

# *Other Legal Issues in Sign Codes*

Birmingham, Alabama  
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# Permitting

- Activate the ordinance
- Additional permits required?
- Administrative designee
- Required information
- Exemptions
- Fees

# Permitting fees

Set fee: A flat fee for all signs

Valuation: The fee is based on the value of the sign.

Sign size: Fees increase as the area or height of the sign increases.

Hybrid: A combination of the valuation method and the sign size method

Fees should be enough to cover administrative costs – not to generate revenue

# Prior Restraint

1. The ordinance could lack procedural safeguards, which means that it does not set out a prompt timeframe for review of a permit application.

Where an ordinance is content-neutral, it is not required to have a definite timeframe, but the timeframe may not be arbitrarily long.

2. The ordinance could grant government officials unbridled discretion in approving or denying the permit if the language of the ordinance does not provide sufficient direction for review of the permit application.

Official approve/reject signs only on basis of consistency with “general health, safety, and welfare”.

Design review presents a series of potential obstacles

# Due Process

- 14<sup>th</sup> Amendment: *“Nor shall any State deprive any person of life, liberty, or property without due process of law”*
- Procedural Due Process
  - Sufficient Notice, Fair Hearing
  - Example: Vague Standards
- Substantive Due Process
  - If Substance of Regulation Deprives a Fundamental Right
  - Example: “Unreasonable” Permit Fees

# Takings

5<sup>th</sup> Amendment: *“nor shall private property be taken for public use without just compensation”*

- Direct Taking (Eminent Domain)
- Non-conforming signs
- Amortization

# Code Enforcement

***Not enough resources, time or personnel***

Fees from permitting in special cases

Local government bears the burden of proving that the fee charged bears a reasonable relationship to the actual costs of administering the permit system.

Courts will invalidate sign permit fees if a local government fails to show that the fee was reasonably related to the costs of enforcement

# Legislation That Affects Signs

- Highway Beautification Act of 1965
- Alabama Department of Transportation
- Federal Manual on Uniform Traffic Control Devices (MUTCD)



# Lanham Act

- Protects federally registered names, marks, emblems, slogans, colors, etc.
- Prohibits the government from requiring the alteration of a trademark



# Recommendations

- Consult with city attorney early on in process of drafting regulations
- Do not copy language from other cities; may be borrowing unconstitutional rules
- As always, main consideration is tolerance of risk from legal exposure