, projecting signs, freestanding signs, temporary signs, and portable signs. . . . The sum of the gross surface display area in square feet of all business signs on a lot shall not exceed one (1) times the lineal feet of lot frontage or seventy-five (75) square feet, whichever is greater. . . . Wall signs, including temporary window signs, should not exceed 30% of the store window glass area. The lettering of the business name should not exceed twelve (12) inches in height. The lettering for other information should not exceed one inch in height.
Henderson, Nevada	Ordinance § 19.8.7(B)(1)	Wall Signs. A maximum of one wall sign per business per street frontage not to exceed twenty-five percent of the non-glazed area of the storefront, or forty square feet, whichever is smaller, shall be permitted. Wall signs shall be constructed of individual letters either internally or externally illuminated. Cabinet signs shall only be utilized for corporate logos.
Long Beach, New York	Ordinances Art. I, § 3-5(f)	1. In no case shall a permanent interior sign cover more than thirty (30) per cent of the window area, provided that if there are more than one hundred fifty (150) square feet of window area, said interior sign shall be limited to no more than fifteen (15) per cent of the window area. 2. Eighty (80) per cent of permanent interior signage exceeding ten (10) square feet in area shall be counted as part of the maximum sign area permitted for a particular use.

Other Helpful Resources

The Tobacco Control Legal Consortium's parent organization, the [Public Health Law Center](#), features on its website Consortium [publications and resources](#) that address potential ways in which state and local governments can regulate marketing and promotion. Those materials, however, primarily focus on restricting tobacco advertising

and promotion. This site includes [Restricting Tobacco Advertising – Tips & Tools](#) and the [Center for Public Health and Tobacco Policy](#)'s white paper on [Tobacco Product Display Bans](#). In addition, [Public Health Law and Policy](#) offers resources to assist communities in taking certain approaches to regulating tobacco advertising (for example, [10 Ways to Limit Tobacco](#), a fact sheet that includes information on retail restrictions such as signage).

Contact Us

Please feel free to contact the Tobacco Control Legal Consortium with any questions about the information included in this guide or to discuss concerns you may have about implementing a content-neutral advertising policy.

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Notes

¹ The information contained in this document is not intended to constitute or replace legal advice.

² For additional information on the legality of potential advertising regulations and the way to avoid possible legal pitfalls, see Tobacco Control Legal Consortium publications on the Public Health Law Center website in the [Federal Regulation of Tobacco Collection](#) – specifically “Regulation of Tobacco and ‘Commercial Speech’ Issues.”

³ See, e.g., Tobacco Control Legal Consortium, *Restricting Tobacco Advertising* (2011), available at <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-guide-restricttobadvert-2011.pdf>.

⁴ Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y., 447 U.S. 557 (1980).

⁵ See *supra* text accompanying note 2.

⁶ Sorrell v. IMS Health Inc., 564 U.S. __ (2011), available at <http://www.supremecourt.gov/opinions/10pdf/10-779.pdf>.