

§ 24.381

McQuillin,
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MUNICIPAL CORPORATIONS

as the interested public—has a stronger interest in identifying its place of business and advertising the products or services available there than it has in using or leasing its available space for the purpose of advertising commercial enterprises located elsewhere. *Metromedia, Inc. v. San Diego*, 453 US 490, 69 L Ed 2d 800, 101 S Ct 2882.

Colorado. *Veterans of Foreign Wars v. Steamboat Springs*, 195 Colo 44, 575 P2d 835.

Maryland. *Donnelly Advertising Corp. v. Baltimore*, 279 Md 660, 370 A2d 1127.

North Dakota. *Newman Signs, Inc. v. Hjelle*, 268 NW2d 741 (ND).

Texas. Where the distinction does not involve a "suspect" class, the proper judicial measure is whether there is any reasonable basis for the classification. *Lubbock Poster Co. v. Lubbock*, 569 SW2d 935 (Tex Civ App).

⁴⁰ **New Jersey.** *Passaic v. Paterson Bill Posting, Advertising & Sign Painting Co.*, 72 NJL 285, 287, 62 A 267.

North Carolina. *State v. Whitlock*, 149 NC 542, 63 SE 123.

⁴¹ **United States.** *Major Media of Southeast, Inc. v. City of Raleigh*, 621 F Supp 1446 (ED NC) (failing to define "commercial" and "noncommercial" in

sign ordinance as not unconstitutionally vague).

California. *City of Indio v. Arroyo*, 143 Cal App 3d 151, 191 Cal Rptr 565.

Colorado. *General Outdoor Advertising Co., Inc. v. Goodman*, 128 Colo 344, 262 P2d 261.

Michigan. *Wolverine Sign Works v. Bloomfield Hills*, 279 Mich 205, 271 NW 823.

Ohio. *Leet v. Eastlake*, 7 Ohio App 2d 218, 220 NE2d 121; *State v. Leonard*, 68 Ohio L Abst 542, 50 Ohio Op 162, 124 NE2d 187.

Pennsylvania. *White Advertising Metro, Inc. v. Zoning Hearing Board of Susquehanna Tp.*, 70 Pa Commw 308, 453 A2d 29.

South Carolina. *Schloss Poster Advertising Co. v. Rock Hill*, 190 SC 92, 2 SE2d 392.

⁴² **Texas.** *Ex parte Savage*, 63 Tex Crim 285, 141 SW 244.

⁴³ **United States.** *Major Media of Southeast, Inc. v. City of Raleigh*, 792 F2d 1269 (CA4).

Illinois. *National Advertising Co. v. Village of Downers Grove*, 204 Ill App 3d 499, 560 NE2d 1300 (1990).

⁴⁴ **United States.** *City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 US 365, 113 L Ed 2d 382, 111 S Ct 1344 (1991).

§ 24.382. —Esthetic considerations.

It is well settled that the state may legitimately exercise its police powers to advance esthetic values.¹ Accordingly, the United States Supreme Court has upheld a municipal ordinance prohibiting the posting of signs on public property where that ordinance was applied to the posting of political campaign signs.² Municipalities have a weighty, essentially esthetic interest in proscribing intrusive and unpleasant formats for expression.³ The visual assault on citizens presented by an accumulation of

signs posted on public property constitutes a significant substantive evil within the city's power to prohibit.⁴ Such an ordinance curtails no more speech than is necessary to accomplish its purpose of eliminating visual clutter.⁵ While a restriction on expressive activity may be invalid if the remaining modes of communication are inadequate,⁶ the ordinance does not affect any individual's freedom to exercise the right to speak and to distribute literature in the same place where the posting of signs on public property is prohibited.⁷ The mere fact that government property can be used as a vehicle for communication such as the use of lampposts as signposts does not mean that the constitution requires such use to be permitted.⁸ Public property which is not by tradition or designation a forum for public communication may be reserved by the government for its intended purposes, communicative or otherwise, if the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.⁹

When a governmental unit justifies a restrictive ordinance on the grounds that it promotes esthetic values, the justification of the ordinance must be carefully scrutinized to determine whether it may impermissibly be a public rationalization of an improper purpose.¹⁰

At one time, esthetic considerations alone generally could not sanction restrictions relating to the erection and maintenance of billboards and other outdoor advertising structures.¹¹ That is no longer the case.¹² However, esthetic considerations will not sanction restrictions of this character that are unreasonable.¹³ Thus, the city's legitimate interest in its esthetic environment cannot be a justification for suppressing the rights of those private persons who seek to improve that same esthetic environment.¹⁴ Also, depriving one of the legitimate use of one's property merely because such use offends the esthetic or refined taste of other persons cannot be done, since it would violate the constitutional prohibition of taking of property without due process or for public use without compensation.¹⁵

On the other hand, esthetic considerations are not to be ignored and can be considered in conjunction with objects well within the police power in passing upon the reasonableness and validity of an ordinance regulating billboards, signs, posters, or the like.¹⁶ A municipality may have express power to base ordinances, including sign ordinances, upon esthetic considerations,

particularly in tourist centers where the attractiveness of the community bears a substantial relation to the general welfare,¹⁷ or where the city is a center of culture and beauty.¹⁸ On the other hand, where zoning regulations are strictly construed as being in derogation of the common law,¹⁹ express authorization for a municipality to regulate the height, size and location of advertising signs and billboards in the interest of aesthetics does not authorize a municipality to regulate the colors in a sign for aesthetic concerns.²⁰

A city's determination that off-premises advertising signs constitute traffic hazards and are unattractive provides the city with a sufficient basis for regulating commercial off-premises billboards.²¹ However, where it is far from certain that the esthetic interest, even if coupled with that of traffic safety, is directly advanced by the particular regulations or where such regulations are more restrictive than necessary to advance the city's interest, the regulations will be struck down.²² Although the municipality must have an important legitimate esthetic interest in regulating signs, and the ordinance must be narrowly tailored to further its objective,²³ the ordinance is not invalid merely because it might have gone further than it did.

Because a sign ordinance regulating the size, height and number of commercial and noncommercial signs, the predominant objective of which is esthetics, might impinge on First and Fourteenth Amendment rights, such an ordinance must directly advance the interest of esthetics to be constitutional.²⁴ Because such an ordinance does not prohibit speech altogether, the issue to be addressed in determining whether the ordinance abridges freedom of speech is whether the ordinance constitutes a legitimate time, place and manner restriction.²⁵ The criteria to be analyzed in determining whether the ordinance is a legitimate time, place and manner restriction are whether the restriction serves a significant government interest, whether it is justifiable without reference to the content of the regulated speech, and whether it leaves open ample alternative channels of communication.²⁶ Even though such an ordinance regulates political and religious signs, it may be justified without reference to content against an allegation that it abridges freedom of speech, where religious signs could be posted so long as they comply with the height, size and number restrictions, and where the ordinance

does not contain any restriction on the dissemination of political or religious ideas by means of a sign.²⁷

Where erection of a billboard requires obtaining a permit as a conditional use, grant or denial of the permit may not be based upon a subjective evaluation that the sign would be esthetically objectionable but must instead be grounded upon compliance or noncompliance with objective standards enumerated in the zoning ordinance.²⁸ The exercise of the police power should not extend to every artistic conformity or nonconformity. Rather, what is involved are those esthetic considerations which bear substantially on the economic, social and cultural patterns of a community or district.²⁹

¹ **United States.** *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 US 789, 80 L Ed 2d 772, 104 S Ct 2118; *Ackerley Communications of Massachusetts, Inc. v. City of Cambridge*, 88 F3d 33 (CA1 1996); *National Advertising Co. v. City of Orange*, 861 F2d 246 (CA9 1988).

Alaska. *Barber v. Municipality of Anchorage*, 776 P2d 1035 (Alaska 1989).

New Hampshire. *State of New Hampshire v. Hodgkiss*, 132 NH 376, 565 A2d 1059 (1989).

See also §§ 24.16, 25.29–25.31.

² **United States.** *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 US 789, 80 L Ed 2d 772, 104 S Ct 2118.

Alaska. *Barber v. Municipality of Anchorage*, 776 P2d 1035 (Alaska 1989).

³ **United States.** *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 US 789, 80 L Ed 2d 772, 104 S Ct 2118; *Harnish v. Manatee County Florida*, 783 F2d 1535 (CA11) (validating ban on temporary signs based on esthetic considerations).

Alaska. *Barber v. Municipality of Anchorage*, 776 P2d 1035 (Alaska 1989).

Missouri. *City of Dellwood v. Latimore*, 857 SW2d 513 (Mo App 1993), citing this treatise.

⁴ **United States.** *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 US 789, 80 L Ed 2d 772, 104 S Ct 2118.

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⁵ **United States.** *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 US 789, 80 L Ed 2d 772, 104 S Ct 2118; *Ackerley Communications of Massachusetts, Inc. v. City of Cambridge*, 88 F3d 33 (CA1 1996).

⁶ **Alaska.** *Barber v. Municipality of Anchorage*, 776 P2d 1035 (Alaska 1989).

⁷ **United States.** *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 US 789, 80 L Ed 2d 772, 104 S Ct 2118.

⁸ **United States.** *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 US 789, 80 L Ed 2d 772, 104 S Ct 2118.