



INFORMATION MEMO

Election Campaign Signs

During each election cycle, cities face questions from candidates and residents about where and when campaign signs can be posted. This memo addresses some of the common concerns about campaign sign regulation by the city, the size and location of signs, and how to deal with illegal signs.

RELEVANT LINKS:

U.S. Const. amend. I
Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015).
Goward v. City of Minneapolis, 456 N.W.2d 460 (Minn. App. 1990).
Brayton v. City of New Brighton, 519 N.W.2d 243 (Minn. App. 1994) cert. denied, 514 US 1036, (1995).
City of Ladue v. Gilleo, 512 U.S. 43 (1994).
LMC information memo, Signs and the First Amendment.

Brayton v. City of New Brighton, 519 N.W.2d 243 (Minn. App. 1994), cert. denied, 514 U.S. 1036, (1995).

Minn. Stat. § 211B.045.

Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015).

I. Signs as speech—commercial or noncommercial

Legally, signs represent speech. The First Amendment protects signs as speech and courts closely review any attempts to regulate them. Generally, sign content represents the protected “free speech” that cities must not censor. Cities and municipalities, however, may, within certain bounds, regulate the size and physical characteristics of signs and billboards.

Since courts consider the content of signs “speech”, it is worth noting that case law distinguishes “noncommercial speech” from “commercial speech”. Although the law protects both types of speech, it treats them differently. One Minnesota case distinguishes noncommercial speech signs from commercial speech signs, defining a “noncommercial opinion sign” as one which “does not advertise products, goods, businesses, or services and which expresses an opinion or other point of view.” Courts consider campaign signs a subset of noncommercial opinion speech and, generally, provide significant protection and latitude to those types of signs.

II. Campaign signs

Cities may regulate the number, size, and placement of noncommercial signs—including campaign signs—for safety or aesthetic reasons, but must do so carefully. Cities cannot, however, regulate the content of these signs. Courts have found city ordinances that categorize types of signs based on type of information conveyed (such as temporary, political, and ideological) unconstitutional. Because of potential constitutional issues, cities should work with their city attorney before regulating signs.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

Minn. Stat. § 211B.045.
Minn. Stat. § 204D.03 (state primary shall be held on the second Tuesday in August in each even-numbered year).
Secretary of State Website: Campaign Signs.
LMC information memo, *Calendar of Important Dates*.
Secretary of State Election Calendar (Cities with Primaries).
Secretary of State Election Calendar (Cities without Primaries).
Hensel v. City of Little Falls, 992 F.Supp.2d 916, fn. 3 (D. Minn. 2014).

Adv. Media v. City of Hopkins, 379 F.Supp.2d 1030 (D. Minn. 2005).
Adv. Media v. City of Eden Prairie, 405 F.Supp.2d 1037 (D. Minn. 2005).

Constitutionality, Section VI (content neutral discussion).

City of Ladue v. Gilleo, 512 U.S. 43, 47-48 (1994).

Hensel v. City of Little Falls, 992 F. Supp.2d 916 (D. Minn. 2014).

Secretary of State Website: Campaign Signs.

MnDOT website: Signs and other objects along highway right-of-way and MnDOT property.
Minn. Stat. § 160.27.

A. State general election years

During a state general election year (always in even-numbered years), “sign anarchy” reigns, temporarily giving a reprieve from local regulations that restrict the size or the number of noncommercial signs. Specifically, the state statute requires cities to allow posting of noncommercial signs of any size and number during election season of a general election year, defined as starting 46 days before the state general primary date and running until 10 days after the state general election. Check the League of Minnesota Cities memo, *Calendar of Important Dates*, for the applicable dates each year that trigger the appropriate time frame.

This “sign anarchy” law does not, however, address location, making it likely that reasonable, local regulations on sign location still apply even during the general election season. Also, outside of this “election season” for a general election year, a city’s local sign ordinance governs.

B. Non-general election years

1. Cities with an ordinance regulating signs

During non-general-election years, a city’s local sign ordinance governs noncommercial signs, including campaign signs. As stated above, because campaign signs represent a subset of noncommercial opinion speech, courts provide significant protection and latitude to those types of signs. As a result, ordinances that regulate signs, including campaign signs, must not regulate content. Generally, cities can regulate time, place, and manner of sign placement, as long as doing so furthers a compelling governmental interest and are other alternative channels for communicating the information are available. If a city ordinance even classifies signs by type of sign for purposes of regulation (such as having different restrictions for posting political signs as opposed to other signs), then courts generally find those ordinances unconstitutional. Keep in mind, courts likely would invalidate a sign ordinance that completely prohibits yard signs.

2. Cities with no ordinance regulating signs

In cities that do not have sign ordinances, cities have no authority to restrict the size and number of noncommercial signs or campaign signs at any time during the year. However, even when no local sign ordinance exists, signs still must comply with certain state regulations.

RELEVANT LINKS:

Minn. Stat. § 211B.045.
Adv. Media v. City of Hopkins, 379 F.Supp.2d 1030 (D. Minn. 2005).
Adv. Media v. City of Eden Prairie, 405 F.Supp.2d 1037 (D. Minn. 2005).

Minn. Stat. § 160.27.

MnDOT website: Signs and other objects along highway right-of-way and MnDOT property.

Minn. Stat. § 160.2715.

Minn. Stat. § 173.15.
MNDOT Letter to Candidates for Public Office.

LMC information memo, *Acquisition and Maintenance of City Streets*.

III. State law

A. Size and number of signs

Other than the election season campaign sign law discussed above, state law does not regulate the size or number of campaign signs.

B. Location

Candidates and their supporters want campaign signs noticed, creating competition for certain locations. Where a candidate may post signs can get confusing under the law.

Election season or not, a person never can place signs in a location that violates state law. For example, the Minnesota Department of Transportation states that objects along roadways pose hazards for drivers and maintenance crews and, in fact, state law prohibits the painting, printing, placing, or affixing any advertisement or advertising device within county and state highway limits. Minnesota’s Outdoor Advertising Control Act specifically prohibits placement of advertising devices (including campaign signs):

- On private land without the consent of the owner or occupant.
- On public utility poles.
- On trees or shrubs.
- As paintings or drawings on rocks or natural features.

Although some cities have decided to align their sign ordinances with the Department of Transportation’s stance on objects in rights of way in some situations and with proper approvals, posting of certain signs within rights of way along city streets may be allowed.

Because the law often can get confusing about placement of signs in rights-of-way, cities should consult their city attorneys.

C. Determination of right-of-way

As stated above, confusion about where candidates can post signs often arises. An easement document or plat generally defines the scope of the right-of-way, which will include the street itself, as well as an area on either side of the street used to support the use of the street. Additionally, the right-of-way includes the area below and above the roadway. So, in sum, typically a city right-of-way includes the:

RELEVANT LINKS:

Minn. Stat. § 211B.11.
City Clerk Election Guide.
Minn. Stat. § 211B.11.

MnDOT website: Signs and other objects along highway right-of-way and MnDOT property.
Minn. Stat. § 160.27.

Minn. Stat. § 160.2715.

Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015).

Ward v. Rock Against Racism, 491 U.S. 781 (1989).

Members of City Council of City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 813-14 (1984).

- Traveled street surface.
- Center median or divider.
- Shoulder of the street.
- Curb and gutter.
- Bicycle lane (if any).
- Sidewalk and/or ditch alongside the road.
- Area above the roadway

Since the size, shape, and geography of rights of way vary dramatically from city to city, and cities often regulate objects in their rights of way (including campaign signs), cities should seek guidance from the city attorney to develop clear guidelines applicable to campaign signs and other noncommercial signs.

IV. Voting locations

Campaign signs are not allowed within 100 feet of the building where absentee voting takes place during the absentee voting period.

Additionally, on Election Day, campaign signs are not allowed within 100 feet of the building that houses a polling place, or anywhere on the public property where the polling place is located.

V. Campaign sign removal

Even though the election season exemption (for general election years) allows the posting of noncommercial signs (other than in voting locations or in locations prohibited by state law) “until 10 days following the state general election,” this does not mandate the removal of those signs 10 days after an election.

For example, in a city that has an ordinance governing signs, it simply means that the city may again enforce its own ordinance starting 10 days after the election. In a city with no ordinance governing signs, the city cannot require the removal of either campaign signs or other signs, except for those signs that do not comply with state regulations.

VI. Constitutionally valid regulation

As stated above, First Amendment issues may arise when regulating signs, including campaign signs, but that does not mean cities can never do so. However, cities must use caution and should adopt sign ordinances that:

- do not regulate content or the message;
- address only the time, place, and manner of the sign and its posting; and
- further a compelling governmental interest.

RELEVANT LINKS:

Brayton v. City of New Brighton, 519 N.W.2d 243 (Minn. Ct. App. 1994).

Hensel v. City of Little Falls, 992 F. Supp.2d 916 (D. Minn. 2014).

Members of City Council of City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 813-14 (1984).

Members of City Council of City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 813-14 (1984).

Additionally, evidence of other alternative channels for communicating the information must exist.

The most commonly cited “compelling governmental interests” include ensuring traffic safety, reducing clutter, protecting home values, and protecting aesthetics. Ordinances that categorize signs by types based on content or the message conveyed (such as temporary, political, and ideological) have been found to be unconstitutional and not content-neutral. In determining the content-neutrality of a city’s sign ordinance, courts often review the city’s purpose for the regulation and most often find sign ordinances content-neutral when the city can justify the regulation without reference to the content of the regulated speech. Safety and aesthetics often represent acceptable content-neutral reasons for regulating signs, including the adoption of regulations restricting size, building materials, lighting, moving parts, and portability of signs.

A. Public forum

First Amendment protections of speakers’ rights to speech and assembly vary based upon the choice of the speakers’ forum. Traditional public forums enjoy the strongest First Amendment protections and most often include public parks, sidewalks, and areas open to political debate and speech. In these types of public forums, a city may not discriminate against speakers or, in this instance, signs based upon viewpoints; but rather, may adopt content-neutral regulations that restrict time, place, and manner.

B. Nonpublic forum

Not all structures or buildings located on city-owned property fall within the scope of the public forum. The mere fact that a city owns or controls certain property that someone could use as a vehicle for communication—such as lampposts or utility poles on which signs could be posted—does not mean that the Constitution protects such use. The U.S. Supreme Court stated that “public property which is not, by tradition or designation, used as a forum for public communication may be reserved by the government for its intended purposes, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.” In fact, the Supreme Court found that a city may properly decide that the aesthetic interest in avoiding visual clutter justifies removal of all signs creating or increasing that clutter.

Since access to public property depends on the type and use of the public property, cities should consult their city attorney before answering questions about the use of public property for campaign signs.

RELEVANT LINKS:

United States v. O'Brien, 391 U.S. 367, 377 (1968).

MnDOT website: Signs and other objects along highway right-of-way and MnDOT property.

Minn. Stat. §§ 211B.32-211B.36.

VII. Common concerns

A. Removal of illegal signs

The authority responsible for the road where the sign is posted may remove an illegally placed sign, but must do so in a fair and impartial manner. Consequently, cities may remove noncommercial signs posted illegally on city streets, counties may remove illegal signs on county roads, and the Minnesota Department of Transportation may remove illegal signs from state highways.

Candidates should not remove illegally posted signs that they do not own. Cities may contact the owner of the sign and have them remove the sign or, in the alternative, designate a city staff member to do so. For most cities, public works or police department staff most often remove illegally placed signs.

B. Retrieval of illegal signs

When a city removes an illegal sign, it is best practice to store the sign and notify the owner of the storage location, so he or she may pick up the sign. Many cities choose to temporarily store signs at city hall or a public works garage so the owner can easily retrieve them.

C. Complaints of Unfair Campaign Practices

Complaints alleging unfair campaign practices, including illegal removal of signs, must follow a specific statutory procedure, including filing with the Office of Administrative Hearing ("OAH"). A party aggrieved by a final decision of an Administrative Law Judge from the OAH then can seek judicial review of that decision.

VIII. Conclusion

Remember that landowners may post signs expressing opinions—including campaign signs—on private property year-round. However, cities still may regulate these signs to some extent, even when on private property, as long as the city does so with constitutionally valid city ordinances that do not regulate content, but may address the number, size, and placement of the signs for safety and aesthetic reasons. Consult the city attorney to ensure carefully crafted regulations of such noncommercial signs.

RELEVANT LINKS:

While normally a city can impose reasonable size, number, and location restrictions on noncommercial signs, during state general election season in even years, these local ordinances temporarily are preempted by a state law that allows posting of noncommercial signs of any size or number during that time. This allows candidates and their supporters more flexibility in posting signs in support of their election bid.

Specifically, the statute allows the posting of noncommercial signs of any size and number from 46 days before the date for state primary election to 10 days after the state general election, during general election years, irrespective of the city's sign ordinance regulation. Location of campaign signs, however, still may be subject to both state law and, if the city has a sign ordinance, also to city regulation.

Keep in mind, for those cities that do not have an ordinance regulating signs, anyone can post campaign signs in any size and number throughout the year (not just during election season); however, the location still must comply with state law.

